



CITY OF ELKO

Planning Department

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

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

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, July 7, 2020 in the Turquoise Room at Elko Convention Center, 700 Moren Way, 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:

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801

Date/Time Posted: June 30, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician

Name

Title

Shelby Archuleta
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 June, 2020.

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

Cathy Laughlin
Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, JULY 7, 2020
ELKO CONVENTION CENTER, TURQUOISE ROOM,
700 MOREN WAY, 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 5, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

June 2, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration and possible approval of Final Map No. 3-20, filed by Scott Reutner Properties, LLC, for the development of a subdivision entitled Aspen Heights involving the proposed division of approximately 2.54 acres of property into 9 lots for residential development within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located on the south side of Celtic Way between Shadow Ridge Drive and Sunnyside Avenue. (APN 001-660-011)

2. Review, consideration, and possible recommendation to City Council for Parcel Map 5-20, filed by City of Elko. The parcel map creates four parcels from the existing one parcel and contains an offer of dedication for right-of-way for a portion of Wright Way, Rocky Road and Jennings Way. Due to the dedication, it is referred to

the Planning Commission with recommendation to the City Council, and matters related thereto. **FOR POSSIBLE ACTION**

The parcel map creates four parcels from the one parcel owned by the applicant, City of Elko. The map will be dedicating a portion of Wright Way, Rocky Road and Jennings Way to the City of Elko.

3. Review, consideration, and possible action to an amendment to the City of Elko Master Plan, specifically amending: 1) the Proposed Future Land Use Plan Atlas Map 8 on six parcels of land located on S. 5th Street generally between Carlin Court and S. 9th Street; 2) adding RO (Residential Office) as a corresponding zoning under the Downtown Mixed-Use land use designation, and 3) the Proposed Future Land Use Plan Atlas Map 8 on one parcel located at the western terminus of Rocky Road, and matters related thereto. **FOR POSSIBLE ACTION**

Recent development applications have revealed some inconsistencies between existing Zoning districts and Master Plan designations. The proposed amendment cleans up these inconsistencies. NRS Section 278.210(5) allows Master Plans to be amended up to four times a year. This amendment is the second in 2020.

4. Review, consideration, and possible action to initiate an amendment to the City of Elko district boundaries, specifically APN 001-472-014, removing the C-General Commercial Zoning District and replacing with the PQP- Public, Quasi-Public District, and matters related thereto. **FOR POSSIBLE ACTION**

Elko City Code Section 3-2-21 allows the Planning Commission to initiate on its own motion a change to the district boundaries. The City of Elko owns the parcel and the building has been occupied for many years as a fire station. This amendment, initiated by the Planning Commission, if approved, will bring back as a public hearing a rezone of the parcel from C-General Commercial to PQP- Public Quasi-Public.

5. Review, consideration, and possible action to initiate an amendment to the City of Elko district boundaries, specifically APN 001-01A-012, removing the AG-General Agriculture Zoning District and replacing with the PQP- Public, Quasi-Public District, and matters related thereto. **FOR POSSIBLE ACTION**

Elko City Code Section 3-2-21 allows the Planning Commission to initiate on its own motion a change to the district boundaries. The City of Elko owns the parcel and the VA is proposing to purchase a portion of the property for a future VA Cemetery. This amendment, initiated by the Planning Commission, if approved, will bring back the zone amendment as a public hearing to rezone the parcel from AG-General Agriculture to PQP- Public Quasi-Public.

II. REPORTS

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

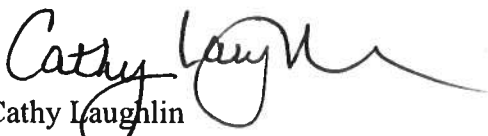
COMMENTS BY THE GENERAL PUBLIC

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

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

ADJOURNMENT

Respectfully submitted,


Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, MAY 5, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
GoToMeeting.com
<https://global.gotomeeting.com/join/906677325>

CALL TO ORDER

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

ROLL CALL

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

Absent: **Evi Buell**

City Staff Present: **Scott Wilkinson, Assistant City Manager**
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Matthew Griego, Fire Chief
 Bob Thibault, Civil Engineer
 Ty Trouten, Police Chief
 Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

I. NEW BUSINESS

A. PUBLIC HEARING

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

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

Amber Dupee explained that they were wanting to open up a Brew Pub. There would be no hard alcohol, only craft beer that would be made on site, with the addition of some other local beers. They are planning to start off with small appetizers and progressing to other appetizers. They don't plan on staying open on weekends later than 10 p.m. They are not looking to create a bar scene, there will be no smoking and minimal music.

Cathy Laughlin, City Planner, went through the City of Elko Staff Report dated April 17, 2020. Staff recommended conditional approval with the conditions and findings in the Staff Report.

Ty Trouten, Police Chief, went over the Police Department Conditions that were listed in the Staff Report.

Chairman Jeff Dalling asked Chief Trouten if he had discussed the Police Department conditions with the applicants.

Chief Trouten explained that he had not spoken with the applicants, but he had been speaking with Ms. Laughlin.

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

Bob Thibault, Civil Engineer, had no additional comments.

Matt Griego, Fire Chief, had no comments or concerns.

Scott Wilkinson, Assistant City Manager, had no comments or concerns.

Commissioner Gratton Miller asked if the applicants would be having vats in the building, or if they would be doing the brewing off-site.

Bill Dupee explained that they would be brewing in the building.

Ms. Dupee wanted to touch on the Police Department condition on the hours of operation. She explained that they would be closing at 10 p.m. They didn't plan on staying open any later than that, except to let people finish their drinks. On weekdays they were looking at closing at 8 p.m.

***** Motion: Conditionally approve Conditional Use Permit No. 1-20 subject to the conditions in the City of Elko Staff Report dated April 17, 2020, listed as follows:**

- 1. The permit is granted to the applicant Bill Dupee and Amber Dupee-Johnson for a brewery and/or bar establishment subject to compliance with all conditions imposed by a conditional use permit.**
- 2. The permit shall be personal to the permittee and applicable only to the specific use (bar establishment) and to the specific property (401 Railroad Street) for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for**

the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.

3. CUP 1-20 to be recorded with the Elko County Recorder within 90 days after the business license is issued for the bar.
4. Signage will require review and comment by the Redevelopment Agency prior to approval by the City.
5. Applicant shall install and maintain exterior security lighting that illuminates both the Railroad and 4th Street frontages as well as the alleyway adjacent to the establishment. The security lighting shall be sufficient to make easily discernible the appearance and conduct of all persons and patrons in the vicinity of the front and side entrances, and shall be positioned so as not to cause excessive glare for persons located outside of the vicinity of the front and side entrances, such as pedestrians, motorists, and owners and occupants of neighboring properties.
6. Applicant shall remove all bottles, cans, trash, broken glass, debris, and bodily fluids from abutting properties upon closing on each day applicant's business is open.
7. Applicant shall maintain an active account with Elko Sanitation at all times for the collection of garbage, refuse and waste within the common collection area of the 400 block.

Police Department:

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

Commissioner Beck's findings to the support the motion were the conditional use is in conformance with the Land Use Component of the Master Plan. The conditional use is in conformance with the Transportation Component of the Master Plan and existing transportation infrastructure. The conditional use is in conformance with the Wellhead Protection Plan. Approval of the Conditional Use Permit is required for the proposed use to be in conformance to Sections 3-2-3 & 3-2-10 of the Elko City Code. The proposed use is in conformance with Sections 3-2-4, 3-2-17, and 3-2-18 of the Elko City Code. The proposed use conforms to Section 3-8 of Elko City Code.

Made by Stefan Beck, Seconded by Gratton Miller.

**Motion Passed Unanimously. (6-0)*

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

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

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

Ms. Rambo went over the City of Elko Staff Report dated April 20, 2020. Staff recommended approval. She explained that the Planning Commission would need to add a couple conditions. The first one is to consider changing the public access easement to a reciprocal access easement that benefits only the property owner. The second one is to fill in the two missing dimensions along the access easement.

Ms. Laughlin recommended conditional approval as presented.

Mr. Thibault explained that his two conditions were mentioned by Ms. Rambo, so he recommended conditional approval as presented.

Chief Griego had no concerns and recommended approval.

Ms. Archuleta explained that Mr. Wilkinson was having technical difficulties, but he stated that he did not have any comments or concerns on this application.

*****Motion: Recommend that the City Council accept, on behalf of the public, the parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication; that the final map substantially complies with the tentative map; that the City Council approve the agreement to install improvements in accordance with the approved construction plans that satisfies the requirements of Title 2, Chapter 3, and conditionally approve Final Map 1-20 with conditions listed in the Staff Report dated April 20, 2020 with additions, listed as follows:**

1. The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.
2. The Performance and Maintenance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council.
4. The Final Map for Townhomes at Ruby View is approved for 10 townhouse lots and 1 common lot.
5. The Utility Department will issue a Will Serve Letter for the subdivision.
6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.
7. Construction shall not commence prior to Final Map approval by the City Council

- and issuance of a will-serve letter by the City of Elko.
8. Conformance with the conditions of approval of the Tentative Map is required.
 9. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. All right-of-way and utility improvements are to be certified by the Engineer of Record for the project.
 10. Consider changing the Public Access Easement to a Reciprocal Access Easement that benefits only the property owner.
 11. Fill in the two missing dimensions along the Access Easement.

Commissioner Beck's findings to support the motion were the Final Map for Townhomes at Ruby View has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City Code. The Final Map is in conformance with the Tentative Map. The proposed subdivision is in conformance with the Land Use and Transportation Component of the Master Plan. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive). The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City Code. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City Code. The Subdivider has submitted plans to the City and State agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City Code. The Subdivider has submitted construction plans which, having been found to be in conformance with Section 3-3-20 of City Code, have been approved by City Staff. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City Code. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City Code. The proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 of City Code. The proposed development is in conformance with Section 3-8 of City Code.

Made by Stefan Beck, Seconded by Giovanni Puccinelli.

**Motion Passed Unanimously. (6-0)*

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

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

Luke Fitzgerald and Tom Ballew stated that they were available for questions.

Ms. Rambo went over the City of Elko Staff Report dated April 20, 2020. Staff recommended approval with the findings and conditions listed in the Staff Report.

Ms. Laughlin recommended conditional approval as presented by staff.

Mr. Thibault recommended approval as presented by staff.

Chief Griego had no comments and recommended approval.

Ms. Laughlin stated that the City Manager's office recommended approval as presented.

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

1. The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.
2. The Performance and Maintenance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council.
4. The Final Map for Mountain View Townhomes – Unit 1 is approved for 12 townhouse lots and 1 common lot.
5. The Utility Department will issue a Will Serve Letter for the subdivision.
6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.
7. Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.
8. Conformance with the conditions of approval of the Tentative Map is required.
9. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. All right-of-way and utility improvements are to be certified by the Engineer of Record for the project.
10. Fire Department Turnaround to be constructed to 2018 IFC Appendix D 102.1 Access and Loading...*approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds.*
11. Fire department turn around be labeled as "FIRE DEPARTMENT TURN-AROUND ACCESS EASEMENT".

Commissioner Beck's findings to support the motion were the Final Map for Mountain View Townhomes – Unit 1 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City Code. The Final Map is in conformance with the Tentative Map. The proposed subdivision is in conformance with the Land Use and Transportation Components of the Master Plan. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive). The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City Code. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City Code. The Subdivider has submitted plans to the City and State agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City Code. The Subdivider has submitted construction plans which, having been found to be in conformance with Section 3-3-20 of City Code, have been approved by City Staff. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City Code. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City Code. The proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 of City Code. The proposed development is in conformance with Section 3-8 of City Code.

Made by Stefan Beck, Seconded by Gratton Miller.

**Motion Passed Unanimously. (6-0)*

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

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

Ms. Laughlin went over the proposed changes to the City of Elko Land Inventory.

Commissioner Gratton Miller had a question on the Well 16 property. He asked if the property would be available to the land owners adjacent to the Well first.

Ms. Laughlin explained that staff had received applications from both adjacent property owners to purchase the property. The Nevada Revised Statutes does require that the City sell it at a public auction. Right now it is in the process of being sold. Staff will need to get an appraisal and then it will go to City Council as a public hearing and public auction.

*****Motion: Forward a recommendation to City Council to approve an update to the City Land Inventory.**

Made by Stefan Beck, Seconded by Giovanni Puccinelli.

**Motion Passed Unanimously. (6-0)*

APPROVAL OF MINUTES

March 3, 2020 – Regular Meeting FOR POSSIBLE ACTION

*****Motion: Approve the Planning Commission Minutes dated March 3, 2020**

Moved by Stefan Beck, Seconded by Giovanni Puccinelli

****Motion Passed Unanimously. (6-0)***

II. REPORTS

A. Summary of City Council Actions.

Cathy reported that City Council, on April 14th, approved an Amendment to the Great Basin Performance Agreement and the Master Plan Amendment. She also reported the Planning Department would be accepting applications again.

B. Summary of Redevelopment Agency Actions.

Cathy reported that the RDA had a meeting on April 14th. They approved over \$101,000 in Storefront Improvement Grants and extended one 2019 Grant.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.D.S.T., TUESDAY, JUNE 2, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
GoToMeeting.com
<https://global.gotomeeting.com/join/123367613>

CALL TO ORDER

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

ROLL CALL

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

City Staff Present: **Scott Wilkinson, Assistant City Manager**
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Shelby Archuleta, Planning Technician
 Kelly Wooldridge, City Clerk
 Bob Thibault, Civil Engineer
 Matthew Griego, Fire Chief

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action of Conditional Use Permit No. 2-20, filed by Scott and Leslie Rangel, which would allow for a professional office within an RO (Residential Office) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the west corner of the intersection of 9th Street and Court Street. (902 Court Street - APN 001-281-001)

Leslie Rangel stated that she was available to answer any questions.

Cathy Laughlin, City Planner, announced that the public phone line was working for anyone that wanted to call in to give public comments. She then went over the City of Elko Staff Report dated May 18, 2020. Staff recommended conditional approval with the conditions and findings listed in the Staff Report.

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

Bob Thibault, Civil Engineer, recommended approval with no additional comments or concerns.

Matthew Griego, Fire Chief, had no comments or concerns.

Scott Wilkinson, Assistant City Manager, had no comments concerns and recommended approval as presented by staff.

*****Motion: Conditionally approve Conditional Use Permit No. 2-20 subject to the conditions in the City of Elko Staff Report dated May 18, 2020, listed as follows:**

- 1. CUP 2-20 shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which the permit was issued.**
- 2. The CUP 2-20 to be recorded with the Elko County Recorder within 90 days after the commencement of the work for the conversion from single family dwelling to professional office.**
- 3. The permit is granted to the applicant Scott and Leslie Rangel for the use of a professional office.**
- 4. The permit shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.**
- 5. The conditions of Variance 2-20 be met prior to occupancy of the building.**
- 6. Revocable Permit 2-20 is approved by City Council for the parking encroachment into the public right-of-way.**
- 7. Merge lots 11 and 12 prior to certificate of occupancy to be issued for the building.**

Commissioner Buell's findings to support the motion were the proposed conditional use, under the conditionally approved Residential Office district is consistent with the Land Use

Component of the Master Plan. The proposed conditional use meets Objectives 2 and 4 of the Land Use Component of the Master Plan. The proposed conditional use is consistent with the Transportation Component of the Master Plan. The proposed use, intensity of use and limitations of intensity of use will not create any significant cumulative issues on the existing transportation system. The proposed conditional use and repurposing the property and structure conforms to the Redevelopment Plan. The proposed conditional use is consistent with City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the RO-Residential Office Zoning District do not present hazard to City wells. The proposed use of the property requires a conditional use permit to conform to Section 3-2-3 of City Code. The proposed conditional use based on conditional approval of Variance 2-20 conforms to Section 3-2-4 of City Code. The proposed conditional use is in conformance with Section 3-2-5(F)(3) RO-Residential Office based on conditional approval of Variance 2-20. The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single family residence. Additional parking and ADA access is required for conformance under the proposed conditional use. Parking in the interior side yard setback will be required to be approved as part of Variance 2-20. The parcel is not located within a designated Special Flood Hazard Area. Development under the proposed conditional use 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 conditional use permit is consistent with existing land uses in the immediate vicinity.

Moved by Commissioner Evi Buell, Seconded by Commissioner Tera Hooiman.

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

2. Review, consideration, and possible action on Variance No. 2-20, filed by Scott and Leslie Rangel, for a reduction of the required interior side yard setback from 10' to 2.2', exterior side yard setback from 12' to 9.8', front yard setback from 15' to 11.7' and required off street parking to be located within the interior side yard setback for a professional office in an RO (Residential Office) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the west corner of the intersection of 9th Street and Court Street. (902 Court Street - APN 001-281-001)

Ms. Rangel stated that Lana Carter and Bob Morley were also available for questions.

Ms. Laughlin went through the City of Elko Staff Report dated May 18, 2020. Staff recommended conditional approval with the conditions and findings listed in the staff report.

Ms. Rambo had no comments or concerns.

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

Chief Griego had no comments or concerns and recommended approval

Mr. Wilkinson had no comments and recommended approval as presented by staff.

*****Motion: Conditionally approve Variance No. 2-20 subject to the condition in the City of Elko Staff Report dated May 18, 2020, listed as follows:**

1. The variance is granted for the principal structure and parking within the interior side yard setback. No new structures or accessory structures to be constructed within the required setbacks.
2. Commencement within one year and completion within eighteen (18) months.

Commissioner Buell's findings to support the motion were the variance approval is in conformance with the Land Use Component of the Master Plan. The property is located within the Redevelopment Area. The proposed variance and repurposing the property and structure conforms to the Redevelopment Plan. The property does not conform to Section 3-2-4 of City Code. Approval of the variance application is required to bring the property into conformance. The proposed variance is not in conformance with Section 3-2-5(R) Residential Office, Approval of the variance application is required to bring the property into conformance. Approval of Variance No. 2-20 will bring the property into conformance with Section 3-2-17 of City Code. It does not appear that granting of the variance will result in material damage or prejudice to other properties in the vicinity, nor will granting of the variance be detrimental to the interest, health, safety and general welfare of the public. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Granting of the variance will not impair natural resources. The proposed variance is consistent with surrounding land uses.

Moved by Commissioner Evi Buell, seconded by Commissioner Giovanni Puccinelli.

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

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review and consideration of Temporary Use Permit No. 1-20, filed by High Desert Imaging, LLC., on behalf of Silver River Properties, LLC, for the temporary use of a mobile MRI unit located within a C (Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located on the northeast side of Mountain City Hwy approximately 145' from North Cedar St. (APN 001-131-009) Within A+ Urgent Care at 976 Mountain City Hwy.

Steve Mims, Administrator of High Desert Imaging, stated that he was available to answer questions.

Ms. Laughlin went over the City of Elko Staff Report dated May 18, 2020. Staff Recommended conditional approval with the conditions and findings listed in the Staff Report. One of the things that was not mentioned in the Staff Report, because it is still a draft and hasn't been adopted, is the City of Elko has been working as part of a very lengthy process to develop a Comprehensive Economic Development Strategy for Northeastern Nevada through the NNRDA. Part of the

goals and objectives of this Strategy is to provide additional healthcare services and providers to the area as possible. Ms. Laughlin felt approving this Temporary Use Permit would be in support of this strategy. If the application were to be denied, Ms. Laughlin felt it would force everyone to the only other provider in town for an MRI.

Ms. Rambo had no comments or concerns and supported all the comments from Ms. Laughlin.

Mr. Thibault had no comments or concerns.

Chief Griego had no comments or concerns and recommended approval.

Mr. Wilkinson had no comments and recommended approval as presented by staff.

Chairman Jeff Dalling said that he had a few questions for the applicant. He explained that he was on the Planning Commission four years ago when it came through, and it was a little controversial then. He said four years seemed like a lot of time to get this done. There have been other people on Mountain City Highway that had to do beautification projects because of the fact that it is Mountain City Highway and we are trying to make it nicer. You guys were bringing in a trailer and parking it next to a building. It was a little controversial because it didn't seem fair. Chairman Dalling said he remembered the reason the Temporary Use Permit was approved was because it would be good for the community. He felt that four years was plenty of time and he thought they would be in a permanent building by this time. He then asked Mr. Mims to explain why four years wasn't long enough.

Mr. Mims said that he appreciated the comments and support that they have received. In consideration of extending this permit four years does seem like a long time. They were trying to bring a business here and move here. Him and his family love the Elko area and wanted to make a place to spend rest of their lives. In doing that they wanted to bring a way to support themselves, and that was expanding a radiology business and opening an imaging center. Four years ago it was a new business, and they thought they would know within year or two if the business would be successful. Fortunately, they are still here, and even with the current COVID-19 crisis they are still successful and hanging in there. It is certainly not due to lack of effort. Mr. Mims stated that his ideal situation was that they would have their own building, more parking, and a unique site. They have explored various sites. They have looked at the Surgery Center that was supposed to go in by JC Penney, which is something they are still considering doing. Ideally, they thought quickest thing they could do was to move the MRI inside the building that they are in now, which was their plan four years ago. A Plus Urgent Care has expanded their business, so they have taken over more space, which pinched the applicant for space to move the MRI into the building. In addition to that there is a physical therapist inside the building as well. That opportunity doesn't look as promising as it did before. The other thing they have looked at is the old Elko Diagnostic Imaging space, and due to the cost of that space, it is cost prohibitive. Their goal is to provide high quality medical imaging and to keep the community here. They are certainly not rolling in the dough. They are cash flow positive, which is great, but it is very expensive to build a building, do the improvements, and move the equipment that they have. In the last 6 months, Mr. Mims has gotten a quote for moving from Philips Medical Equipment. Just to move the CT and the MRI it was going to be \$350,000. Before construction even begins and preparing the site, it is going to be \$350,000 just to get those two pieces of equipment out and moved. It's challenging, and the last thing they want to do is raise the prices. They like

having the significant difference between the hospital and them. Mr. Mims didn't want to get any closer to the hospital prices, so they can afford to move. He was trying to do that within the means that they have now. This is still something that they are trying to accomplish, but it is taking more time than they expected.

Chairman Dalling said it has been four years and you haven't secured a new lease on a new building, but you did go in to this knowing it was temporary. He stated that the applicant said they are out looking for a place, but then he saw in their application that they are asking for "five years, or preferably longer." Mr. Dalling asked the applicant if they wanted to talk about that.

Mr. Mims explained that he was asking for a period of time that he thought they could accomplish this in. Ask for five and try to get it done in three was his goal, versus asking for three and having to come back and do this all over again. They have done their best to make it look good. They have put up signage and built the trailer inside the building, so it looks part of the space. The location of the MRI makes it difficult to see. Aesthetically, they are trying to keep it as nice as they can. Their goal was to accomplish this in the first four years, but they didn't achieve that. One thing they did achieve was a successful business and they are keeping people in the community. Mr. Mims stated that his goal was to ask for as many years as they could and try to get it done within those years.

Chairman Dalling said he felt if the Commission gave the applicant four years, he would take it and be back for another four. He asked the applicant if two years would help out.

Mr. Mims didn't think two years was enough time. The time that it takes to find space, design the space, and have physicists come out makes this a huge project. Mr. Mims explained that he did an imaging center in Carson City that took 3.5 years. It takes a very significant amount of time and capital. The COVID thing hasn't helped. They are doing their best to stay open, but it has impacted the cash flow.

Mr. Wilkinson asked the applicant to provide an in depth description of the business. He thought it was important to understand that some of the operation takes place inside the main building. The Temporary Use applies to some of the equipment, not all of the equipment for the business. Mr. Wilkinson also asked the applicant to inform the Planning Commission of the number of employees and their average salary, or the range of salaries for those jobs. He thought the applicant could talk to the Planning Commission about the impact it would have on the business if this permit was not granted.

Mr. Mims explained that there is only one piece of equipment in the trailer, which is the MRI. Within their business they offer the following services: x-ray, ultrasound, DEXA, CT, Mammography, and MRI. The number of staff changes, but it is between 8 and 10. They also offer opportunities for students going through X-ray school to come in to get their training as well. The average salary ranges from \$15 per hour to \$46 per hour. If this application was not approved it would be devastating to the business. They wouldn't be able to offer MRI services, which would make it a challenge to be in business.

Chairman Dalling thought this was great service, and he thought that was why the Planning Commission approved it last time. He didn't understand and wished they could give it a forever permit, because it sounded like it was always going to be there.

Mr. Mims said he would have preferred the same thing. Having the need to get a Temporary Use Permit was something that he wasn't aware of until they were pretty far along in the project. When they bought the equipment and the trailer they were not aware that they needed a Temporary Use Permit.

*****Motion: Conditionally approve Temporary Use Permit No. 1-20 subject to the following conditions found in the City of Elko Staff Report dated May 18, 2020, listed as follows:**

Planning Department:

- 1. The use is permitted for a period of 4 years**
- 2. The temporary use applies to APN 001-131-009**
- 3. The applicant shall maintain fire access around the MRI trailer.**
- 4. All items/materials stored must be inert.**

Commissioner Buell's findings to support the motion were the proposed TUP is in conformance with the Land Use Component of the Master Plan. The proposed TUP is in conformance with the Transportation Component of the Master Plan. The proposed TUP is in conformance with Elko City Code 3-2-3(C)(5). The proposed TUP is in conformance with Elko City Code 3-2-17. The parcel is not located in a designated flood zone.

Moved by Commissioner Evi Buell, Seconded by Giovanni Puccinelli.

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

2. Review, consideration, and possible recommendation to City Council for Vacation No. 1-20, filed by Brian and Dena Starkey, for the vacation of the southeasterly portion of Juniper Street and northeasterly portion of 6th Street, consisting of an area approximately 3,636 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the east corner of the 6th Street and Juniper Street intersection, (698 6th Street- APN 001-231-001)

Brian Starkey explained that what they were here for was to get the place cleaned up. It is a corner with no sidewalk, and it's kind of a no man's land. Vacating the area would take care of it and clean it up.

Ms. Laughlin went over the City of Elko Staff Report dated May 18, 2020. Staff recommended conditional approval with the conditions and findings listed in the Staff Report.

Chairman Dalling asked if the applicant was aware of the requirements, and if he was okay with them.

Mr. Starkey stated that he was ok with the conditions. He added that he appreciate the City's help with doing the patch back work.

Ms. Rambo had no comments.

Mr. Thibault had no comments and recommended approval.

Chief Griego had no comments or concerns and recommended approval.

Mr. Wilkinson had no comments or concerns.

***** Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 1-20 subject to the conditions listed in the City of Elko Staff Report dated May 18, 2020, listed as follows:**

- 1. Approved conditions are to be included in the Resolution.**
- 2. The applicant is responsible for all costs associated with the recordation of the vacation.**
- 3. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.**
- 4. Required public improvements be completed within one (1) year from date of approval by the City Council of vacation 1-20.**
- 5. The vacation will not be recorded until public improvements have been completed and accepted by City of Elko staff.**

Commissioner Buell's findings to support the recommendation were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The proposed vacation is in conformance with the Redevelopment Plan. The proposed vacation is in conformance with NRS 278.479 to 480, inclusive. The proposed vacation is in conformance with City Code 3-2-5(E) and 8-7.

Moved by Commissioner Evi Buell, Seconded by Commissioner Tera Hooiman.

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

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported at the City Council Meeting on May 12th they approved the Final Map and Performance Agreement for the Ruby View Townhomes, approved the Final Map, Performance Agreement, and Slope and Utility Easement for the Mountain View Townhomes, and they approved the Land Inventory Update. They also accepted the petition for the Starkey Vacation.

B. Summary of Redevelopment Agency Actions.

Ms. Laughlin reported that the RDA and RAC had not had any meetings.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

Ms. Laughlin announced that the July Planning Commission Meeting would be held at The Convention Center in the Turquoise Room to provide for proper distance separation.

Commissioner Buell stated that she wouldn't be able to attend the next meeting live.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

**Elko City Planning Commission
Agenda Action Sheet**

- 1. Review, consideration and possible approval of Final Map No. 3-20, filed by Scott Reutner Properties, LLC, for the development of a subdivision entitled Aspen Heights involving the proposed division of approximately 2.54 acres of property into 9 lots for residential development within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
- 2. Meeting Date: July 7, 2020**
- 3. Agenda Category: **NEW BUSINESS****
- 4. Time Required: 15 Minutes**
- 5. Background Information: Subject property is located on the south side of Celtic Way between Shadow Ridge Drive and Sunnyside Avenue. (APN 001-660-011)**
- 6. Business Impact Statement: Not Required**
- 7. Supplemental Agenda Information: Application and Staff Report**
- 8. Recommended Motion: Recommend that the City Council accept, on behalf of the public, the parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication; that the final map substantially complies with the tentative map; that the City Council approve the agreement to install improvements in accordance with the approved construction plans that satisfies the requirements of Title 2 Chapter 3, and conditionally approve Final Map 3-20 with findings and conditions listed in the Staff Report dated June 11, 2020.**
- 9. Findings: See Staff Report dated June 11, 2020**
- 10. Prepared By: Michele Rambo, AICP, Development Manager**
- 11. Agenda Distribution: Scott Reutner Properties, LLC
Attn: Scott Reutner
1770 Sharps Access Road
Elko, NV 89801

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

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 7/7

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

Title: Final Map No. 3-20 Aspen Heights
Applicant(s): Scott Reutner Properties, LLC
Site Location: S side of Celtic Way, between Shadow Ridge + Sunnyside Ave
Current Zoning: R Date Received: 5/19/20 Date Public Notice: N/A
COMMENT: This is to divide \approx 2.54 acres of property into 9
lots for residential Development.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 6/23/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 6/24/20

No comments/concerns.

CC

Initial



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

CITY OF ELKO STAFF REPORT

REPORT DATE:	June 11, 2020
PLANNING COMMISSION DATE:	July 7, 2020
AGENDA ITEM NUMBER:	I.A.1.
APPLICATION NUMBER:	Final Map 3-20
APPLICANT:	Scott Reutner Properties, LLC
PROJECT DESCRIPTION:	Aspen Heights

A Final Map for the division of approximately 2.54 acres into 9 lots for single family residential development within an R (Single-Family and Multi-Family Residential) zoning district.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-660-011

PARCEL SIZE: 2.54 Acres

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

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

EXISTING LAND USE: Vacant

BACKGROUND:

1. The Final Map for Aspen Heights has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
2. The Planning Commission reviewed and recommended a conditional approval to the City Council on the Aspen Heights Tentative Map on May 27, 2016.
3. The City Council conditionally approved the Aspen Heights Tentative Map in June 2016.
4. A previous Final Map was reviewed and forwarded to the City Council on December 20, 2016.
5. This original Final Map was conditionally approved by the City Council in January 2017.
6. The approved Final Map was never recorded and has since expired.
7. No phasing was shown on the Tentative Map.
8. The subdivision is located on APN 001-660-011.
9. The proposed subdivision consists of 9 residential lots.
10. The total subdivided area is approximately 2.54 acres.
11. The proposed density is 3.54 units per acre.
12. Approximately 0.367 acres are offered for dedication for street development.
13. Drainage and utility easements are provided along all lot lines.
14. The property is located on the south side of Celtic Way between Shadow Ridge Drive and Sunnyside Avenue.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

-) North: Single-Family Residential (R1) / Under Construction (Cambridge Estates)
-) South: Single-Family and Multiple-Family Residential (R) / Developed
-) East: Single-Family and Multiple-Family Residential (R) / Developed
-) West: Single-Family and Multiple-Family Residential (R) / Developed

PROPERTY CHARACTERISTICS:

-) The property is an undeveloped residential parcel.
-) The area abuts previous residential development to the east, west, and south. The north side of the property includes both previous residential development and the new Cambridge Estates, which is currently constructing public improvements.

-) The parcel has some slope down to from the west to east, which is incorporated into the design of the lots where possible.
-) The property will be accessed off of Celtic Drive via Jennings Way.

APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:

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

MASTER PLAN - Land use:

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

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

MASTER PLAN - Transportation:

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

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

ELKO REDEVELOPMENT PLAN:

The property is not located within the redevelopment area.

ELKO WELLHEAD PROTECTION PLAN:

The property is located outside of any capture zone for City of Elko wells. Development of the site is required to be connected to a programmed sewer system and all street drainage will be directed to a storm sewer system.

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

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

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

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

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

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

H. Required Certifications

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

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

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

The proposed development conforms with these sections of City code.

SECTION 3-3-17 RESPONSIBILITY FOR PUBLIC IMPROVEMENTS

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

SECTION 3-3-18 CONSTRUCTION PLANS

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

SECTION 3-3-19 CONSTRUCTION AND INSPECTION

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

SECTION 3-3-20 REQUIRED IMPROVEMENTS

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

Civil improvements include curb, gutter, and sidewalk as well as paving and utilities within the Celtic Drive right-of-way.

SECTION 3-3-21 AGREEMENT TO INSTALL IMPROVEMENTS

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

SECTION 3-3-22 PERFORMANCE AND MAINTENANCE GUARANTEES

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

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

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

The proposed development conforms with these sections of City code.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

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

FINDINGS

1. The Final Map for Aspen Heights has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
2. The Final Map is in conformance with the Tentative Map.
3. The proposed subdivision is in conformance with the Land Use and Transportation Components of the Master Plan.
4. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive).
5. The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City code.
6. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City code.
7. The Subdivider has submitted plans to the city and state agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City code.
8. The Subdivider has submitted construction plans which, having been found to be in conformance with Section 3-3-20 of City code, have been approved by City staff.

9. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City code.
10. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City code.
11. The proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 of City code.
12. The proposed development is in conformance with Section 3-8 of City code.

STAFF RECOMMENDATION:

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

Community Development:

1. The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.
2. The Performance and Maintenance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council or the Final Map approval becomes null and void.
4. The Final Map for Aspen Heights is approved for 9 single family residential lots.
5. The Utility Department will issue a Will Serve Letter for the subdivision.
6. Site disturbance (including grading) shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.
7. Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.
8. Building permits will not be issued until the water system is approved to be put in service by the Nevada Department of Environmental Protection.
9. Conformance with the conditions of approval of the Tentative Map is required.
10. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko.

The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. The Engineer of Record is to certify that the project was completed in conformance with the approved plans and specifications.

Public Works:

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



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

May 20, 2020

Scott Reutner Properties, LLC
1770 Sharps Access Road
Elko, NV 89801

Re: Aspen Heights – Complete Submittal (Final Map 3-20)

Dear Mr. Reutner:

The City of Elko has reviewed your Final Map application materials for the Aspen Heights subdivision (submitted May 19, 2020) and has found them to be complete. We will now begin processing your application by transmitting the materials to other City departments for their review. You may receive further comments or corrections as these reviews progress. Barring any complications, this Final Map will be scheduled for Planning Commission on July 7, 2020 and City Council on July 28, 2020.

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

Sincerely,

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

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

City of Elko – File

MATT GRIEGO
FIRE CHIEF
Email: mgriego@ci.elko.nv.us

MARY HASSETT
ADMINISTRATIVE ASSISTANT
Email: ejdadmin@ci.elko.nv.us



JOHN HOLMES
FIRE MARSHAL
Email: jholmes@elkocitynv.gov

CITY OF ELKO - FIRE DEPARTMENT

911 W. Idaho Street
Elko, NV 89801
(775)777-7345 FAX (775)777-7359

October 18, 2016

Thomas C. Ballew
High Desert Engineering, LLC
640 Idaho Street
Elko NV 89801

Dear Mr. Ballew,

As per our phone discussion, here is the information needed. The Final Plat will be recommended for approval with the following fire department conditions.

- 1) Fire Flow of 1500 GPM / 2 Hours has been determined based upon the maximum structure size of 3600 Square Feet.
- 2) Documentation shall be provided that the minimum required fire flow can be achieved and provided with the site improvement submittal package. A water flow test shall be conducted prior to final acceptance as required by the 2009 International Fire Code section 507.4
- 3) The addition of hydrants may be required. Final placement and quantity will be completed at site improvement submittal.
- 4) Fire Protection water supply providing the required fire flow and required number of hydrants shall be installed, tested, and approved prior to combustible materials on site as per the 2009 International Fire Code section 507.1 and 1412.1.
- 5) All weather Fire Department access shall be in place prior to the start of construction and storage of combustible materials on site.
- 6) Materials storage location shall be approved prior to entrance to site.
- 7) Residential developments exceeding 30 units require 2 separate means of fire department access as required by the 2009 International Fire Code Appendix D section D104.3 and D107.1.

Sincerely,

John Holmes
Fire Marshal
Elko Fire Department
775 777-7352 Office
775 777-7359 Fax

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MAY 19 2020

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



May 18, 2020

*Consulting Civil Engineering
Land Surveying
Water Rights*

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

Re: Aspen Heights Subdivision, Elko, Nevada - Final Plat

Dear Cathy,

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

- Application for Final Plat approval.
- Two (2) full size copies of the Final Plat.
- One (1) reduced scale copy of the Final Plat.
- Two (2) full sized copies of the Site Construction Drawings.
- One (1) copy of the Project Design Report.
- One (1) copy of the Project Drainage Calculations.
- One (1) copy of the Project Geotechnical Investigation Report.
- One (1) copy of the Project Lot Calculations.
- One (1) copy of the Project Construction Cost Estimate
- City of Elko Fire Department Information Letter dated 10/18/2016.
- Check in the amount of \$ 975.00 (750.00 plus 9 lots at \$25.00 each) for the Final Plat review fee.

Please advise me of the dates for the Planning Commission and City Council hearings on this matter. I look forward to your review of this item.

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

Sincerely,
High Desert Engineering, LLC



Thomas C. Ballew, PE, PLS

enclosures

cc Scott Reutner

RECEIVED

MAY 19 2020



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s): Scott Reutner Properties, LLC
MAILING ADDRESS: 1770 Sharps Access Road
PHONE NO (Home) _____ (Business) (775) 753-5100
NAME OF PROPERTY OWNER (If different): same
(Property owner consent in writing must be provided)
MAILING ADDRESS: same
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-660-011 Address Not Addressed
Lot(s), Block(s), & Subdivision NE1/4 OF SW1/4 OF SW1/4 OF NE1/4
Or Parcel(s) & File No. Section 17, T.34 N., R.55 E., M.D.B. & M.
PROJECT DESCRIPTION OR PURPOSE: Single Family Residential Lots
APPLICANT'S REPRESENTATIVE OR ENGINEER: High Desert Engineering, LLC

FILING REQUIREMENTS:

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

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

Fee: \$750.00 + \$25.00 per lot including remainder parcels; non-refundable.

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

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Final Plat Checklist 3-3-8

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

By My Signature below:

- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I acknowledge that, if approved, I must provide an AutoCAD file containing the final subdivision layout on NAD 83 NV East Zone Coordinate System to the City Engineering Department when requesting final map signatures for recording.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant / Agent: Scott Reutner
(Please print or type)

Mailing Address: 1770 Sharps Access Road
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: (775) 753-5100

Email address: scott@modernconcrete.net

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 3-20 Date Filed: 3/19/20 Fee Paid: \$975.00 CV # 33294

9 lots x \$25 = \$225
+ 750
\$975.00

ASPEN HEIGHTS SUBDIVISION

Map Check

Parcel name: LOT 1

North: 28472211.6316 East : 595768.2585
Line Course: S 00-32-40 E Length: 75.00
North: 28472136.6350 East : 595768.9712
Line Course: S 89-29-33 W Length: 142.52
North: 28472135.3726 East : 595626.4568
Line Course: N 00-30-27 W Length: 60.65
North: 28472196.0202 East : 595625.9196
Curve Length: 23.64 Radius: 15.00
Delta: 90-17-31 Tangent: 15.08
Chord: 21.27 Course: N 44-38-19 E
Course In: N 89-29-33 E Course Out: N 00-12-56 W
RP North: 28472196.1531 East : 595640.9190
End North: 28472211.1530 East : 595640.8626
Line Course: N 89-47-04 E Length: 127.40
North: 28472211.6323 East : 595768.2617

Perimeter: 429.20 Area: 10,690 S.F. 0.245 ACRES

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

Error Closure: 0.0032 Course: N 77-25-21 E
Error North: 0.00070 East : 0.00313

Precision 1: 134,128.13

Parcel name: LOT 2

North: 28472135.3748 East : 595626.4546
Line Course: N 89-29-33 E Length: 142.52
North: 28472136.6372 East : 595768.9690
Line Course: S 00-32-44 E Length: 72.50
North: 28472064.1405 East : 595769.6593
Line Course: S 89-29-33 W Length: 122.58
North: 28472063.0547 East : 595647.0841
Curve Length: 19.24 Radius: 55.00
Delta: 20-02-28 Tangent: 9.72
Chord: 19.14 Course: N 45-38-13 W
Course In: S 54-23-01 W Course Out: N 34-20-33 E
RP North: 28472031.0252 East : 595602.3727
End North: 28472076.4376 East : 595633.4004
Curve Length: 14.44 Radius: 15.00
Delta: 55-09-00 Tangent: 7.83
Chord: 13.89 Course: N 28-04-57 W
Course In: N 34-20-33 E Course Out: S 89-29-33 W
RP North: 28472088.8228 East : 595641.8624
End North: 28472088.6899 East : 595626.8630
Line Course: N 00-30-27 W Length: 46.69

Aspen Heights Subdivision
Map Check

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North: 28472135.5/81

East : 595626.4495

Perimeter: 417.96 Area: 10,122 S.F. 0.232 ACRES

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

Error Closure: 0.0061

Course: N 57-26-16 W

Error North: 0.00326

East : -0.00511

Precision 1: 68,519.67

Parcel name: LOT 3

North: 28472063.0547 East : 595647.0891

Line Course: N 89-29-33 E Length: 122.58

North: 28472064.1405 East : 595769.6643

Line Course: S 00-32-37 E Length: 107.70

North: 28471956.4453 East : 595770.6861

Line Course: N 64-01-15 W Length: 129.38

North: 28472013.1195 East : 595654.3795

Curve Length: 52.43

Radius: 55.00

Delta: 54-37-05

Tangent: 28.40

Chord: 50.47

Course: N 08-18-26 W

Course In: N 70-59-54 W

Course Out: N 54-23-01 E

RP North: 28472031.0272

East : 595602.3765

End North: 28472063.0568

East : 595647.0879

Perimeter: 412.08 Area: 9,089 S.F. 0.209 ACRES

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

Error Closure: 0.0024

Course: N 29-53-27 W

Error North: 0.00208

East : -0.00119

Precision 1: 171,704.17

Parcel name: LOT 4

North: 28472013.1173 East : 595654.3807

Line Course: S 64-01-15 E Length: 129.38

North: 28471956.4432 East : 595770.6873

Line Course: S 00-32-40 E Length: 76.43

North: 28471880.0166 East : 595771.4136

Line Course: S 89-48-10 W Length: 83.69

North: 28471879.7285 East : 595687.7241

Line Course: N 32-46-59 W Length: 119.36

North: 28471980.0777 East : 595623.0955

Curve Length: 46.91

Radius: 55.00

Delta: 48-52-18

Tangent: 24.99

Chord: 45.50

Course: N 43-26-15 E

Course In: N 22-07-36 W

Course Out: S 70-59-54 E

RP North: 28472031.0271

East : 595602.3794

End North: 28472013.1194

East : 595654.3824

Aspen Heights Subdivision
Map Check

Perimeter: 455.76 Area: 12,497 S.F. 0.287 ACRES

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

Error Closure: 0.0026 Course: N 39-29-57 E

Error North: 0.00203 East : 0.00167

Precision 1: 175,296.15

Parcel name: LOT 5

North: 28471980.0757 East : 595623.0938

Line Course: S 32-46-59 E Length: 119.36

North: 28471879.7266 East : 595687.7224

Line Course: S 89-48-10 W Length: 168.00

North: 28471879.1483 East : 595519.7234

Line Course: N 32-00-10 E Length: 118.59

North: 28471979.7153 East : 595582.5714

Curve Length: 41.51 Radius: 55.00

Delta: 43-14-19 Tangent: 21.80

Chord: 40.53 Course: N 89-29-33 E

Course In: N 21-06-43 E Course Out: S 22-07-36 E

RP North: 28472031.0236 East : 595602.3820

End North: 28471980.0741 East : 595623.0980

Perimeter: 447.45 Area: 10,369 S.F. 0.238 ACRES

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

Error Closure: 0.0045 Course: S 69-20-36 E

Error North: -0.00158 East : 0.00419

Precision 1: 99,435.56

Parcel name: LOT 6

North: 28471979.7168 East : 595582.5673

Line Course: S 32-00-10 W Length: 118.59

North: 28471879.1498 East : 595519.7193

Line Course: S 89-48-10 W Length: 82.22

North: 28471878.8668 East : 595437.4998

Line Course: N 00-30-27 W Length: 75.33

North: 28471954.1938 East : 595436.8326

Line Course: N 63-00-21 E Length: 127.79

North: 28472012.1977 East : 595550.7002

Curve Length: 46.91 Radius: 55.00

Delta: 48-52-17 Tangent: 24.99

Chord: 45.50 Course: S 44-27-08 E

Course In: N 69-59-00 E Course Out: S 21-06-43 W

RP North: 28472031.0238 East : 595602.3778

End North: 28471979.7155 East : 595582.5673

Perimeter: 450.84 Area: 12,245 S.F. 0.281 ACRES

Aspen Heights Subdivision
Map Check

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.0013 Course: S 00-42-35 W
Error North: -0.00127 East : -0.00002
Precision 1: 346,800.00

Parcel name: LOT 7

North: 28472012.1991 East : 595550.7001
Line Course: S 63-00-21 W Length: 127.79
North: 28471954.1953 East : 595436.8325
Line Course: N 00-30-27 W Length: 106.99
North: 28472061.1811 East : 595435.8848
Line Course: N 89-29-33 E Length: 121.22
North: 28472062.2548 East : 595557.1001
Curve Length: 52.43 Radius: 55.00
Delta: 54-37-06 Tangent: 28.40
Chord: 50.47 Course: S 07-17-33 W
Course In: S 55-23-54 E Course Out: S 69-59-00 W
RP North: 28472031.0220 East : 595602.3716
End North: 28472012.1959 East : 595550.6940

Perimeter: 408.43 Area: 8,941 S.F. 0.205 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.0069 Course: S 62-04-44 W
Error North: -0.00322 East : -0.00607
Precision 1: 59,192.75

Parcel name: LOT 8

North: 28472062.2578 East : 595557.1061
Line Course: S 89-29-33 W Length: 121.22
North: 28472061.1841 East : 595435.8909
Line Course: N 00-30-27 W Length: 72.50
North: 28472133.6813 East : 595435.2487
Line Course: N 89-29-33 E Length: 141.22
North: 28472134.9321 East : 595576.4632
Line Course: S 00-30-27 E Length: 46.69
North: 28472088.2439 East : 595576.8767
Curve Length: 14.44 Radius: 15.00
Delta: 55-09-01 Tangent: 7.83
Chord: 13.89 Course: S 27-04-03 W
Course In: S 89-29-33 W Course Out: S 35-21-26 E
RP North: 28472088.1111 East : 595561.8773
End North: 28472075.8777 East : 595570.5574
Curve Length: 19.24 Radius: 55.00
Delta: 20-02-28 Tangent: 9.72
Chord: 19.14 Course: S 44-37-20 W
Course In: S 35-21-26 E Course Out: N 55-23-54 W
RP North: 28472031.0219 East : 595602.3844

Aspen Heights Subdivision
Map Check

End North: 28472062.2546

East : 595557.1128

Perimeter: 415.30 Area: 10,026 S.F. 0.230 ACRES

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

Error Closure: 0.0074

Course: S 64-19-33 E

Error North: -0.00321

East : 0.00667

Precision 1: 56,122.97

Parcel name: LOT 9

North: 28472134.9320 East : 595576.4565

Line Course: S 89-29-33 W Length: 141.22

North: 28472133.6812 East : 595435.2421

Line Course: N 00-30-27 W Length: 76.70

North: 28472210.3782 East : 595434.5627

Line Course: N 89-47-04 E Length: 126.30

North: 28472210.8533 East : 595560.8618

Curve Length: 23.49

Radius: 15.00

Delta: 89-42-29

Tangent: 14.92

Chord: 21.16

Course: S 45-21-41 E

Course In: S 00-12-56 E

Course Out: N 89-29-33 E

RP North: 28472195.8534

East : 595560.9183

End North: 28472195.9863

East : 595575.9177

Line Course: S 00-30-27 E Length: 61.05

North: 28472134.9387 East : 595576.4584

Perimeter: 428.75 Area: 10,733 S.F. 0.246 ACRES

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

Error Closure: 0.0069

Course: N 15-40-37 E

Error North: 0.00667

East : 0.00187

Precision 1: 62,139.13

Parcel name: STREET

North: 28472211.1525

East : 595640.8605

Curve Length: 23.64

Radius: 15.00

Delta: 90-17-31

Tangent: 15.08

Chord: 21.27

Course: S 44-38-19 W

Course In: S 00-12-56 E

Course Out: S 89-29-33 W

RP North: 28472196.1526

East : 595640.9169

End North: 28472196.0197

East : 595625.9175

Line Course: S 00-30-27 E Length: 107.33

North: 28472088.6940

East : 595626.8682

Curve Length: 14.44

Radius: 15.00

Delta: 55-09-00

Tangent: 7.83

Chord: 13.89

Course: S 28-04-57 E

Course In: N 89-29-33 E

Course Out: S 34-20-33 W

RP North: 28472088.8268

East : 595641.8676

Aspen Heights Subdivision
Map Check

End North: 28472076.4416	East : 595633.4055
Curve Length: 278.67	Radius: 55.00
Delta: 290-18-01	Tangent: 38.30
Chord: 62.86	Course: S 89-29-33 W
Course In: S 34-20-33 W	Course Out: N 35-21-26 W
RP North: 28472031.0292	East : 595602.3779
End North: 28472075.8850	East : 595570.5509
Curve Length: 14.44	Radius: 15.00
Delta: 55-09-01	Tangent: 7.83
Chord: 13.89	Course: N 27-04-03 E
Course In: N 35-21-26 W	Course Out: N 89-29-33 E
RP North: 28472088.1184	East : 595561.8708
End North: 28472088.2513	East : 595576.8702
Line Course: N 00-30-27 W Length: 107.74	
North: 28472195.9871	East : 595575.9159
Curve Length: 23.49	Radius: 15.00
Delta: 89-42-29	Tangent: 14.92
Chord: 21.16	Course: N 45-21-41 W
Course In: S 89-29-33 W	Course Out: N 00-12-56 W
RP North: 28472195.8542	East : 595560.9165
End North: 28472210.8541	East : 595560.8601
Line Course: N 89-47-04 E Length: 80.00	
North: 28472211.1551	East : 595640.8595

Perimeter: 649.75 Area: 15,968 S.F. 0.367 ACRES

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

Error Closure: 0.0027 Course: N 20-51-43 W

Error North: 0.00256 East : -0.00097

Precision 1: 240,648.15

Parcel name: SUBDIVISION

North: 28472211.6316	East : 595768.2585
Line Course: S 00-32-40 E Length: 331.63	
North: 28471880.0166	East : 595771.4097
Line Course: S 89-48-10 W Length: 333.91	
North: 28471878.8672	East : 595437.5017
Line Course: N 00-30-27 W Length: 331.52	
North: 28472210.3742	East : 595434.5653
Line Course: N 89-47-04 E Length: 333.70	
North: 28472211.6296	East : 595768.2629

Perimeter: 1330.75 Area: 110,679 S.F. 2.541 ACRES

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

Error Closure: 0.0048 Course: S 65-51-32 E

Error North: -0.00198 East : 0.00442

Precision 1: 277,241.67

Aspen Heights Subdivision
Map Check

ASPEN HEIGHTS SUBDIVISION

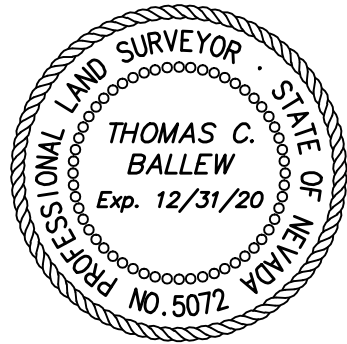
ELKO, ELKO COUNTY, NEVADA

LAND SURVEYOR'S CERTIFICATE:

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

- THIS PLAT REPRESENTS THE RESULTS OF A SURVEY CONDUCTED UNDER MY SUPERVISION AND DIRECTION AT THE INSTANCE SCOTT REUTNER PROPERTIES, LLC.
- THE LANDS SURVEYED LIE WITHIN SECTION 17, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B.& M., AND THE SURVEY WAS COMPLETED ON THE ____ DAY OF _____, 20 ____.
- THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
- THE MONUMENTS DEPICTED ON THE PLAT ARE OF THE CHARACTER SHOWN, OCCUPY THE POSITIONS INDICATED HEREON AND ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

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



DATE

CITY ENGINEER'S REPRESENTATIVE CERTIFICATE:

I, _____, REPRESENTATIVE FOR THE CITY ENGINEER OF THE CITY OF ELKO, NEVADA, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND FIND IT SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, WITH ALL APPROVED ALTERATIONS; THAT ALL PROVISIONS OF N.R.S. 278.010 THROUGH 278.630, INCLUSIVE, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH; THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT; AND THAT THE MONUMENTS AS SHOWN ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THE MONUMENTS HAVE NOT BEEN SET AND THAT A PROPER PERFORMANCE BOND HAS BEEN DEPOSITED GUARANTEEING THEIR SETTING ON OR BEFORE _____.

CITY OF ELKO CITY ENGINEER'S REPRESENTATIVE

DATE

APPROVAL – CITY OF ELKO PLANNING COMMISSION

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, PLANNING COMMISSION HELD ON THE 7TH DAY OF JUNE, 2016, A TENTATIVE MAP OF THIS SUBDIVISION WAS DULY AND REGULARLY APPROVED PURSUANT TO N.R.S. 278.330. THIS FINAL MAP SUBSTANTIALLY COMPLIES WITH SAID TENTATIVE MAP AND ALL CONDITIONS PURSUANT THERETO HAVE BEEN MET.

CHAIRMAN, CITY OF ELKO PLANNING COMMISSION

DATE

APPROVAL – CITY OF ELKO CITY COUNCIL

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, CITY COUNCIL HELD ON THE ____ DAY OF _____, 20____, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES. ALL OFFERS OF DEDICATION, AS SHOWN HEREON, WERE ACCEPTED FOR PUBLIC USE.

MAYOR, CITY OF ELKO, NEVADA

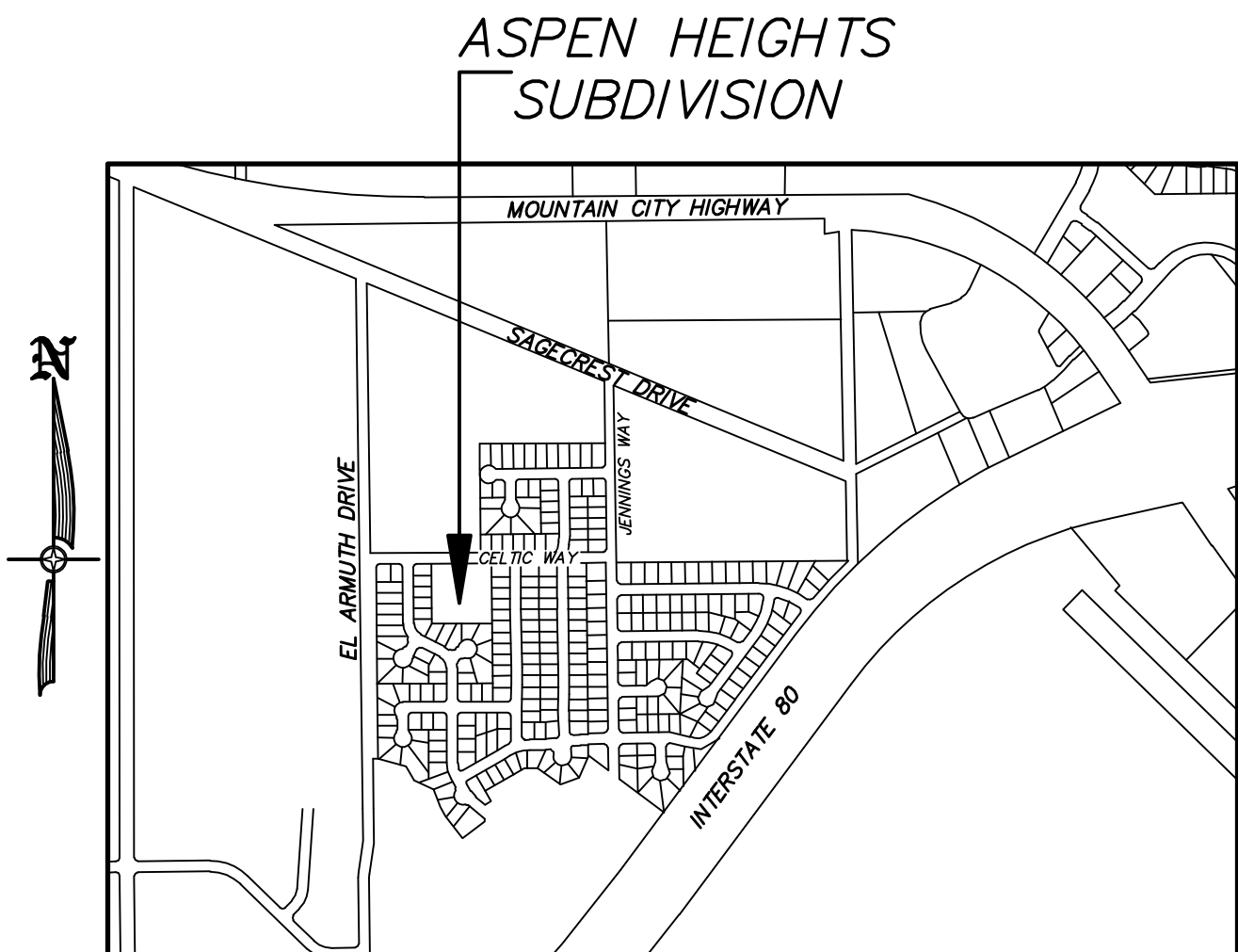
DATE

ATTEST: CITY CLERK, CITY OF ELKO, NEVADA

DATE

LEGAL DESCRIPTION:

THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF THE NE 1/4 OF SECTION 17, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B.& M. AS DESCRIBED IN THE DEED FILED IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA, AT FILE NUMBER 666539.



VICINITY MAP

APPROVAL – NEVADA DIVISION OF WATER RESOURCES

THIS FINAL MAP IS APPROVED BY THE DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY SUBJECT TO REVIEW OF APPROVAL ON FILE AT THIS OFFICE.

NEVADA DIVISION OF WATER RESOURCES

DATE

APPROVAL – NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

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

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER POLLUTION CONTROL

DATE

ASSESSOR'S CERTIFICATE:

I, KATRINKA RUSSELL, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBER SHOWN ON THIS PLAT IS CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF SAID ASSESSOR'S PARCEL NUMBER 001-660-011.

ELKO COUNTY ASSESSOR

DATE

TREASURER'S CERTIFICATE:

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL NUMBER 001-660-011 HAVE BEEN PAID FOR THIS FISCAL YEAR.

ELKO COUNTY TREASURER

DATE

OWNER'S CERTIFICATE:

KNOWN OF ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, SCOTT REUTNER, MANAGER OF SCOTT REUTNER PROPERTIES, LLC, A DOMESTIC LIMITED LIABILITY COMPANY, BEING THE OWNER OF THOSE PARCELS AS SHOWN ON THIS MAP, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP AND OFFERS FOR DEDICATION ALL OF THE RIGHTS-OF-WAT AND EASEMENTS FOR PUBLIC ACCESS, PUBLIC UTILITY AND PUBLIC DRAINAGE PURPOSES AS DESIGNATED HEREON. IN WITNESS I, SCOTT REUTNER, SET MY HAND ON THE DATE SHOWN.

SCOTT REUTNER PROPERTIES, LLC

BY: SCOTT REUTNER, MANAGER

DATE

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

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE ____ DAY OF _____, 20____, BY SCOTT REUTNER, MANAGER OF SCOTT REUTNER PROPERTIES, LLC.

NOTARY PUBLIC IN AND FOR ELKO COUNTY, NEVADA

MY COMMISSION EXPIRES: _____

APPROVAL – PUBLIC UTILITY EASEMENTS

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

FRONTIER COMMUNICATIONS

DATE

SIERRA PACIFIC POWER COMPANY D/B/A NV ENERGY

DATE

SOUTHWEST GAS CORPORATION

DATE

ZITO MEDIA

DATE

ELKO COUNTY RECORDER:

FILE NUMBER: _____

FILED AT THE REQUEST OF: _____

DATE: _____

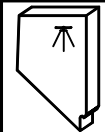
TIME: _____

D. MIKE SMALES, ELKO COUNTY RECORDER

FINAL MAP
OF
ASPEN HEIGHTS SUBDIVISION
SHEET 1 OF 2

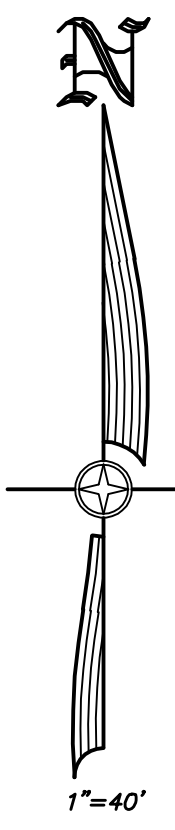
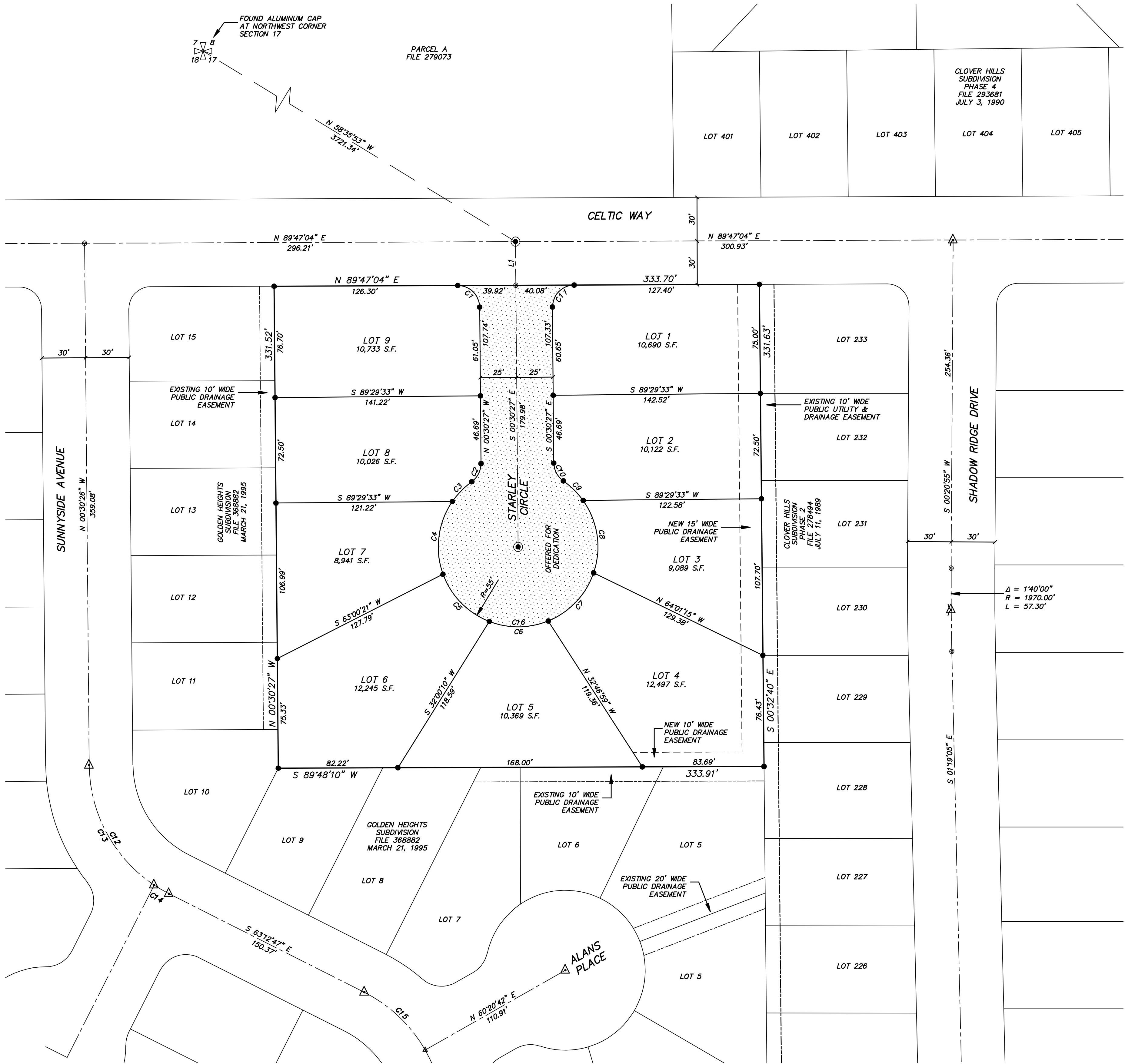
LOCATED IN:
SECTION 17, T.34 N., R.55 E., M.D.B.& M.

ELKO ELKO COUNTY NEVADA



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

216037



- NOTES:**
1. BASIS OF BEARINGS: THE CITY OF ELKO HAD 83 MODIFIED GRID. COORDINATES ON THIS BASIS ARE AS FOLLOWS:

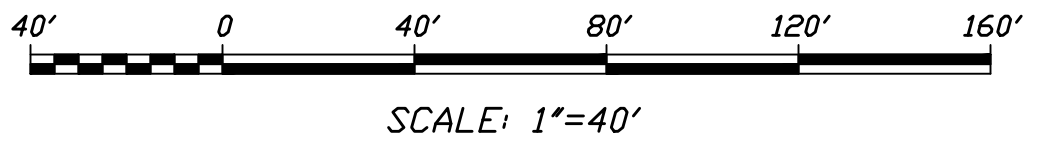
MONUMENT	NORTHING	EASTING
NW CORNER SECTION 17	28,474,179.97	592,424.23
NEW MONUMENT AT THE INTERSECTION OF CELTIC WAY AND STARLEY CIRCLE	28,472,241.00	595,600.52
NEW MONUMENT AT THE CENTER OF THE STARLEY CIRCLE CUL-DE-SAC	28,472,031.03	595,602.38
 2. THIS MAP SUBDIVIDES THE NE 1/4 OF THE SW 1/4 OF THE SW 1/4 OF THE NE 1/4 OF SECTION 17, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B. & M., AS DESCRIBED IN THE DEED FILED IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA, AT DOCUMENT NUMBER 866538.
 3. THE TOTAL SUBDIVIDED AREA ON THIS MAP IS 2.541 ± ACRES.
 4. THE TOTAL DEDICATED STREET AREA WITHIN THIS SUBDIVISION IS 15,968 ± S.F. (0.367 ± ACRES).
 5. A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY TO NV ENERGY WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY.
 6. A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY TO SOUTHWEST GAS CORP. WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INGRESS/EGRESS, INSTALLING, MAINTAINING, INSPECTING AND REPAIRING UTILITY FACILITIES PROVIDE SERVICE TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH ADDITIONAL UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS. RIGHTS ARE ALSO GRANTED TO USE EXISTING PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF MAINTAINING, INSTALLING, INSPECTING AND REPAIRING SAID UTILITY FACILITIES.
 7. IN ADDITION TO THE EASEMENTS SHOWN, PUBLIC UTILITY AND PUBLIC DRAINAGE EASEMENTS ARE OFFERED FOR DEDICATION AS FOLLOWS:

STREET FRONTAGE:	7.5' DRAINAGE & UTILITY EASEMENT
SIDE LOT LINES:	5.0' DRAINAGE & UTILITY EASEMENT
REAR LOT LINES:	5.0' DRAINAGE EASEMENT

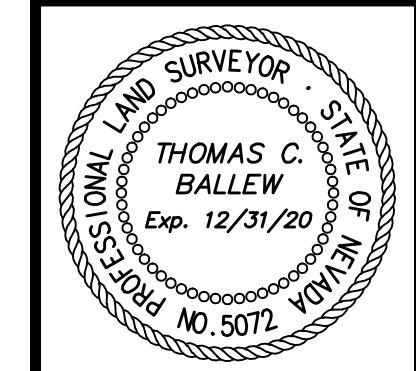
CURVE TABLE				
CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING
C1	89°42'29"	15.00	23.49	N 45°21'41" W
C2	55°08'00"	15.00	14.44	N 27°04'03" E
C3	20°02'28"	55.00	19.24	S 44°37'20" W
C4	54°37'05"	55.00	52.43	S 07°17'33" W
C5	48°52'18"	55.00	46.91	S 44°27'08" E
C6	43°14'19"	55.00	41.51	N 89°29'33" E
C7	48°52'18"	55.00	46.91	N 43°26'15" E
C8	54°37'05"	55.00	52.43	N 08°18'26" W
C9	20°02'28"	55.00	19.24	N 45°36'13" W
C10	55°08'00"	15.00	14.44	S 28°04'57" E
C11	90°17'31"	15.00	23.64	S 44°38'19" W
C12	62°42'21"	100.00	109.44	S 31°51'36" E
C13	55°54'06"	100.00	97.56	S 28°27'27" E
C14	6°49'29"	99.72	11.88	S 59°48'19" E
C15	33°30'49"	100.00	58.49	N 46°27'22" W
C16	29°18'01"	55.00	278.67	N 89°29'33" E

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 00°30'27" E	30.00'

- LEGEND:**
- 13 18 24 19 EXISTING SECTION CORNER AS NOTED
 - 13 18 EXISTING 1/4 SECTION CORNER AS NOTED
 - △ EXISTING MONUMENT IN STREET WELL
 - FOUND MONUMENT AS NOTED
 - PROPOSED MONUMENT IN STREET WELL
 - PROPOSED 5/8" REBAR W/ 5072 CAP
 - CALCULATED POINT, NOTHING SET
 - RIGHT-OF-WAY OFFERED FOR DEDICATION



ASPEN HEIGHTS SUBDIVISION



FINAL MAP
OF
ASPEN HEIGHTS SUBDIVISION
SHEET 2 OF 2

LOCATED IN:
SECTION 17, T.34 N., R.55 E., M.D.B. & M.
ELKO ELKO COUNTY NEVADA

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

216037

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible recommendation to City Council for Parcel Map 5-20, filed by City of Elko. The parcel map creates four parcels from the existing one parcel and contains an offer of dedication for right-of-way for a portion of Wright Way, Rocky Road and Jennings Way. Due to the dedication, it is referred to the Planning Commission with recommendation to the City Council, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **July 7, 2020**
3. Agenda Category: ***NEW BUSINESS, MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS***
4. Time Required: **15 Minutes**
5. Background Information: **The parcel map creates four parcels from the one parcel owned by the applicant, City of Elko. The map will be dedicating a portion of Wright Way, Rocky Road and Jennings Way to the City of Elko.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Forward a recommendation to City Council to conditionally approve Parcel Map 5-20 based on the facts, findings and conditions as presented in the Staff Report dated June 23, 2020.**
9. Findings: Findings: **See Staff Report dated June 23, 2020**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 7/7
Do not use pencil or red pen, they do not reproduce

Title: Parcel Map No. 5-20

Applicant(s): City of Eiko

Site Location: APN 001-01A-012 -

Current Zoning: A Date Received: 6/15/20 Date Public Notice: N/A

COMMENT: This is to divide APN 001-01A-012 into four parcels with dedications to Rocky Rd., Jennings Way, and Wright Way rights-of-way.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 6/23/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 6/24/20

No comments/concerns.

cc

Initial



CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

To: Cathy Laughlin, City Planner
From: Michele Rambo, AICP, Development Manager
Re: Parcel Map 5-20, City of Elko, Wright Way/Rocky Road
Date: June 23, 2020

The City of Elko, Development Department has reviewed the proposed parcel map under existing conditions. 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 Code – Section 2-13-3 Sidewalk, Curb and Gutter Construction
-) City of Elko Code – Section 3-2-4 Establishment of Zoning Districts
-) City of Elko Code – Section 3-2-13 General Agriculture District
-) City of Elko Code – Section 3-8 Flood Plain Management
-) City of Elko Code – Section 3-3-24 Parcel Maps
-) City of Elko Code – Section 3-3-28 Mergers and Resubdivision of Land



The City of Elko Development Department finds that without a Master Plan and/or Zone Change, the parcel map is **NOT** in general compliance with the above referenced Master Plan Components and Sections of City Code. The parcel map was evaluated based on the existing conditions and current zoning

of the property.

BACKGROUND INFORMATION

1. The proposed map is the division of one parcel, 001-01A-012 into four new parcels.
2. The proposed parcels have an area approximately
 - a. Parcel A: 10.11 Acres
 - b. Parcel B: 15.37 Acres
 - c. Parcel C: 2.36 Acres
 - d. Parcel D: 7.23 Acres
3. The area is zoned (AG) General Agriculture
4. The property is currently vacant.
5. The area lies on the west side of Wright Way and north of Burgess Lane. Rocky Road bisects the parcel.
6. Public improvements are not in place.

MASTER PLAN:

Land Use:

-) The land use is identified as Residential Medium Density.
-) General Agriculture is not a corresponding Zoning designation under the Residential Medium Density category. Per the Master Plan, General Agriculture is only an allowable zoning under the Agricultural/Residential – Rural Density and Parks and Open Space designations.
-) A Master Plan Amendment and/or Zone Change is required to bring the property into conformance with the Master Plan.
-) Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety.
-) **Until a Master Plan and/or Zone Change is completed, the project is not consistent with the Land Use Section of the Master Plan.**

Transportation:

-) The proposed parcels have access to:
 - o N. 5th Street, a Minor Arterial, via Rocky Road, Brookwood Drive, and Rolling Hills Drive.
 - o Jennings Way, a Minor Arterial
-) Future development of the parcels will dictate access points to individual parcels.

ELKO REDEVELOPMENT PLAN:

-) The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

-) The property is located outside the 30 year capture zone.

SECTION 2-13-3 SIDEWALK, CURB AND GUTTER CONSTRUCTION

-) This section of code states sidewalks, curbs and gutters shall be required on all vacant lots or parcels of land which are hereafter ... merged or divided.
-) The applicant is not currently proposing street improvements, but is dedicating right-of-way as part of the proposed Parcel Map.

-) The improvements required along the frontage(s) of all parcels must be installed at the time of development. Off-site improvements will also be required as needed to provide connectivity.

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS

-) Section 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS states that no yard or lot area can be reduced below the minimum requirements set forth in Title 3 (zoning).
-) The General Agriculture zoning district has a minimum lot size of 5 acres.
-) Parcels A, B, and D are larger than the minimum 5 acres required. **Lot C does not conform with the current minimum lot size at only 2.36 acres.**

Section3-2-13 GENERAL AGRICULTURE DISTRICT

-) Compliance with this section of code is required **unless a Zone Change occurs.**
-) Allowed uses for the General Agriculture District include:
 - o Agriculture
 - o Ranching
 - o Dairy Farms
 - o Oil Wells
 - o Soil Crops
 - o Guest Ranches
 - o Veterinary Clinic
 - o Churches (with CUP)
 - o Public Recreation Uses (with CUP)
 - o Schools (with CUP)
 - o Water Pumping and Storage (with CUP)
-) Any other uses are prohibited.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

-) The site is located outside of any flood hazard area.
-) This Parcel Map and any future development of the project site will not increase the potential of flooding above what already exists.

SECTION 3-3-24 PARCEL MAPS

Parcel Maps (A) – The proposed Parcel Map has been submitted as required.

Parcel Maps (B) – Public improvements have not been shown on the Parcel Map (See Section C below).

Parcel Maps (C) – Because this Parcel Map is dedicating right-of-way along Rocky Road and Jennings Way, City of Elko Code requires that the map be approved by the City Council and that public improvements be designed and constructed (including off-site improvements) upon development. The required condition of approval has been added.

With the City of Elko being the applicant for this Parcel Map, this requirement will mean that the City is responsible for designing and constructing all needed public improvements as these parcels are developed. This will continue to be the case unless and until an agreement with a user is in place. Ideally, this agreement should be in place prior to the map recordation.

Parcel Maps (D) – The map does include offers for dedication of Rights of Way on both Rocky Road and Jennings Way.

Parcel Maps (E) – As it exists, the map **does not** comply with all zoning requirements. As discussed above, one of the proposed parcels does not meet the minimum lot size for the General Agriculture zoning designation. A condition of approval has been added that the map not be recorded until a Master Plan Amendment and/or Zone Change has been approved and is in place.

Parcel Maps (F) – Construction plans have not been submitted and approved for site improvements. These plans will be required for development of the individual parcels.

Parcel Maps (G) – This section does not apply because this is not a subsequent Parcel Map.

Parcel Maps (H) – Application has been made through the Planning Department to be processed as required by this section.

Parcel Maps (I) – No exceptions apply to this site. A Parcel Map is required.

Parcel Maps (J) – A survey was done as part of the Parcel Map preparation.

Parcel Maps (K) – The required filing fee was paid to the Planning Department.

Parcel Maps (L) – All required information has been shown on the Parcel Map.

Parcel Maps (M) – The applicant is responsible for recording the Parcel Map within the required timeframe. A condition of approval has been included.

Parcel Maps (N) – None of the listed prohibitions apply to the proposed Parcel Map.

SECTION 3-3-28 MERGERS AND RESUBDIVISIONS OF LAND

Mergers (A) – All lots are owned by the applicant (City of Elko).

Mergers (B) – The map shall be recorded in accordance with NRS 278.320 - .4725

Mergers (C) – All easements are clearly identified on the map.

Mergers (D) – No security is being held by the city.

RECOMMENDATION

The City of Elko **Development Department** recommends conditional approval of the parcel map with the following conditions.

1. Prior to map recordation, a Master Plan Amendment is required to change the Master Plan designation from Residential Medium Density to Public (or other appropriate designation).
2. Prior to map recordation, a Zone Change is required to change the zoning designation from General Agriculture to Public/Quasi-Public (or other appropriate designation).
3. All required public improvements (including any off-site improvements) required as future

development occurs must be designed and constructed per current City of Elko code requirements in place at that time.

4. The Parcel Map shall be recorded by Elko County within two (2) years of this approval.
5. Prior to map recordation, add a note to the map stating that all public improvements are to be installed at time of the development of each parcel.
6. Future water and sewer will need to be extended from the residential neighborhood to the east. The water line shall be a minimum of 10 inches and the sewer line shall be a minimum of 8 inches per City Code.



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR PARCEL MAP APPROVAL

APPLICANT(s):	CITY OF ELKO, NEVADA		
MAILING ADDRESS:	1751 COLLEGE AVENUE		
PHONE NO (Home)	775-777-7160	(Business)	
NAME OF PROPERTY OWNER (If different):			
(Property owner's consent in writing must be provided.)			
MAILING ADDRESS:			
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):			
ASSESSOR'S PARCEL NO.:	001-01A-012	Address	ROCKY RD / JENNINGS WAY / WRIGHT WAY
Lot(s), Block(s), & Subdivision	PORTION OF THE NE1/4 SECTION 8, T34N, R55E, MDM		
Or Parcel(s) & File No.	PATENT 27-2006-0005 RECORDED AS DOCUMENT No. 543305		
APPLICANT'S REPRESENTATIVE OR ENGINEER:	SUMMIT ENGINEERING / RYAN COOK, PLS		

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. A complete application must include the following:

1. One .pdf of the entire application, and one (1) copy of a 24" x 36" sized parcel map provided by a properly licensed surveyor as well as one (1) set of reproducible plans 8 ½" x 11" in size of the site drawn to scale showing proposed division of property prepared in accordance with Section 3-3-60 of the Elko City Code along with any supporting data to include:
 - a. Name, address and telephone number of the person who prepared the parcel map.
 - b. Proposed use of each parcel.
 - c. A certificate of execution (signature block) for the Elko City Planning Commission or duly authorized representative.
 - d. Source of water supply and proposed method of sewage disposal for each parcel.
 - e. A copy of all survey computations
 - f. A vicinity map.
2. If the property is improved, a plot plan depicting the existing conditions drawn to scale showing proposed property lines, existing buildings, building setbacks, parking and loading areas and any other pertinent information.

Fee: \$400.00 + \$25.00 per lot for Planning Commission and City Council Review; dedication of street right of way or modification of subdivision ordinance standards or regulations.

\$200.00 + \$25.00 per lot for administrative review only; no dedications or modifications.

Fees are non-refundable.

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

RECEIVED

1. Identify the existing zoning of the property:

ZA

2. Explain in detail the type and nature of the use proposed on each parcel: _____

PARCEL A, PARCEL C, AND PARCEL D ARE CURRENTLY VACANT AND ARE PLANNED TO BE
RETAINED BY THE CITY OF ELKO AT THIS TIME.

PARCEL B WOULD ULTIMATELY BE CONVEYED TO THE U.S. DEPARTMENT OF VETERANS AFFAIRS
FOR USE AS A NATIONAL CEMETERY.

3. Explain the source of water supply and proposed method of sewerage disposal for each
parcel: _____

FUTURE EXTENSION OF CITY SEWER AND CITY WATER WITHIN WRIGHT WAY.

This area intentionally left blank

By My Signature below:

- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I acknowledge that, if approved, I must provide an AutoCAD file containing the final lot 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

SUMMIT ENGINEERING / RYAN COOK, PLS

(Please print or type)

Mailing Address

5405 MAE ANNE AVENUE

Street Address or P.O. Box

RENO, NV 89523

City, State, Zip Code

Phone Number:

775-787-4316

Email address:

ryan@summitnv.com

SIGNATURE:



FOR OFFICE USE ONLY

File No.: 5-20 Date Filed: 6/15/20 Fee Paid: \$475.00 CC#9796

=====

CITY OF ELKO PARCEL MAP

FILE NAME = N:\DWGS\J82539_ElkoVACemetery\COE_VA_PM_Sheet1-2

=====

=====

EXTERIOR BOUNDARY

=====

START

	.....28479530.32	597747.83
INV	S 00°03'18" W 664.58	
	.....28478865.74	597747.20
INV	S 89°37'46" W 332.86	
	.....28478863.59	597414.34
INV	S 00°03'04" W 664.60	
	.....28478198.99	597413.75
INV	N 89°37'35" E 332.82	
	.....28478201.16	597746.56
INV	S 00°03'18" W 332.29	
	.....28477868.87	597746.24
INV	S 89°37'30" W 998.38	
	.....28477862.34	596747.88
INV	N 00°02'34" E 332.31	
	.....28478194.65	596748.13
INV	S 89°37'35" W 332.82	
	.....28478192.49	596415.32
INV	N 00°02'20" E 664.64	
	.....28478857.13	596415.77
INV	N 89°37'46" E 332.86	
	.....28478859.28	596748.63
INV	N 00°02'34" E 664.63	
	.....28479523.91	596749.12
INV	N 89°37'56" E 998.73	
	.....28479530.32	597747.83

AREA 1659078.3 SQUARE FEET 38.087 ACRES

TOTAL DISTANCE 6651.52

CLOSING VECTOR N 14°52'21" E 0.014

Closure precision = 1 in 483166

=====

R/W JENNINGS WAY

=====

START

	.....28478192.49	596415.32
INV	N 00°02'20" E 480.42	
	.....28478672.91	596415.65
INV	S 11°08'31" E 381.50	
	.....28478298.60	596489.37
RADIUS POINT (TANGENT CURVE RIGHT)		
	.....28477701.48	593457.61

01°59'15" DELTA
 3090.00 RADIUS
 107.19 LENGTH
 107.18 CHORD
 53.60 TANGENT

TANGENT BRG

S 11°08'31" E
 S 09°09'16" E

P.C. TO P.T. S 10°08'54" E 107.18
28478193.09 596508.25

NON-TANGENT LINE

INV S 89°37'35" W 92.93
28478192.49 596415.32

AREA 22711.0 SQUARE FEET 0.521 ACRES

TOTAL DISTANCE 1062.05

CLOSING VECTOR S 69°51'46" W 0.004

Closure precision = 1 in 246941

=====

R/W SOUTHEASTERLY WRIGHT WAY

=====

START

.....28478201.16 597746.56

INV S 00°03'18" W 332.29

.....28477868.87 597746.24

INV S 89°37'30" W 50.00

.....28477868.55 597696.24

INV N 00°03'18" E 332.29

.....28478200.84 597696.56

INV N 89°37'35" E 50.00

.....28478201.16 597746.56

AREA 16614.5 SQUARE FEET 0.381 ACRES

TOTAL DISTANCE 764.58

CLOSING VECTOR N 00°22'27" W 0.001

Closure precision = 1 in 630826

=====

ROCKY ROAD & BALANCE OF WRIGHT WAY

=====

START

.....28479270.40 597747.58

INV S 00°03'18" W 404.66

.....28478865.74 597747.20

INV S 89°37'46" W 50.00

.....28478865.42 597697.20

INV N 00°03'18" E 308.97

.....28479174.38 597697.49

RADIUS POINT (TANGENT CURVE LEFT)

.....28479174.40 597677.49

99°28'28" DELTA
 20.00 RADIUS
 34.72 LENGTH
 30.52 CHORD
 23.61 TANGENT

TANGENT BRG

N 00°03'18" E
 S 80°34'50" W

P.C. TO P.T.	N 49°40'56" W	30.52		
			.....28479194.13	597674.22
RADIUS POINT (TANGENT CURVE LEFT)				
			.....28478735.40	597750.32

24°59'03" DELTA
 465.00 RADIUS
 202.77 LENGTH
 201.16 CHORD
 103.02 TANGENT

TANGENT BRG

S 80°34'50" W
 S 55°35'47" W

P.C. TO P.T.	S 68°05'19" W	201.16		
			.....28479119.07	597487.59
INV	S 55°35'47" W	262.61		
			.....28478970.68	597270.91
RADIUS POINT (TANGENT CURVE RIGHT)				
			.....28479300.72	597044.90

38°11'14" DELTA
 400.00 RADIUS
 266.60 LENGTH
 261.69 CHORD
 138.46 TANGENT

TANGENT BRG

S 55°35'47" W
 N 86°12'58" W

P.C. TO P.T.	S 74°41'25" W	261.69		
			.....28478901.59	597018.51
INV	N 86°12'58" W	270.43		
			.....28478919.43	596748.67
INV	N 00°02'34" E	70.15		
			.....28478989.58	596748.72
INV	S 86°12'58" E	275.00		
			.....28478971.44	597023.13
RADIUS POINT (TANGENT CURVE LEFT)				
			.....28479300.72	597044.90

38°11'14" DELTA
 330.00 RADIUS
 219.94 LENGTH

215.89 CHORD
 114.23 TANGENT

TANGENT BRG
 S 86°12'58" E
 N 55°35'47" E

P.C. TO P.T. N 74°41'25" E 215.89
28479028.44 597231.36

RADIUS POINT (TANGENT CURVE RIGHT)
28479028.44 597231.36

68°48'25" DELTA
 0.00 RADIUS
 0.00 LENGTH
 0.00 CHORD
 0.00 TANGENT

TANGENT BRG
 N 55°35'47" E
 S 55°35'47" E

P.C. TO P.T. N 90°00'00" E 0.00
28479028.44 597231.36

NON-TANGENT LINE
 INV N 55°35'47" E 262.61
28479176.82 597448.04

RADIUS POINT (TANGENT CURVE RIGHT)
28478735.40 597750.32

34°05'10" DELTA
 535.00 RADIUS
 318.28 LENGTH
 313.61 CHORD
 164.01 TANGENT

TANGENT BRG
 N 55°35'47" E
 N 89°40'57" E

P.C. TO P.T. N 72°38'22" E 313.61
28479270.40 597747.36

INV N 89°40'57" E 0.23
28479270.40 597747.58

AREA 92132.5 SQUARE FEET 2.115 ACRES

TOTAL DISTANCE 2946.96

CLOSING VECTOR N 73°18'51" W 0.002

Closure precision = 1 in 1778141

=====

PARCEL A

=====

START

.....28479530.32 597747.83

INV S 00°03'18" W 259.92
28479270.40 597747.58

INV	S 89°40'57" W	0.23		
	.....	28479270.40	597747.36	
RADIUS POINT (TANGENT CURVE LEFT)				
	.....	28478735.40	597750.32	

34°05'10" DELTA
535.00 RADIUS
318.28 LENGTH
313.61 CHORD
164.01 TANGENT

TANGENT BRG

	S 89°40'57" W			
	S 55°35'47" W			
P.C. TO P.T.	S 72°38'22" W	313.61		
	.....	28479176.82	597448.04	
INV	S 55°35'47" W	262.61		
	.....	28479028.44	597231.36	
RADIUS POINT (TANGENT CURVE RIGHT)				
	.....	28479300.72	597044.90	

38°11'14" DELTA
330.00 RADIUS
219.94 LENGTH
215.89 CHORD
114.23 TANGENT

TANGENT BRG

	S 55°35'47" W			
	N 86°12'58" W			
P.C. TO P.T.	S 74°41'25" W	215.89		
	.....	28478971.44	597023.13	
INV	N 86°12'58" W	275.00		
	.....	28478989.58	596748.72	
INV	N 00°02'34" E	534.33		
	.....	28479523.91	596749.12	
INV	N 89°37'56" E	998.73		
	.....	28479530.32	597747.83	

AREA 440263.5 SQUARE FEET 10.107 ACRES

TOTAL DISTANCE 2869.05

CLOSING VECTOR S 13°52'28" W 0.009

Closure precision = 1 in 311920

=====

PARCEL B

=====

START

	.....	28478863.59	597414.34	
INV	S 00°03'04" W	664.60		
	.....	28478198.99	597413.75	
INV	S 89°37'35" W	665.63		
	.....	28478194.65	596748.13	

INV	S 89°37'35" W	239.88		
			.....28478193.09	596508.25
RADIUS POINT (NON TANGENT CURVE LEFT)				
			.....28477701.48	593457.61

01°59'15" DELTA
 3090.00 RADIUS
 107.19 LENGTH
 107.18 CHORD
 53.60 TANGENT

TANGENT BRG

	N 09°09'16" W			
	N 11°08'31" W			
P.C. TO P.T.	N 10°08'54" W	107.18		
			.....28478298.60	596489.37
INV	N 11°08'31" W	381.50		
			.....28478672.91	596415.65
INV	N 00°02'20" E	184.22		
			.....28478857.13	596415.77
INV	N 89°37'46" E	332.86		
			.....28478859.28	596748.63
INV	N 00°02'34" E	60.15		
			.....28478919.43	596748.67
INV	S 86°12'58" E	270.43		
			.....28478901.59	597018.51
RADIUS POINT (TANGENT CURVE LEFT)				
			.....28479300.72	597044.90

12°55'02" DELTA
 400.00 RADIUS
 90.18 LENGTH
 89.99 CHORD
 45.28 TANGENT

TANGENT BRG

	S 86°12'58" E			
	N 80°52'00" E			
P.C. TO P.T.	N 87°19'31" E	89.99		
			.....28478905.79	597108.40
NON-TANGENT LINE				
INV	S 87°46'01" E	306.20		
			.....28478893.86	597414.37
INV	S 00°03'04" W	30.27		
			.....28478863.59	597414.34

AREA 669540.5 SQUARE FEET 15.371 ACRES

TOTAL DISTANCE 3333.11

CLOSING VECTOR N 20°09'58" W 0.018

Closure precision = 1 in 182280

=====

PARCEL C

```

=====
START
.....28478865.42  597697.20
INV      S 89°37'46" W      282.86
.....28478863.59  597414.34
INV      N 00°03'04" E      30.27
.....28478893.86  597414.37
INV      N 87°46'01" W      306.20
.....28478905.79  597108.40
RADIUS POINT (NON TANGENT CURVE LEFT)
.....28479300.72  597044.90

      25°16'12" DELTA
      400.00 RADIUS
      176.42 LENGTH
      174.99 CHORD
      89.67 TANGENT

TANGENT BRG
      N 80°52'00" E
      N 55°35'47" E
P.C. TO P.T.  N 68°13'53" E      174.99
.....28478970.68  597270.91
INV      N 55°35'47" E      262.61
.....28479119.07  597487.59
RADIUS POINT (TANGENT CURVE RIGHT)
.....28478735.40  597750.32

      24°59'03" DELTA
      465.00 RADIUS
      202.77 LENGTH
      201.16 CHORD
      103.02 TANGENT

TANGENT BRG
      N 55°35'47" E
      N 80°34'50" E
P.C. TO P.T.  N 68°05'19" E      201.16
.....28479194.13  597674.22
RADIUS POINT (TANGENT CURVE RIGHT)
.....28479174.40  597677.49

      99°28'28" DELTA
      20.00 RADIUS
      34.72 LENGTH
      30.52 CHORD
      23.61 TANGENT

TANGENT BRG
      N 80°34'50" E
      S 00°03'18" W
P.C. TO P.T.  S 49°40'56" E      30.52
.....28479174.38  597697.49

```

INV	S 00°03'18" W	308.97		
			.....28478865.42	597697.20

AREA 102665.7 SQUARE FEET 2.357 ACRES
 TOTAL DISTANCE 1604.82
 CLOSING VECTOR N 73°59'44" E 0.007
 Closure precision = 1 in 220587

=====

PARCEL D

=====

START

			.....28477868.55	597696.24
INV	S 89°37'30" W	948.38		
			.....28477862.34	596747.88
INV	N 00°02'34" E	332.31		
			.....28478194.65	596748.13
INV	N 89°37'35" E	665.63		
			.....28478198.99	597413.75
INV	N 89°37'35" E	282.81		
			.....28478200.84	597696.56
INV	S 00°03'18" W	332.29		
			.....28477868.55	597696.24

AREA 315150.7 SQUARE FEET 7.235 ACRES
 TOTAL DISTANCE 2561.43
 CLOSING VECTOR N 76°41'02" E 0.011
 Closure precision = 1 in 232524

=====

EASEMENTS NORTH PART OF PARCEL A

=====

START

			.....28479530.32	597747.83
INV	S 00°03'18" W	259.92		
			.....28479270.40	597747.58
INV	S 89°40'57" W	0.23		
			.....28479270.40	597747.36
RADIUS POINT (TANGENT CURVE LEFT)				
			.....28478735.40	597750.32

31°19'37" DELTA
 535.00 RADIUS
 292.51 LENGTH
 288.89 CHORD
 150.01 TANGENT

TANGENT BRG

	S 89°40'57" W			
	S 58°21'21" W			
P.C. TO P.T.	S 74°01'09" W	288.89		
			.....28479190.86	597469.64

NON-TANGENT LINE

INV	S 89°42'56" W	720.77		
	.....		28479187.28	596748.87
INV	N 00°02'34" E	336.63		
	.....		28479523.91	596749.12
INV	N 89°37'56" E	998.73		
	.....		28479530.32	597747.83

AREA 322196.9 SQUARE FEET 7.397 ACRES
 TOTAL DISTANCE 2608.80
 CLOSING VECTOR S 45°33'46" E 0.008
 Closure precision = 1 in 346505

=====

EASEMENTS MIDDLE PART OF PARCEL A

=====

START

	.....		28479187.28	596748.87
INV	N 89°42'56" E	720.77		
	.....		28479190.86	597469.64
RADIUS POINT (NON TANGENT CURVE LEFT)				
	.....		28478735.40	597750.32

02°45'33" DELTA
 535.00 RADIUS
 25.76 LENGTH
 25.76 CHORD
 12.88 TANGENT

TANGENT BRG

	S 58°21'21" W			
	S 55°35'47" W			
P.C. TO P.T.	S 56°58'34" W	25.76		
	.....		28479176.82	597448.04
INV	S 55°35'47" W	6.36		
	.....		28479173.23	597442.79
INV	S 89°42'56" W	693.94		
	.....		28479169.78	596748.86
INV	N 00°02'34" E	17.50		
	.....		28479187.28	596748.87

AREA 12374.1 SQUARE FEET 0.284 ACRES
 TOTAL DISTANCE 1464.34
 CLOSING VECTOR S 76°00'33" E 0.003
 Closure precision = 1 in 463950

=====

EASEMENTS SOUTH PART OF PARCEL A

=====

START

	.....		28479169.78	596748.86
INV	N 89°42'56" E	693.94		
	.....		28479173.23	597442.79
INV	S 55°35'47" W	256.25		

.....	28479028.44	597231.36
RADIUS POINT (TANGENT CURVE RIGHT)		
.....	28479300.72	597044.90

38°11'14" DELTA
330.00 RADIUS
219.94 LENGTH
215.89 CHORD
114.23 TANGENT

TANGENT BRG

	S 55°35'47" W		
	N 86°12'58" W		
P.C. TO P.T.	S 74°41'25" W	215.89	
	.....	28478971.44	597023.13
INV	N 86°12'58" W	275.00	
	.....	28478989.58	596748.72
INV	N 00°02'34" E	180.20	
	.....	28479169.78	596748.86

AREA 105692.5 SQUARE FEET 2.426 ACRES
TOTAL DISTANCE 1625.33
CLOSING VECTOR S 68°39'46" W 0.011
Closure precision = 1 in 142423

=====

EASEMENTS NORTH PART OF PARCEL C

=====

START

	.....	28479174.38	597697.49
INV	S 89°42'56" W	101.98	
	.....	28479173.88	597595.51
RADIUS POINT (NON TANGENT CURVE RIGHT)			
	.....	28478735.40	597750.32

10°01'36" DELTA
465.00 RADIUS
81.37 LENGTH
81.27 CHORD
40.79 TANGENT

TANGENT BRG

	N 70°33'14" E		
	N 80°34'50" E		
P.C. TO P.T.	N 75°34'02" E	81.27	
	.....	28479194.13	597674.22
RADIUS POINT (TANGENT CURVE RIGHT)			
	.....	28479174.40	597677.49

99°28'28" DELTA
20.00 RADIUS
34.72 LENGTH
30.52 CHORD

23.61 TANGENT

TANGENT BRG

N 80°34'50" E

S 00°03'18" W

P.C. TO P.T. S 49°40'56" E 30.52

.....28479174.38 597697.49

AREA 1259.3 SQUARE FEET 0.029 ACRES

TOTAL DISTANCE 218.08

CLOSING VECTOR S 50°18'52" E 0.004

Closure precision = 1 in 54958

=====

EASEMENTS MIDDLE PART OF PARCEL C

=====

START

.....28478907.84 597697.24

INV N 87°46'01" W 508.41

.....28478927.66 597189.21

RADIUS POINT (NON TANGENT CURVE LEFT)

.....28479300.72 597044.90

13°15'20" DELTA

400.00 RADIUS

92.54 LENGTH

92.34 CHORD

46.48 TANGENT

TANGENT BRG

N 68°51'08" E

N 55°35'47" E

P.C. TO P.T. N 62°13'28" E 92.34

.....28478970.68 597270.91

INV N 55°35'47" E 262.61

.....28479119.07 597487.59

RADIUS POINT (TANGENT CURVE RIGHT)

.....28478735.40 597750.32

14°57'27" DELTA

465.00 RADIUS

121.39 LENGTH

121.05 CHORD

61.04 TANGENT

TANGENT BRG

N 55°35'47" E

N 70°33'14" E

P.C. TO P.T. N 63°04'31" E 121.05

.....28479173.88 597595.51

NON-TANGENT LINE

INV N 89°42'56" E 101.98

.....28479174.38 597697.49

INV S 00°03'18" W 266.54

```

.....28478907.84    597697.24

AREA      81065.7  SQUARE FEET      1.861 ACRES
TOTAL DISTANCE      1353.47
CLOSING VECTOR S 60°14'53" W 0.002
Closure precision = 1 in 692901
=====
EASEMENTS SOUTH PART OF PARCEL C
=====
START
.....28478865.42    597697.20
INV      S 89°37'46" W      282.86
.....28478863.59    597414.34
INV      N 00°03'04" E      30.27
.....28478893.86    597414.37
INV      N 87°46'01" W      306.20
.....28478905.79    597108.40
RADIUS POINT (NON TANGENT CURVE LEFT)
.....28479300.72    597044.90

      12°00'52" DELTA
      400.00 RADIUS
      83.88 LENGTH
      83.72 CHORD
      42.09 TANGENT

TANGENT BRG
      N 80°52'00" E
      N 68°51'08" E
P.C. TO P.T.  N 74°51'34" E      83.72
.....28478927.66    597189.21
NON-TANGENT LINE
INV      S 87°46'01" E      508.41
.....28478907.84    597697.24
INV      S 00°03'18" W      42.43
.....28478865.42    597697.20

AREA      20340.8  SQUARE FEET      0.467 ACRES
TOTAL DISTANCE      1254.04
CLOSING VECTOR N 56°32'37" W 0.003
Closure precision = 1 in 411624
=====
CENTERLINE NORTH PART OF ROCKY ROAD
=====
START
.....28478989.58    596748.72
INV      S 86°12'58" E      275.00
.....28478971.44    597023.13
RADIUS POINT (TANGENT CURVE LEFT)
.....28479300.72    597044.90

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	38°11'14" DELTA		
	330.00 RADIUS		
	219.94 LENGTH		
	215.89 CHORD		
	114.23 TANGENT		
TANGENT BRG	S 86°12'58" E		
	N 55°35'47" E		
P.C. TO P.T.	N 74°41'25" E	215.89	
	.....	28479028.44	597231.36
INV	N 55°35'47" E	262.61	
	.....	28479176.82	597448.04
RADIUS POINT (TANGENT CURVE RIGHT)			
	.....	28478735.40	597750.32
	34°05'10" DELTA		
	535.00 RADIUS		
	318.28 LENGTH		
	313.61 CHORD		
	164.01 TANGENT		
TANGENT BRG	N 55°35'47" E		
	N 89°40'57" E		
P.C. TO P.T.	N 72°38'22" E	313.61	
	.....	28479270.40	597747.36
INV	N 89°40'57" E	0.23	
	.....	28479270.40	597747.58
INV	S 00°03'18" W	35.00	
	.....	28479235.40	597747.55
RADIUS POINT (NON TANGENT CURVE LEFT)			
	.....	28478735.40	597750.32
	34°05'10" DELTA		
	500.00 RADIUS		
	297.46 LENGTH		
	293.09 CHORD		
	153.28 TANGENT		
TANGENT BRG	S 89°40'57" W		
	S 55°35'47" W		
P.C. TO P.T.	S 72°38'22" W	293.09	
	.....	28479147.94	597467.81
INV	S 55°35'47" W	262.61	
	.....	28478999.56	597251.14
RADIUS POINT (TANGENT CURVE RIGHT)			
	.....	28479300.72	597044.90
	38°11'14" DELTA		
	365.00 RADIUS		
	243.27 LENGTH		

	238.79 CHORD		
	126.35 TANGENT		
TANGENT BRG	S 55°35'47" W		
	N 86°12'58" W		
P.C. TO P.T.	S 74°41'25" W	238.79	
	.....	28478936.51	597020.82
INV	N 86°12'58" W	272.71	
	.....	28478954.51	596748.70
INV	N 00°02'34" E	35.07	
	.....	28478989.58	596748.72
AREA	37662.1 SQUARE FEET	0.865 ACRES	
TOTAL DISTANCE	2222.19		
CLOSING VECTOR	N 57°49'30" W 0.006		
Closure precision	= 1 in 343065		
=====			
CENTERLINE SOUTH PART OF ROCKY ROAD			
=====			
START			
	.....	28478954.51	596748.70
INV	S 86°12'58" E	272.71	
	.....	28478936.51	597020.82
RADIUS POINT (TANGENT CURVE LEFT)			
	.....	28479300.72	597044.90
	38°11'14" DELTA		
	365.00 RADIUS		
	243.27 LENGTH		
	238.79 CHORD		
	126.35 TANGENT		
TANGENT BRG	S 86°12'58" E		
	N 55°35'47" E		
P.C. TO P.T.	N 74°41'25" E	238.79	
	.....	28478999.56	597251.14
INV	N 55°35'47" E	262.61	
	.....	28479147.94	597467.81
RADIUS POINT (TANGENT CURVE RIGHT)			
	.....	28478735.40	597750.32
	34°05'10" DELTA		
	500.00 RADIUS		
	297.46 LENGTH		
	293.09 CHORD		
	153.28 TANGENT		
TANGENT BRG	N 55°35'47" E		
	N 89°40'57" E		
P.C. TO P.T.	N 72°38'22" E	293.09	

.....	28479235.40	597747.55
NON-TANGENT LINE		
INV S 00°03'18" W 369.65		
.....	28478865.74	597747.20
INV S 89°37'46" W 50.00		
.....	28478865.42	597697.20
INV N 00°03'18" E 308.97		
.....	28479174.38	597697.49
RADIUS POINT (TANGENT CURVE LEFT)		
.....	28479174.40	597677.49
99°28'28" DELTA		
20.00 RADIUS		
34.72 LENGTH		
30.52 CHORD		
23.61 TANGENT		
TANGENT BRG		
N 00°03'18" E		
S 80°34'50" W		
P.C. TO P.T. N 49°40'56" W 30.52		
.....	28479194.13	597674.22
RADIUS POINT (TANGENT CURVE LEFT)		
.....	28478735.40	597750.32
24°59'03" DELTA		
465.00 RADIUS		
202.77 LENGTH		
201.16 CHORD		
103.02 TANGENT		
TANGENT BRG		
S 80°34'50" W		
S 55°35'47" W		
P.C. TO P.T. S 68°05'19" W 201.16		
.....	28479119.07	597487.59
INV S 55°35'47" W 262.61		
.....	28478970.68	597270.91
RADIUS POINT (TANGENT CURVE RIGHT)		
.....	28479300.72	597044.90
38°11'14" DELTA		
400.00 RADIUS		
266.60 LENGTH		
261.69 CHORD		
138.46 TANGENT		
TANGENT BRG		
S 55°35'47" W		
N 86°12'58" W		
P.C. TO P.T. S 74°41'25" W 261.69		
.....	28478901.59	597018.51
INV N 86°12'58" W 270.43		

INV	.....28478919.43	596748.67
N 00°02'34" E	35.07	
.....28478954.51	596748.70	

AREA 54470.4 SQUARE FEET 1.250 ACRES
 TOTAL DISTANCE 2876.88
 CLOSING VECTOR S 52°37'40" E 0.005
 Closure precision = 1 in 587276

=====

CENTERLINE WEST PART OF JENNINGS WAY

=====

START

INV	.....28478192.49	596415.32
N 00°02'20" E	170.99	
.....28478363.48	596415.44	
INV	S 11°08'31" E	77.95
.....28478287.00	596430.50	
RADIUS POINT (TANGENT CURVE RIGHT)	.....28477701.48	593457.61

01°48'44" DELTA
 3030.00 RADIUS
 95.83 LENGTH
 95.83 CHORD
 47.92 TANGENT

TANGENT BRG

	S 11°08'31" E	
	S 09°19'47" E	
P.C. TO P.T.	S 10°14'09" E	95.83
.....28478192.70	596447.53	
NON-TANGENT LINE		
INV	S 89°37'35" W	32.21
.....28478192.49	596415.32	

AREA 2836.9 SQUARE FEET 0.065 ACRES
 TOTAL DISTANCE 376.98
 CLOSING VECTOR N 11°37'09" E 0.006
 Closure precision = 1 in 65229

=====

CENTERLINE EAST PART OF JENNINGS WAY

=====

START

INV	.....28478193.09	596508.25
S 89°37'35" W	60.73	
.....28478192.70	596447.53	
RADIUS POINT (NON TANGENT CURVE LEFT)	.....28477701.48	593457.61

01°48'44" DELTA
 3030.00 RADIUS

95.83 LENGTH
 95.83 CHORD
 47.92 TANGENT

TANGENT BRG

N 09°19'47" W
 N 11°08'31" W

P.C. TO P.T.	N 10°14'09" W	95.83		
			.....28478287.00	596430.50
INV	N 11°08'31" W	77.95		
			.....28478363.48	596415.44
INV	N 00°02'20" E	309.43		
			.....28478672.91	596415.65
INV	S 11°08'31" E	381.50		
			.....28478298.60	596489.37
RADIUS POINT (TANGENT CURVE RIGHT)			.....28477701.48	593457.61

01°59'15" DELTA
 3090.00 RADIUS
 107.19 LENGTH
 107.18 CHORD
 53.60 TANGENT

TANGENT BRG

S 11°08'31" E
 S 09°09'16" E

P.C. TO P.T.	S 10°08'54" E	107.18		
			.....28478193.09	596508.25

AREA 19874.1 SQUARE FEET 0.456 ACRES
 TOTAL DISTANCE 1032.63
 CLOSING VECTOR S 34°08'16" E 0.009
 Closure precision = 1 in 120781



Original
PRELIMINARY REPORT

Our Order No.: 733833
Proposed Buyer/Borrower: U.S Department of Veterans Affairs
Seller:

Sales Price:
Loan Amount:

Property Address: - TWP 34N RGE 55E MDB&M, Elko, NV 89801

Proposed Lender:

Today's Date: April 27, 2020

In response to the above referenced application for a policy of title insurance, Stewart Title Guaranty Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.



Authorized Countersignature
Annette Scates, Title Officer

Dated as of April 27, 2020 at 8:00AM

When replying, please contact:

Pamela Aguirre, Escrow Officer
(775) 738-5181 Fax: (866) 394-6995
Email: Paguirre@stewart.com

PRELIMINARY REPORT

The form of Policy of Title Insurance contemplated by this report is:

- ☒ 2006 ALTA Owner's Policy - Standard
- ☐ 2006 ALTA Owner's Policy - Extended
- ☐ 1998 ALTA Homeowners Plus Insurance Policy
- ☐ ALTA Short Form Residential Loan Policy
- ☐ 2006 ALTA Loan Policy - Standard
- ☐ 2006 ALTA Loan Policy - Extended
- ☐ Preliminary Report Only
- ☐

SCHEDULE A

The estate or interest in the land hereinafter described or referred to covered by this report is:

FEE

Title to said estate or interest at the date hereof is vested in:

City of Elko, Nevada

LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of Elko, described as follows:

TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B.&M.

Section 8: NE1/4NE1/4NE1/4; E1/2NW1/4NE1/4NE1/4; SW1/4NE1/4NE1/4; W1/2SE1/4NE1/4NE1/4;
N1/2NE1/4SE1/4NE1/4; NE1/4NW1/4SE1/4NE1/4;

SCHEDULE B

At the date hereof, exceptions to coverage in addition to the printed exceptions and exclusions contained in said policy or policies would be as follows:

1. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. (a) Unpatented mining claims, (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water; whether or not the matters excepted under (a), (b) or (c) are shown by the public records, (d) Indian tribal codes or regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
3. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
4. Taxes which may become due and payable upon recordation of a deed to a taxable entity.
5. The Lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 361.260 of the NEVADA REVISED STATUTES.
6. Mineral rights, reservations, easements and exclusions in the patent from the United States of America recorded November 8, 2005, as [Document No. 543305](#), Official Records of Elko County, Nevada.

END OF EXCEPTIONS

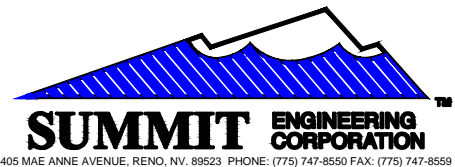
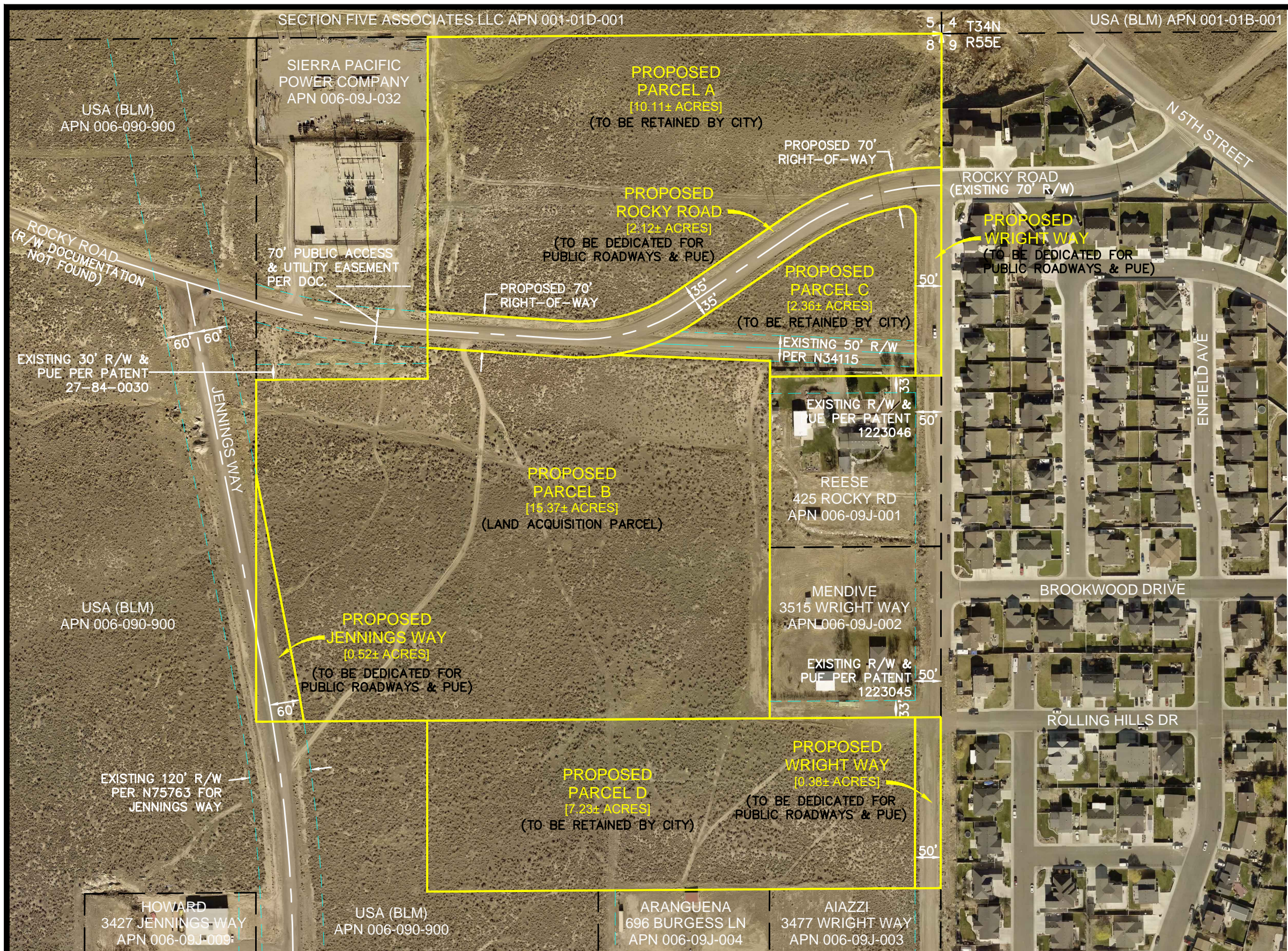
REQUIREMENTS AND NOTES

1. Show that restrictions or restrictive covenants have not been violated.
2. Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest, mortgage or lien to be issued.
3. Furnish proof of payment of all bills for labor and material furnished or to be furnished in connection with improvements erected or to be erected.
4. Pay the premiums, fees and charges for the policy.
5. Pay all taxes, charges, and assessments affecting the land that are due and payable.
6. Documents satisfactory to us creating the interest in the land and the mortgage to be insured must be signed delivered and recorded.
7. Tell us in writing the name of any one not referred to in this Prelim who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
8. Record instrument(s) conveying or encumbering the estate or interest to be insured, briefly described:

Documents necessary to close the within transaction

9. After the review of all the required documents, the Company reserves the right to add additional items and/or make additional requirements prior to the issuances of any policy of title insurance.
10. N/A

END OF REQUIREMENTS AND NOTES



SCALE: 1"=200'

JOB #: 82539

DESIGNED BY: RGC

CHECKED BY: RGC

DRAWN BY: rcook

N:\DWGS\J82539_ElkoVACemetery\ElkoVACemeteryPM_Display20200609.DWG ~ 10:01 AM * 09-JUN-2020

ELKO APN 001-01A-012 (38.09 ACRES)
PROPOSED PARCEL MAP CONFIGURATION
6/9/2020 DISPLAY FOR REVIEW

SHEET
1
OF
1

OWNER'S CERTIFICATE

KNOWN OF ALL MEN BY THE PRESENTS THAT THE UNDERSIGNED, CITY OF ELKO, NEVADA, BEING THE OWNER OF THE PARCELS SHOWN ON THIS MAP DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP. THE PUBLIC UTILITY EASEMENTS SHOWN AND NOTED HEREON ARE HEREBY GRANTED. THE PUBLIC ROADWAYS SHOWN AND NOTED HEREON ARE HEREBY DEDICATED. IN WITNESS I, _____ AS _____ OF CITY OF ELKO, NEVADA, SIGN MY NAME ON THE DATE SHOWN.

CITY OF ELKO, NEVADA.

BY: _____ DATE _____
TITLE: _____

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

ON _____, 2020, PERSONALLY APPEARED BEFORE ME, A

NOTARY PUBLIC, _____, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC IN AND FOR ELKO COUNTY, NEVADA

(MY COMMISSION EXPIRES:_____)

CITY OF ELKO - APPROVAL

ON THE _____ DAY OF _____, 2020, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES. I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT. THE PUBLIC UTILITY EASEMENTS SHOWN AND NOTED HEREON ARE HEREBY GRANTED. THE PUBLIC ROADWAYS SHOWN AND NOTED HEREON ARE ACCEPTED FOR PUBLIC USE.

CITY ENGINEER OR ENGINEERING REPRESENTATIVE

DATE

CITY PLANNER OR PLANNING DEPARTMENT REPRESENTATIVE

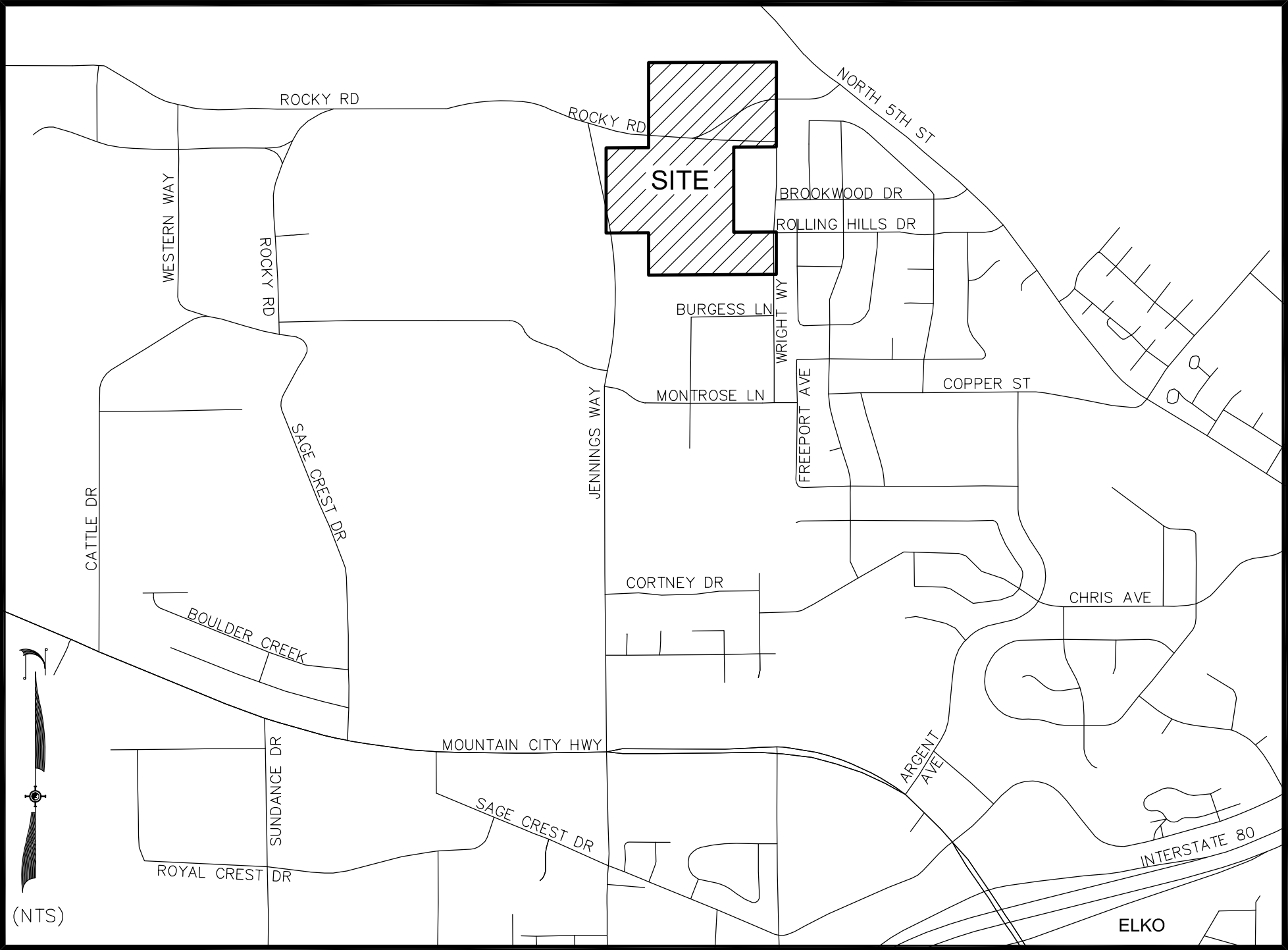
DATE

COUNTY ASSESSOR'S CERTIFICATE

I, KATRINKA S. RUSSEL, CERTIFY THAT THE PARCEL SHOWN ON THIS PARCEL MAP IS ASSESSOR'S PARCEL NO. 001-01A-012.

ELKO COUNTY ASSESSOR

DATE



VICINITY MAP
(NOT TO SCALE)

SURVEYOR'S CERTIFICATE

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

1. THIS PLAT WAS PREPARED AT THE INSTANCE OF CITY OF ELKO, NEVADA.
2. THE LANDS SURVEYED LIE WITHIN THE NE1/4 OF SECTION 8, T34N, R55E, M.D.M. AND THE SURVEY WAS COMPLETED ON _____, 2020.
3. THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
4. THE MONUMENTS ARE OF THE CHARACTER SHOWN, OCCUPY THE POSITIONS INDICATED, AND ARE OF SUFFICIENT DURABILITY.

RYAN G. COOK
NEVADA PLS 15224



NOTES

1. THE TOTAL AREA EQUALS 38.09± ACRES.
2. THE TOTAL NUMBER OF PARCELS = 4
3. THE TOTAL PARCEL AREA = 35.07± ACRES.
4. THE TOTAL NUMBER OF DEDICATIONS = 3.
5. THE TOTAL DEDICATION AREA = 3.02± ACRES.
6. A PUBLIC UTILITY EASEMENT IS ALSO HEREBY GRANTED WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT PARCEL AND THE RIGHT TO EXIT THAT LOT WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY. IN ADDITION, ALL SIDE PROPERTY LINES SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 10 FEET IN WIDTH CENTERED ABOUT THE PROPERTY LINE. ALSO, ALL REAR PROPERTY LINES SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 5 FEET IN WIDTH LOCATED WITHIN THE PARCEL ADJACENT TO THE REAR PROPERTY LINE. ALSO, ALL FRONT PROPERTY LINES ADJACENT TO PUBLIC STREETS SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 10 FEET IN WIDTH LOCATED WITHIN THE PARCEL. THE PUBLIC UTILITY EASEMENTS SHOWN AND NOTED ON THIS MAP INCLUDE THE USE FOR THE INSTALLATION AND MAINTENANCE OF CABLE TELEVISION FACILITIES.

CITY OF ELKO CITY COUNCIL - APPROVAL

AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF ELKO, STATE OF NEVADA, HELD ON THE

_____ DAY OF _____, 2020, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES AT THE TIME OF APPROVAL, AND ANY OFFERS OF DEDICATION SHOWN HEREON WERE APPRECIATED FOR PUBLIC USE.

MAYOR _____ DATE _____

CLERK: ATTEST _____ DATE _____

UTILITY COMPANIES CERTIFICATE:

THE PUBLIC UTILITY EASEMENTS, ARE APPROVED BY THE RESPECTIVE PUBLIC UTILITIES EXECUTED BELOW.

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

SOUTHWEST GAS CORPORATION _____ DATE _____

FRONTIER _____ DATE _____

ZITO MEDIA _____ DATE _____

COUNTY TREASURER'S CERTIFICATE

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL No. 001-01A-012 HAS BEEN PAID FOR THE FISCAL YEAR OF 2020/2021.

ELKO COUNTY TREASURER

DATE


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

ELKO COUNTY RECORDER
MIKE SMALES

PARCEL MAP
FOR
CITY OF ELKO,
NEVADA

A DIVISION OF THE LANDS DESCRIBED IN PATENT 27-2006-0005
LOCATED IN THE NE1/4 OF SECTION 8, T34N, R55E, MDM

ELKO NEVADA
ELKO COUNTY
N:\DWG\182639_ElkoVAcemetery\COE_VA_PM_Sheets1-2.DWG ~ 12:51 PM • 09-JUN-2020



SUMMIT ENGINEERING CORPORATION
1150 LAMOLLE HIGHWAY, ELKO, NV 89801 PH:(775) 738-8058 FAX:(775) 738-8267

SHEET
1
OF
3

REFERENCES

- 1) US GLO PLAT AND FIELD NOTES, TOWNSHIP 34 NORTH, RANGE 55 EAST, MDM, DATED APRIL 1869.
- 2) UNITED STATES OF AMERICA LAND PATENT, PATENT NO. 1220805, DATED JUNE 26, 1961.
- 3) UNITED STATES OF AMERICA LAND PATENT, PATENT NO. 1220806, DATED JUNE 26, 1961.
- 4) UNITED STATES OF AMERICA LAND PATENT, PATENT NO. 1223045, DATED SEPTEMBER 28, 1961.
- 5) UNITED STATES OF AMERICA LAND PATENT, PATENT NO. 1223046, DATED SEPTEMBER 28, 1961.
- 6) RIGHT OF WAY MAP NO. 66088, RECORDED ON AUGUST 10, 1977.
- 7) UNITED STATES OF AMERICA LAND PATENT, PATENT NO. 27-84-0080, DATED FEBRUARY 8, 1984.
- 8) SUBDIVISION TRACT MAP NO. 359865, RECORDED ON OCTOBER 26, 1994.
- 9) SUBDIVISION TRACT MAP NO. 359867, RECORDED ON OCTOBER 26, 1994.
- 10) PARCEL MAP NO. 384998, RECORDED ON MAY 8, 1996.
- 11) RECORD OF SURVEY MAP NO. 471047, RECORDED ON JUNE 21, 2001.
- 12) UNITED STATES OF AMERICA LAND PATENT, PATENT NO. 27-2006-0005, DATED NOVEMBER 8, 2005.
- 13) ANNEXATION MAP NO. 551023, RECORDED ON APRIL 7, 2006.
- 14) SUBDIVISION TRACT MAP NO. 583247, RECORDED ON OCTOBER 16, 2007.
- 15) REVERSION MAP NO. 644338, RECORDED ON AUGUST 30, 2011.
- 16) MASTER TITLE SUPPLEMENTARY PLAT, SECTION 8, TOWNSHIP 34 NORTH, RANGE 55 EAST, MDM, DATED DECEMBER 20, 2011.
- 17) SUBDIVISION TRACT MAP NO. 656196, RECORDED ON MAY 22, 2012.
- 18) SUBDIVISION TRACT MAP NO. 672147, RECORDED ON MAY 9, 2013.
- 19) PARCEL MAP NO. 727682, RECORDED ON JUNE 30, 2017.

ALL RECORDED IN THE OFFICIAL RECORDS OF ELKO COUNTY, NEVADA (EXCEPT FOR REFERENCES 1-5, 7, 12 & 16)

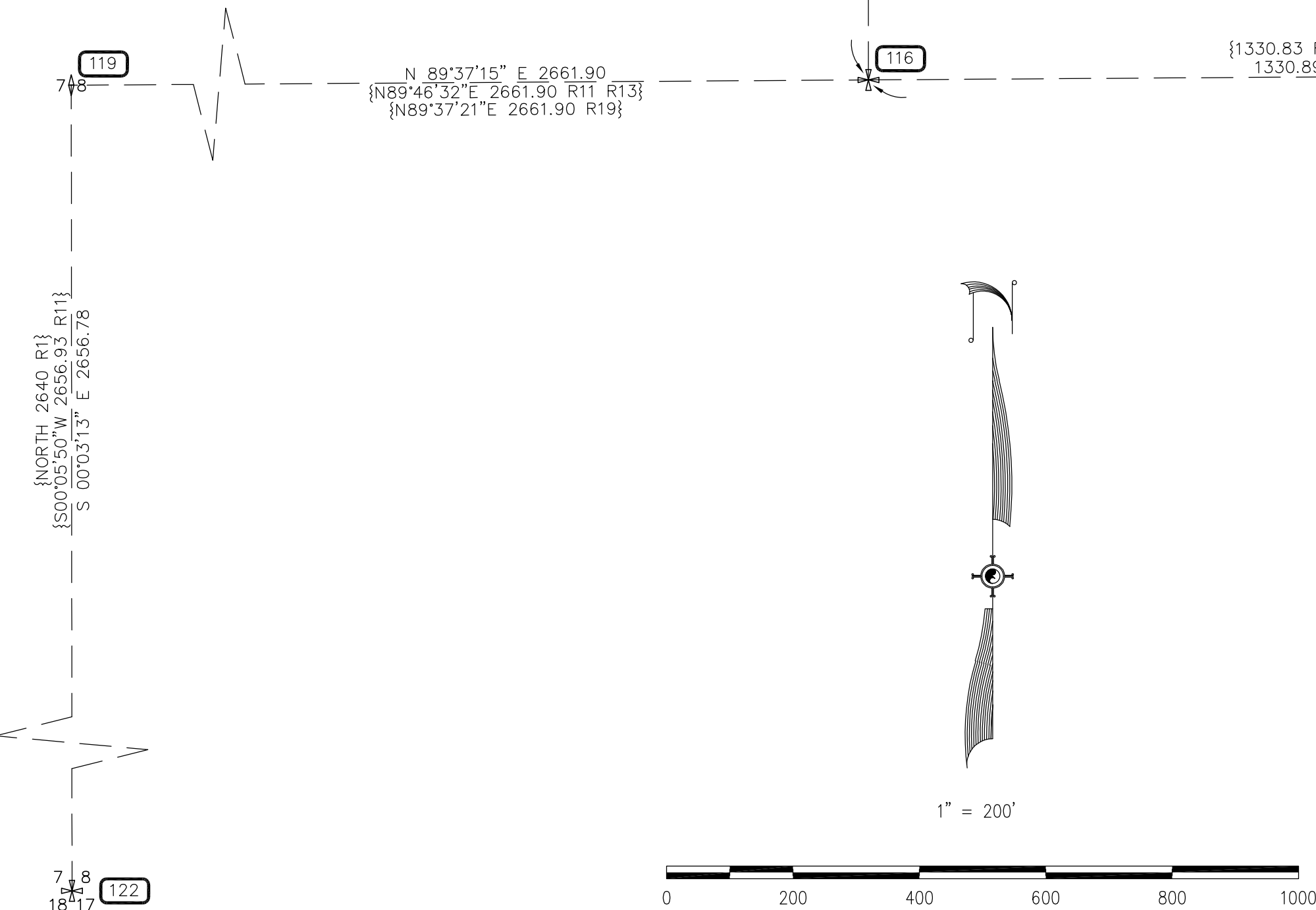
BASIS OF BEARING:

NATIONAL SPATIAL REFERENCE SYSTEM 2007 (NSRS2007) EPOCH 2007.00 HOLDING THE NGS APRIL, 2008 PUBLISHED LATITUDE, LONGITUDE AND ELLIPSOID HEIGHT OF N40° 51' 38.57413", W115° 45' 09.58441" AND 5047.334 FEET FOR THE CITY OF ELKO CORNERS.

COORDINATES ARE PROJECTED USING THE NEVADA STATE PLANE COORDINATE SYSTEM, EAST ZONE AND SCALED TO GROUND USING A COMBINED GRID-TO-GROUND FACTOR OF 1.000357. ORTHOMETRIC ELEVATIONS ABOVE MEAN SEA LEVEL ARE DERIVED USING GEOID 12.

LEGEND

- SECTION CORNER AS NOTED
- QUARTER CORNER AS NOTED
- CENTER QUARTER AS NOTED
- FOUND MONUMENT AS NOTED
- COMPUTED POINT; NOTHING FOUND OR SET
- SET 5/8" REBAR & CAP PLS 15224
- P.U.E. PUBLIC UTILITY EASEMENT
- R/W RIGHT OF WAY
- [R#] RECORD INFORMATION PER REFERENCE
- PM PARCEL MAP
- APN ASSESSOR PARCEL NUMBER
- (R) RADIAL BEARING
- (TB) TANGENT BEARING
- EXTERIOR BOUNDARY OF SUBJECT PARCEL
- PLSS BREAKDOWN &/OR ADJACENT PROPERTY BOUNDARY
- EASEMENT &/OR RIGHT-OF-WAY
- ROADWAY CENTERLINE
- MONUMENT POINT NUMBER




MONUMENT DESCRIPTIONS

- 1) NORTHEAST CORNER OF SECTION 8, T34N, R55E, MDM, FOUND A BENT 5/8" REBAR WITH NO IDENTIFICATION. REESTABLISH UTILIZING RECORD MAPS R18, R17, R13, R11, & R10. REMOVED BENT REBAR AND REPLACED WITH NEW 5/8" REBAR WITH 2" ALUMINUM CAP STAMPED "SUMMIT ENG T24N, R55E, 4/5/8/9 2020 PLS 15224". A FOUND T-POST BEARS N 83°45' W 0.3' FROM RESET CORNER.
- 2) W-E-E 1/64 CORNER BETWEEN SECTIONS 5 & 8, FOUND AND ACCEPTED AN UNDOCUMENTED ORIGIN 5/8" REBAR WITH NO IDENTIFICATION.
- 3) NW-NE 1/64 CORNER OF SECTION 8, SET A NEW 5/8" REBAR & CAP PLS 15224, FROM WHICH A FOUND & REJECTED NAIL & TAG RLS 2771 OF UNDOCUMENTED ORIGIN BEARS S 13°30' E 4.35'.
- 4) N 1/16 CORNER BETWEEN SECTIONS 8 & 9, FOUND AND ACCEPTED A 5/8" REBAR & CAP PLS 6203.
- 5) C-E-E-NE 1/256 CORNER OF SECTION 8, FOUND AND ACCEPTED A 5/8" REBAR & CAP PLS 6203.
- 6) C-E-NE-NE 1/256 CORNER OF SECTION 8, FOUND AND ACCEPTED A 5/8" REBAR & CAP PLS 6203.
- 7) E 1/16 CORNER BETWEEN SECTIONS 5 & 8, FOUND AND REJECTED UNDOCUMENTED ORIGIN 5/8" REBAR WITH NO IDENTIFICATION BEARS S 25°47' E 0.25'.
- 8) NORTH QUARTER OF SECTION 8, FOUND AND ACCEPTED A 5/8" REBAR & CAP PLS 6203.
- 9) C 1/4 OF SECTION 8, FOUND AND ACCEPTED A 5/8" REBAR & CAP PLS 6203.
- 10) W 1/4 OF SECTION 8, FOUND AND ACCEPTED A 1/2" REBAR WITH NO IDENTIFICATION.
- 11) SOUTHWEST CORNER OF SECTION 8, T34N, R55E, MDM, FOUND AND ACCEPTED 1" PIPE, 10" ABOVE GROUND, WITH 2" ALUMINUM CAP STAMPED "DAVIS SURVEYING T34N R55E 7/8/18/17 1993".
- 12) SOUTHEAST CORNER OF SECTION 8, T34N, R55E, MDM, FOUND AND ACCEPTED 2" PIPE, 6" ABOVE GROUND, WITH 2.5" ALUMINUM CAP STAMPED "T34N R55E 8/9/17/16 RLS 6203".
- 13) E 1/4 OF SECTION 8, COMPUTED AT SINGLE PROPORTIONATE MEASUREMENT SET NEW 5/8" REBAR WITH 2" ALUMINUM CAP STAMPED "SUMMIT ENG 1/4 8/9 2020 PLS 15224".
- 14) INTERSECTION OF THE EAST BOUNDARY OF SECTION 8 WITH THE NORTH RIGHT-OF-WAY LINE OF ROCKY ROAD AS SHOWN ON RECORD MAPS R17 & R18, FOUND & ACCEPTED 5/8" REBAR WITH 2" ALUMINUM CAP PLS 12468.
- 15) CENTERLINE, BEGINNING OF CURVE, WELL MONUMENT WITHIN ROCKY ROAD AS SHOWN ON RECORD MAPS R17 & R18, FOUND & ACCEPTED 2" ALUMINUM CAP PLS 12468.
- 16) INTERSECTION OF THE EAST BOUNDARY OF SECTION 8 WITH THE CENTERLINE OF ROCKY ROAD AS SHOWN ON RECORD MAPS R17 & R18, FOUND & ACCEPTED 2" ALUMINUM CAP PLS 12468 IN WELL MONUMENT.
- 17) INTERSECTION OF THE EAST BOUNDARY OF SECTION 8 WITH THE CENTERLINE OF BROOKWOOD DRIVE AS SHOWN ON RECORD MAP R14, FROM WHICH A 2.5" ALUMINUM CAP PLS 8341 IN WELL MONUMENT BEARS N89°40'05"E 0.15'.
- 18) CENTERLINE, INTERSECTION, WELL MONUMENT WITHIN BROOKWOOD DRIVE AS SHOWN ON RECORD MAP R14, FOUND & ACCEPTED 2.5" ALUMINUM CAP PLS 8341 IN A WELL MONUMENT.
- 19) FOUND 5/8" REBAR & CAP PLS 5072 PER RECORD MAP R9.
- 20) INTERSECTION OF THE EAST BOUNDARY OF SE1/4SE1/4NE1/4NE1/4 OF SECTION 8 WITH THE 33' R/W FOR ROADWAY & UTILITIES PER PATENT 1223045, FOUND & REJECTED OF UNDOCUMENTED ORIGIN 5/8" REBAR & CAP PLS 2161 WHICH BEARS N45°48'E 0.45'.
- 21) SE-NE-NE 1/256 CORNER OF SECTION 8, FOUND & REJECTED OF UNDOCUMENTED ORIGIN 5/8" REBAR WITH NO IDENTIFICATION BEARS N 00°03'04" E 0.35'.
- 22) INTERSECTION OF THE NORTH BOUNDARY OF SE1/4NE1/4SE1/4NE1/4 OF SECTION 8 WITH THE 50' R/W FOR ROADWAY & UTILITIES PER PATENT 1220806, FOUND & ACCEPTED 5/8" REBAR & CAP PLS 6203.
- 23) NE-SE-NE 1/256 CORNER OF SECTION 8, FOUND & REJECTED OF UNDOCUMENTED ORIGIN 5/8" REBAR & CAP PLS 6203 WHICH BEARS S 69°40' W 0.30'.
- 24) INTERSECTION OF THE NORTH BOUNDARY OF SW1/4NE1/4SE1/4NE1/4 OF SECTION 8 WITH THE 33' R/W FOR ROADWAY & UTILITIES PER PATENT 1220805, FOUND & REJECTED OF UNDOCUMENTED ORIGIN 5/8" REBAR & CAP PLS 6203 WHICH BEARS S 22°16' W 0.30'.

PARCEL MAP
FOR
CITY OF ELKO,
NEVADA

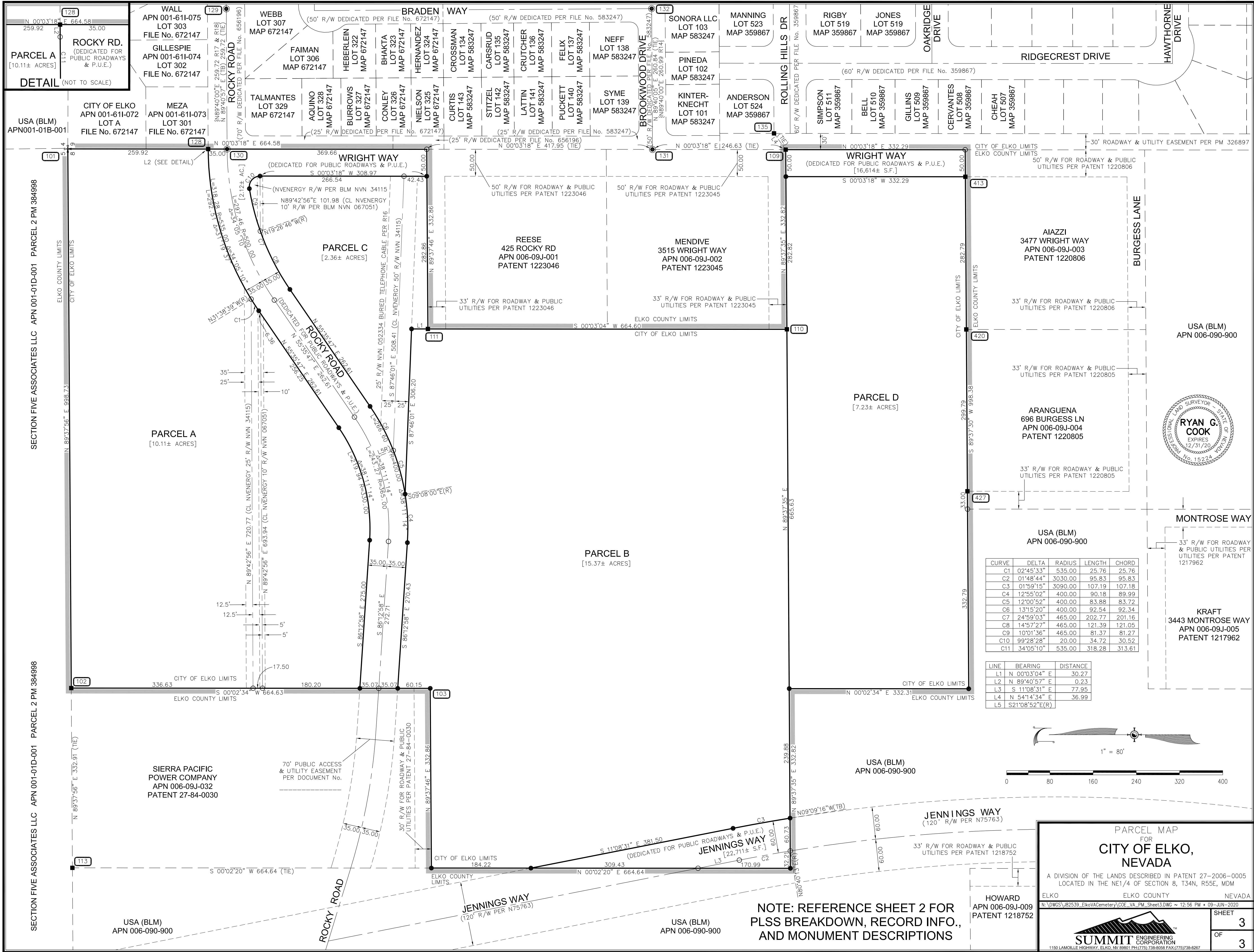
A DIVISION OF THE LANDS DESCRIBED IN PATENT 27-2006-0005
LOCATED IN THE NE1/4 OF SECTION 8, T34N, R55E, MDM

ELKO NEVADA
ELKO COUNTY
N:\DWGCS\J82639_Elko\ACemetery\CDE_VA_PM_Sheets1-2.DWG ~ 12:53 PM ~ 09-JUN-2020



SUMMIT ENGINEERING CORPORATION
1150 LAMOLLE HIGHWAY, ELKO, NV 89801 PH:(775) 738-8058 FAX:(775) 738-8267

SHEET
2
OF
3



**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to an amendment to the City of Elko Master Plan, specifically amending: 1) the Proposed Future Land Use Plan Atlas Map 8 on six parcels of land located on S. 5th Street generally between Carlin Court and S. 9th Street; 2) adding RO (Residential Office) as a corresponding zoning under the Downtown Mixed-Use land use designation, and 3) the Proposed Future Land Use Plan Atlas Map 8 on one parcel located at the western terminus of Rocky Road, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **July 7, 2020**
3. Agenda Category: **MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **10 Minutes**
5. Background Information: **Recent development applications have revealed some inconsistencies between existing Zoning districts and Master Plan designations. The proposed amendment cleans up these inconsistencies.**

NRS Section 278.210(5) allows Master Plans to be amended up to four times a year. This amendment is the second in 2020.
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Staff Report**
8. Recommended Motion: **Move to initiate an amendment to the City of Elko Master Plan and direct staff to bring the item back as a resolution and public hearing.**
9. Prepared By: **Michele Rambo, AICP, Development Manager**
10. Agenda Distribution: **N/A**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 7/7
Do not use pencil or red pen, they do not reproduce

Title: Master Plan Amendment Initiation

Applicant(s): City of Elko

Site Location: N/A

Current Zoning: N/A Date Received: N/A Date Public Notice: N/A

COMMENT: This is to initiate an Amendment to the City of Elko Master Plan, specifically Atlas Map #8, and to add R0 as a corresponding District under Downtown Mixed Use.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 6/23/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 6/24/20

No comments/concerns.

CC

Initial



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

CITY OF ELKO STAFF REPORT

REPORT DATE: June 22, 2020
PLANNING COMMISSION DATE: July 7, 2020
AGENDA ITEM NUMBER:
APPLICATION NUMBER: Master Plan Amendment 2-20

An initiation of an amendment to the City of Elko Master Plan, specifically amending: 1) the Proposed Future Land Use Plan Atlas Map 8 on six parcels of land located on S. 5th Street generally between Carlin Court and S. 9th Street; 2) the Land Use Section to add RO (Residential Office) as a corresponding zoning under the Downtown Mixed-Use land use designation; and 3) the Proposed Future Land Use Plan Atlas Map 8 on one parcel located at the western terminus of Rocky Road.

STAFF RECOMMENDATION:

INITIATE the proposed Master Plan Amendment and direct staff to bring the item back as a resolution and public hearing.

PROPOSED CHANGE #1

BACKGROUND

M&M Tile, located at 815 S. 5th Street, applied for a Parcel Map to move the lot line between two parcels. During the review process, it was discovered that the current zoning of the property, General Commercial, is not a corresponding zoning for the existing Master Plan designation of Residential – Medium Density.

A Master Plan Amendment was determined to be needed because the Master Plan requires that the zoning of individual parcels conform with the Master Plan land use designation. As a general practice throughout Nevada, if these designations do not match, the project cannot be approved or a condition of approval must be placed on the project that a Master Plan Amendment occur. In this instance, a condition of approval was added to the Parcel Map.

Once Staff began looking more closely at this area of town, it was discovered that many parcels surrounding S. 5th Street/Lamoille Highway have conflicting zoning and Master Plan designations. The proposed changes below are just to those parcels within the same block as M&M Tile. Further Master Plan Amendments for other parcels in the area may be forthcoming.

EXISTING CONDITIONS

As seen on the map below, the parcels in questions are zoned General Commercial and Residential. Surrounding properties to the west and south are also zoned General Commercial, while the parcels to

the north are zoned Residential – Special Area, and the parcels to the east are zoned Residential.



There are currently a mix of uses in the neighborhood along S. 5th Street/Lamoille Highway in this area. The six parcels in question include a City of Elko fire station, two tile companies, and vacant land. Mobile home parks exist in most of the surrounding area.

For the most part, the existing zoning districts make sense for this neighborhood and are not proposed to change, with the exception of the parcel containing the fire station. A future Zone Change will need to be processed by Staff at a later time.

The map below shows the existing Master Plan Designations for the same neighborhood. All of the properties surrounding the subject parcels are classified as Residential – Medium Density with the exception of those across S. 5th Street/Lamoille Highway, which are designated as Mixed-Use Neighborhood. In addition, there is an area designated as General Commercial approximately 500 feet east of 9th Street along Lamoille Highway.

Current MP Designation



PROPOSED CHANGES

In order to clean up the multiple discrepancies between the Master Plan designations and Zoning districts of these six parcels, multiple changes are needed. These are outlined below:

APN	Use	Current Zoning	Current Master Plan	Proposed Master Plan
001-472-014	Fire Station	General Commercial	Residential-Medium Density	Public
001-472-013	Commercial	General Commercial	Residential-Medium Density	General Commercial
001-472-015	Vacant	General Commercial	Residential-Medium Density	General Commercial
001-472-012	Commercial	General Commercial	Residential-Medium Density	General Commercial
001-473-001	Vacant	General Commercial	Mixed-Use Neighborhood	General Commercial
001-740-010	Vacant	Residential	Mixed-Use Neighborhood	Residential-Medium Density

The map below shows the proposed changes to the Master Plan designation of each parcel.



These changes will bring these parcels into compliance between their existing zoning districts and the proposed land use designations (with the exception of the fire station discussed above).

JUSTIFICATION

The City of Elko has not adopted findings to be met by Master Plan Amendments. However, other jurisdictions throughout Nevada use some variation of the following findings when reviewing Master Plan Amendments. These are useful when considering the proposed changes.

1. The amendment/project will provide for orderly physical growth of the City, enhance the urban core, and foster safe, convenient, and walkable neighborhoods and shopping districts.

Creating consistency between zoning and Master Plan designations aides in the growth of the City by keeping the intended use of these parcels clear for future development. Inconsistencies create confusion and delay projects, which can ultimately keep somebody from building on a parcel.

2. The amendment/project conforms to the adopted population plan and ensures an adequate supply of housing, including affordable housing.

The proposed change does not have a significant impact on housing or population because most of the parcels under consideration for this change are currently being used for commercial uses. One vacant parcel is proposed to become new Medium-Density Residential land, which off-sets the loss of the same designation on 4 of the smaller parcels.

3. There has been a change in the area or conditions on which the current designation was based which warrants the amendment.

No change has occurred. The amendment is warranted simply as a means to create consistency between the zoning and land use categories.

4. The density and intensity of the proposed Master Plan Amendment is sensitive to the existing land uses and is compatible with the existing adjacent land use designations.

The uses and density permitted under the new Master Plan designations does not change because the Master Plan is being changed to match the existing uses on the parcels.

5. There are, or are planned to be, adequate transportation, recreation, utility, and other facilities to accommodate the uses and density permitted by the proposed Master Plan designation.

The proposed change to the Master Plan designations does not increase the need for facilities such as transportation, recreation, and utilities. With the exception of some street improvements which would be installed with the development of the vacant parcels, all facilities are already in place to serve this area.

6. The proposed change is in substantial conformance with the goals and policies of the Master Plan and other adopted plans and policies.

The proposed changes to each property's Master Plan designation is in substantial conformance with the following objective:

-) Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.

In addition, the proposed amendment conforms with all other adopted plans and policies within the City of Elko.

PROPOSED CHANGE #2

BACKGROUND

Throughout the years, the City of Elko has approved several Zone Changes for individual lots along the south side of Court Street from R (Residential) to RO (Residential Office). The current Master Plan designation of these properties is Downtown Mixed-Use, which does not support the Residential Office

Zoning. Staff feels that Residential Office is a highly compatible use based on the character of the existing neighborhood, but by allowing these zoning changes, the City is technically creating an inconsistency between the Zoning and the Master Plan.

Staff has discussed the option of transforming Court Street into a district similar to what has previously been done along 5th Street. However, the Master Plan designation found along the north side of Court Street (Residential – Medium Density) already allows for the use of Residential Office zoning. Therefore, it would be a much easier process (while achieving the same result as a district) to change the Master Plan to allow for Residential Office zoning in the Downtown Mixed-Use land use designation.

EXISTING CONDITIONS

As seen in the description below, page 18 of the Land Use section of the Master Plan currently lists only General Commercial as a corresponding zoning district under the Downtown Mixed-Use designation.

Downtown Mixed Use
 This land use designation includes land uses that are located in or close to the historic downtown area. The area will capitalize on the existing fabric of the downtown and its walkable grid system. Mixed-use allows for a variety of land uses, and configurations. Housing or office use may be located within the same structure, with retail use primarily on the first floor. Housing options within this land use designation will be predominantly composed of high density multi-family housing including apartments, townhomes, condominiums, etc. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, this Master Plan's goals and policies.

Corresponding zoning districts:

- C General Commercial (with revisions)

Based on this, the highlighted properties below are not in conformance with the Master Plan.



PROPOSED CHANGES

The proposed change is simply to include Residential Office as a corresponding zoning district under the Downtown Mixed-Use designation, as shown below.

Downtown Mixed Use	
This land use designation includes land uses that are located in or close to the historic downtown area. The area will capitalize on the existing fabric of the downtown and its walkable grid system. Mixed-use allows for a variety of land uses, and configurations. Housing or office use may be located within the same structure, with retail use primarily on the first floor. Housing options within this land use designation will be predominantly composed of high density multi-family housing including apartments, townhomes, condominiums, etc. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, this Master Plan's goals and policies.	
Corresponding zoning districts:	
▪ C	General Commercial (with revisions)
▪ RO	Residential Office

This change will bring the properties in question into conformance with the Master Plan and allow for future Zone Changes to Residential Office.

JUSTIFICATION

The City of Elko has not adopted findings to be met by Master Plan Amendments. However, other jurisdictions throughout Nevada use some variation of the following findings when reviewing Master Plan Amendments. These are useful when considering the proposed changes.

1. The amendment/project will provide for orderly physical growth of the City, enhance the urban core, and foster safe, convenient, and walkable neighborhoods and shopping districts.

The proposed amendment to include Residential Office as a corresponding zoning district under Downtown Mixed-Use directly enhances the urban core and provides for convenient mixed-use districts. The existing office uses already in place and the encouragement of future residential office uses will enhance the existing neighborhood and bring a more diverse set of uses. These office uses will further increase sales tax to the City.

2. The amendment/project conforms to the adopted population plan and ensures an adequate supply of housing, including affordable housing.

The proposed change does not remove any current housing stock, but does allow single-family residences to be converted to office uses in the future which are currently located within the Downtown Mixed-Use designation. There are only a handful of properties which would fall into this category so the impact to the overall housing supply in the City of Elko would be negligible.

3. There has been a change in the area or conditions on which the current designation was based which warrants the amendment.

Allowing the Residential Office zoning district within the Downtown Mixed-Use land use category not only cleans up inconsistencies on the parcels discussed above, but also allows for a wider array of uses. The Downtown Mixed-Use designation currently only allows for one zoning district (General Commercial). However, a true mixed-use area should allow for a variety of zoning districts to create the most successful neighborhood possible. With residential offices and mixed-use gaining popularity throughout the country, this proposed change would open up several additional properties within the City for this type of use.

4. The density and intensity of the proposed Master Plan Amendment is sensitive to the existing land uses and is compatible with the existing adjacent land use designations.

Allowing the Residential Office zoning district within the Downtown Mixed-Use designation is directly compatible with, and sensitive to, the existing land uses and designations. The parcels that are currently incompatible with the Master Plan will become compatible. There are several existing parcels zoned for Residential Office across Court Street where Residential Office is already a compatible zoning district under the Residential Medium Density designation found there.

5. There are, or are planned to be, adequate transportation, recreation, utility, and other facilities to accommodate the uses and density permitted by the proposed Master Plan designation.

The proposed change to the Master Plan does not increase the need for facilities such as transportation, recreation, and utilities. These facilities are already in place throughout this area of the City. In addition, the density of any future parcels zoned Residential Office will not increase above what is already in place, eliminating the need for any additional facilities in the future.

6. The proposed change is in substantial conformance with the goals and policies of the Master Plan and other adopted plans and policies.

Allowing Residential Office as a corresponding zoning district under the Downtown Mixed-Use district is in substantial conformance with the following objectives:

-) Objective 4: Consider a mixed-use pattern of development for the downtown area, and for major centers and corridors, to ensure the area's adaptability, longevity, and overall sustainability.
-) Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.

In addition, the proposed amendment conforms with all other adopted plans and policies within the City of Elko.

PROPOSED CHANGE #3

BACKGROUND

The United States Department of Veterans Affairs has been searching for a site in or around Elko to serve as a new veteran's cemetery. After considering several parcels, the group decided that the parcel at the western terminus of Rocky Road (APN 001-01A-012) would work best for their needs.

To begin the process, the City of Elko created a Parcel Map to divide the 38.086-acre parcel into four parcels of various sizes. During review of this Parcel Map, Staff discovered that one of those lots does not conform with the minimum required lot size for the current zoning designation. The Zoning Code requires that all newly created lots comply with the development standards for its current zoning. If a Parcel Map contains a non-compliant parcel, the Parcel Map cannot be approved.

Therefore, Staff determined that a Master Plan Amendment and Zone Change are required prior to the approval of the proposed Parcel Map.

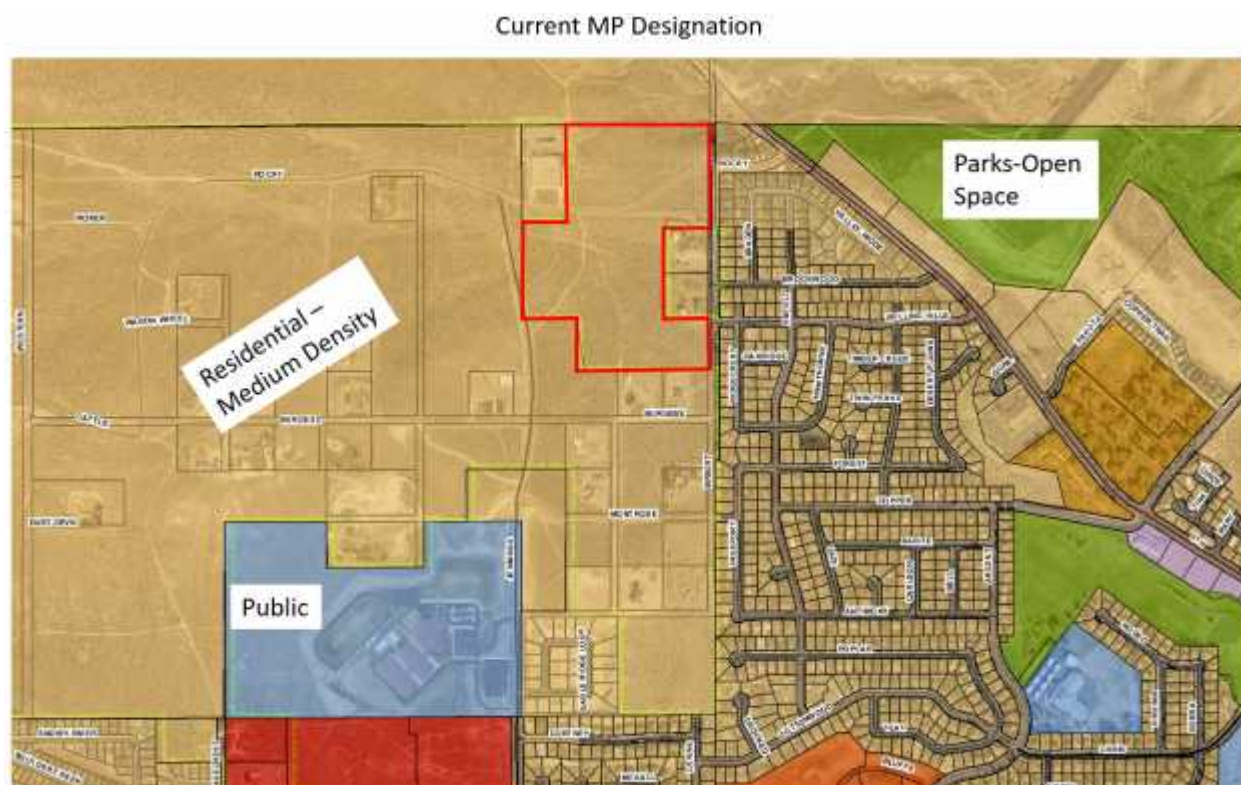
EXISTING CONDITIONS

As seen on the map below, the parcel in question is zoned General Agriculture. Surrounding properties to the north are also zoned General Agriculture, while the properties to the east are zoned Single-Family and Multiple-Family Residential. The areas to the west and south of the site are within Elko County. Further to the south, back within City Limits, consists of Public/Quasi-Public and Single-Family Residential districts.

Current Zoning



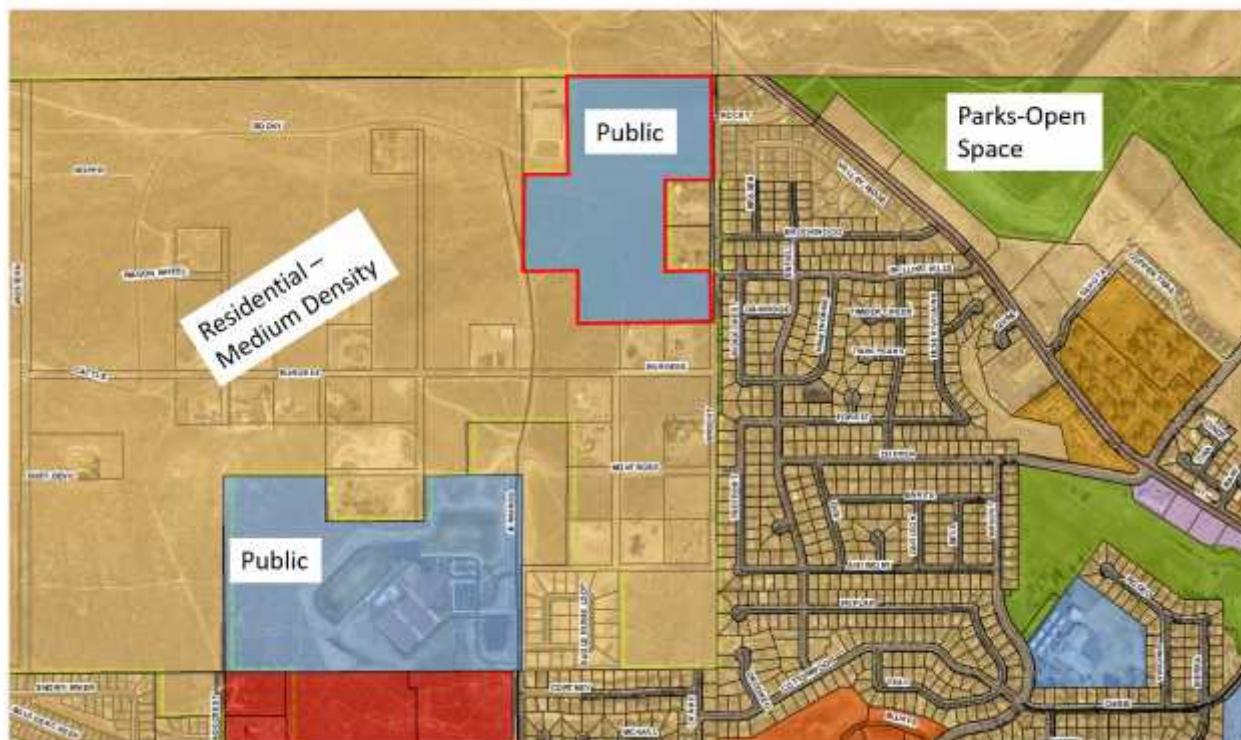
The map below shows the existing Master Plan Designations for the same neighborhood. All of the properties surrounding the subject parcel are classified as Residential – Medium Density. When the Master Plan was approved, a large portion of this area was envisioned as being developed into single-family residences.



PROPOSED CHANGES

The map below shows the proposed changes to the Master Plan designation of the subject parcel. The Public designation was chosen based on the anticipated uses of the four proposed sites. These uses include cemetery and a support facility for the Elko County School District. A corresponding Zone Change to Public/Quasi-Public is also being processed. If prior to development, the anticipated uses change, further amendments may be needed.

Proposed MP Designation



JUSTIFICATION

The City of Elko has not adopted findings to be met by Master Plan Amendments. However, other jurisdictions throughout Nevada use some variation of the following findings when reviewing Master Plan Amendments. These are useful when considering the proposed changes.

1. The amendment/project will provide for orderly physical growth of the City, enhance the urban core, and foster safe, convenient, and walkable neighborhoods and shopping districts.

As the City of Elko grows, large parcels such as this are becoming harder to find. Some uses require larger parcels such as this one, narrowing down the options of location and sometimes conflicting with the original plan for an area. When this happens, it is important to consider whether or not the proposed change is in the best interest of the City and if an alternative plan for orderly physical growth of the City can be determined.

The proposed amendment, while technically blocking the orderly physical growth of the City, allows for the development of needed Public uses that other parcels in town are not large enough for. The possible future annexation of the surrounding Elko County parcels will mitigate this conflict in the long run, but may not happen for many years.

2. The amendment/project conforms to the adopted population plan and ensures an adequate supply of housing, including affordable housing.

The change from Residential – Medium Density to Public reduces the amount of land available for housing in an area that has been envisioned as residential for many years. The proposed

change would ultimately reduce the amount of residential development in the City and reduce the future property tax potential. However, as mentioned above, if the surrounding Elko County properties are ever annexed into the City of Elko, the loss of this parcel will be mitigated.

3. There has been a change in the area or conditions on which the current designation was based which warrants the amendment.

There have been no changes in the area itself or overall conditions that warrant this amendment other than the fact that the US Department of Veteran's Affairs has requested to purchase the property for a cemetery. No other parcels they considered met the criteria.

4. The density and intensity of the proposed Master Plan Amendment is sensitive to the existing land uses and is compatible with the existing adjacent land use designations.

Overall, the proposed amendment is compatible with existing adjacent land use designations. Cemeteries are allowed in and adjacent to residentially designated parcels, such as currently exists in another portion of town.

5. There are, or are planned to be, adequate transportation, recreation, utility, and other facilities to accommodate the uses and density permitted by the proposed Master Plan designation.

As the proposed parcels develop, all public improvements will be required.

6. The proposed change is in substantial conformance with the goals and policies of the Master Plan and other adopted plans and policies.

The proposed change to the property's Master Plan designation is in substantial conformance with the following objective:

-) Objective 4: Consider a mixed-use pattern of development for the downtown area, major centers, and corridors to ensure the area's adaptability, longevity, and overall sustainability.

In addition, the proposed amendment conforms with all other adopted plans and policies within the City of Elko.

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to initiate an amendment to the City of Elko district boundaries, specifically APN 001-472-014, removing the C-General Commercial Zoning District and replacing with the PQP- Public, Quasi-Public District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **July 7, 2020**
3. Agenda Category: **MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **10 Minutes**
5. Background Information: **Elko City Code Section 3-2-21 allows the Planning Commission to initiate on its own motion a change to the district boundaries. The City of Elko owns the parcel and the building has been occupied for many years as a fire station. This amendment, initiated by the Planning Commission, if approved, will bring back the zone amendment as a public hearing to rezone the parcel from C-General Commercial to PQP- Public Quasi-Public.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information:
8. Recommended Motion: **Move to initiate an amendment to the City of Elko district boundary and direct staff to bring it back as a public hearing.**
9. Prepared By: **Cathy Laughlin, City Planner**
10. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 7/7

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Title: Rezone Initiation

Applicant(s): City of Elko

Site Location: APN 001-472-014 - 875 S. 5th Street

Current Zoning: C Date Received: _____ Date Public Notice: N/A

COMMENT: This is to initiate a zone change at 875 S. 5th St. from C-General Commercial to PDP - Public, Quasi-Public to match the use of the building

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 6/23/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 6/24/20

No comments/concerns.

CC

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE: June 17, 2020
PLANNING COMMISSION DATE: July 7, 2020
APPLICATION NUMBER: REZONE 1-20
APPLICANT: City of Elko
PROJECT DESCRIPTION:

A rezone from (C) General Commercial to (PQP) Public, Quasi-Public to be initiated by the City of Elko Planning Commission.



STAFF RECOMMENDATION:

RECOMMEND APPROVAL to initiate an amendment to the City of Elko District Boundary.

BACKGROUND:

1. Planning Commission is considering an amendment to the Master Plan to change the land use atlas for this parcel to be Public. This zone amendment would be consistent with the proposed Master Plan amendment.
2. The property was built in approximately 1985 and has been occupied as a Fire Station

NEIGHBORHOOD CHARACTERISTICS:

-) The property is surrounded by:
- Northeast: Developed, Residential
 - Northwest: Developed, Residential Special Overlay
 - Southeast: Undeveloped, Commercial
 - Southwest: Developed, Commercial

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to initiate an amendment to the City of Elko district boundaries, specifically APN 001-01A-012, removing the AG-General Agriculture Zoning District and replacing with the PQP- Public, Quasi-Public District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **July 7, 2020**
3. Agenda Category: **MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **10 Minutes**
5. Background Information: **Elko City Code Section 3-2-21 allows the Planning Commission to initiate on its own motion a change to the district boundaries. The City of Elko owns the parcel and the VA is proposing to purchase a portion of the property for a future VA Cemetery. This amendment, initiated by the Planning Commission, if approved, will bring back the zone amendment as a public hearing to rezone the parcel from AG-General Agriculture to PQP- Public Quasi-Public.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information:
8. Recommended Motion: **Move to initiate an amendment to the City of Elko district boundary and direct staff to bring it back as a public hearing.**
9. Prepared By: **Cathy Laughlin, City Planner**
10. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 7/7

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

Title: Rezone No 2-20 Initiation

Applicant(s): City of EKO

Site Location: APN 001-01A-012, N 5th + Rocky Rd.

Current Zoning: AG Date Received: _____ Date Public Notice: N/A

COMMENT: This is to initiate a zone change on APN 001-01A-012
from AG- General Agriculture to POP- Public, Quasi- Public

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 6/23/2020

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 6/24/20

No comments/concerns.

CC

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE: June 22, 2020
PLANNING COMMISSION DATE: July 7, 2020
APPLICATION NUMBER: REZONE 2-20
APPLICANT: City of Elko
PROJECT DESCRIPTION:

A rezone from (AG) General Agriculture to (PQP) Public, Quasi-Public to be initiated by the City of Elko Planning Commission.



STAFF RECOMMENDATION:

RECOMMEND APPROVAL to initiate an amendment to the City of Elko District Boundary.

BACKGROUND:

1. City Council took action at their January 14, 2020 meeting approving an access agreement between the City of Elko and United States of America, by and through the U.S. Department of Veterans Affairs for a portion of this property.
2. The U.S. Department of Veterans Affairs is proposing to purchase the internal 15 acres of this parcel for a future VA Cemetery.
3. A Parcel Map application has been submitted to split the parcel into 4 parcels. With the current zoning, one of the parcels would not meet the minimum acreage of 5 acres. Therefore, the parcel map cannot be approved with the current zoning.

NEIGHBORHOOD CHARACTERISTICS:

-) The property is surrounded by:
 - o North: Undeveloped, Agriculture
 - o West: Elko County partially developed, Residential
 - o South: Elko County partially developed, Residential
 - o East: Developed, Residential

Zoning Bulletin

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Permit Denial

Telecommunications provider challenges township's denial of permit

Citation: *New Par v. Charter Township of Brighton*, 2020 WL 1676756 (E.D. Mich. 2020)

New Par d/b/a Verizon Wireless (Verizon) filed suit against Charter Township of Brighton, Michigan, seeking a permanent injunction to block the township from enforcing the denial of two special-use permits. Verizon sought the permits so it could construct two cellular towers in the township.

The question for the court was whether Verizon or the township was entitled to judgment without a trial on any of the claims against the township.

DECISION: Request for judgment granted in part to Verizon.

There wasn't substantial evidence to support the township's reasons for denying the applications, i.e., aesthetic concerns and negative impact on property values.

Verizon contended the township violated the federal Telecommunications Act (the Act) because the denials of its applications were not supported by substantial evidence. To determine whether the reasons for why the applications were denied, the court looked to what "written reasons" it cited "at essentially the same time as it communicates its denial."

Verizon contended the township violated the federal Telecommunications Act (the Act) because the denials of its applications were not supported by substantial evidence.

Such reasons didn't have to be "provided in a formal written denial notice or letter. Instead, the Act permits localities to comply "with their obligation to give written reasons" in different ways, "so long as the locality's reasons are stated clearly enough to enable judicial review." A "locality may satisfy its statutory obligations if it states its reasons with sufficient clarity in some other written record issued essentially contemporaneous with the denial," such as detailed minutes of a city council meeting," the court explained.

Here, the township claimed there were two reasons for denying the permits. But, the written record on the matter didn't support those reasons. The township argued courts had found the "more widespread opposition to a cell tower's aesthetics" as being sufficient for finding there was substantial evidence present under precedent set in *Sprint Spectrum L.P. v. Charter Township of Brandon*.

The township's reliance on that ruling, however, was "misplaced," the court found. The judge "state[d] that the resident concerns about aesthetics in that case could not 'readily be dismissed as generalized objections' as 'far more than a handful of nearby property owners voiced their opposition to Sprint's proposal, thereby distinguishing this case from others in which the courts found evidence of only minimal citizen opposition.'" Also, in that case, multiple residents spoke out in opposition to Sprint's plan, and dozens more signed a petition in opposition to a proposed cell tower.

The court in that case, however, still found that "those objections of the neighboring property owners *did not* constitute substantial evidence in support of the township's denial of the sole proposed tower at issue." The judge in that case also granted Sprint judgment and its request to order the township to grant its application for a special-use permit.

Contributors

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Here, there was far less opposition publicly. "In a township with a population of more than 17,000 persons, less than [25] individuals opposed the *two* different towers that Verizon seeks to build based on aesthetics concerns," the court noted. Thus, the opposition in this case was more similar to the opposition in a Sixth U.S. Circuit Court of Appeals case decided in 2012—*T-Mobile Cent. LLC v. Charter Township of West Bloomfield*.

In that case, the Sixth Circuit affirmed a lower court's ruling that denying an application based on aesthetic concerns had not been submitted by substantial evidence. "That case involved 'generalized complaints' by nearby residents that 'effectively amount to NIMBY-not in my backyard.'" "[I]f such 'generalized objections sufficed, any wireless facility could be rejected,'" the Sixth Circuit reasoned in *T-Mobile*.

The bottom line: NIMBY opposition to a cell tower didn't constitute the type of "substantial evidence" that would support a court's decision to uphold a denial of this type of special-use permit.

A CLOSER LOOK

What would constitute substantial evidence? Here, the township asserted that the towers would cause a decrease in property values. Perhaps that would have been the type of evidence that would have supported its position; however, "that reason ha[d] no evidentiary support in the record that was presented to the Planning Commission," the court found

There weren't any "written reports from any experts . . . presented to the Township to show that the proposed towers would lower property values." "And it [wa]s undisputed that individuals opposing the proposed towers did not present any witnesses at any of the public meetings that had any specialized knowledge that the towers could impact property values—such as appraisers or realtors. It [wa]s also undisputed that Brighton Township Tax Assessor d[id] not make any adjustment reducing values for a parcel of real property based on its proximity to a cell tower," the court added.

Case Note:

The court ordered the township to grant Verizon's applications and issue the necessary permits.

The cases cited are T-Mobile Cent., LLC v. Charter Tp. of West Bloomfield, 691 F.3d 794, 73 A.L.R. Fed. 2d 533 (6th Cir. 2012); and Sprint Spectrum, L.P. v. Charter Tp. of Brandon, 563 F. Supp. 2d 697 (E.D. Mich. 2008).

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

Taking

Owners of dwelling in multi-unit structures claim lifetime lease requirement violated constitutional rights

Citation: *Pakdel v. City and County of San Francisco*, 952 F.3d 1157 (9th Cir. 2020), for additional opinion, see, 798 Fed. Appx. 162 (9th Cir. 2020)

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

In the city and county of San Francisco, it wasn't uncommon for multi-family dwelling ownership to be shared by various individuals through tenancy-in-common (TIC). When TIC owners wanted to convert their dwellings into individually owned condominiums, they had to apply for permission to do so through a lottery system.

San Francisco experienced a lottery-system backlog, and it temporarily suspended the lottery in 2013. It replaced it with the Expedited Conversion Program (ECP), which allowed a TIC property to be converted into a condominium property on the condition that its owner agreed to offer any existing tenants lifetime leases in units within the converted property.

Peyman Pakdel and Sima Chegini (the plaintiffs) purchased an interest in a TIC property in 2009. They rented their portion of the property out, and when the ECP began, they and their co-owners applied to convert their property.

The plaintiffs initially advanced through the application process. And, they agreed to offer their tenant a lifetime lease as a condition of converting and duly received final approval from the city to convert.

During the process, the plaintiffs had the chance to request an exemption from the lifetime lease requirement; they didn't do so, however. Then, they refused to execute the lifetime lease they had offered to their tenant, and they filed suit against the city. They claimed the lifetime lease requirement violated the Takings Clause of the Fifth Amendment.

The lower court dismissed the claims because they had not sought compensation for the alleged taking in state court (which was required under case law precedent established in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*).

Then, the plaintiffs appealed.

DECISION: Affirmed.

The takings challenge was not ripe, so the lower court's ruling stood.

A federal court would not consider a constitutional challenge to a local land-use regulation "until the posture of the challenges ma[de] [it] 'ripe' for federal adjudication." There were two requirements for "ripeness":

- "a takings claim challenging the application of land-use regulations was 'not ripe until the government entity charged with implementing the regulations

ha[d] reached a final decision regarding the application of the regulations to the property at issue'"; and

- the "claim was not ripe if the plaintiff 'did not seek compensation [for the alleged taking] through the procedures the [s]tate ha[d] provided for doing so.'"

A federal court would not consider a constitutional challenge to a local land-use regulation "until the posture of the challenges ma[de] [it] 'ripe' for federal adjudication."

Here, the lower court dismissed the claim under the state-litigation requirement, the Ninth U.S. Circuit Court of Appeals wrote. While this case was pending, however, the Supreme Court had eliminated that requirement, which had been outlined in case *Williamson County*, with its ruling in *Knick v. Township of Scott*. The practical impact was that a plaintiff didn't have to seek compensation in state court to make a federal taking claim "ripe."

That said, the city still asserted the takings claim was not ripe under *Williamson County* which barred a suit "until the government entity charged with implementing the regulations ha[d] reached a final decision regarding the application of the regulations to the property at issue." That's because the newly decided case by the Court didn't affect "this finality requirement."

The bottom line on this issue: The plaintiffs' takings claim wasn't ripe because they didn't get a final decision on the application of the lifetime lease requirement on their unit.

PRACTICALLY SPEAKING

While the part of *Williamson County* concerning the state litigation requirement had been eliminated under *Knick v. Township of Scott*, "because [the] [p]laintiffs did not ask the [c]ity for an exemption from the lifetime lease requirement, they failed to satisfy *Williamson County*'s separate finality requirement, which survived *Knick* and thus continue[d] to be a requirement for bringing regulatory takings claims such as [p]laintiffs' in federal court."

The cases cited are *Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985) (overruled by, *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019)); and *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019).

Adult Entertainment

Valet services provider contends several conspired to deny request for parking permit tied to adult entertainment club

Citation: *Deja Vu of Nashville, Inc. v. Metropolitan Government of Nashville & Davidson County, Tennessee by and through Traffic and Parking Commission*, 2020 WL 1230810 (6th Cir. 2020)

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

Déjà Vu of Nashville Inc. (DV) operated adult entertainment facilities that employed female dancers. In 2016, it decided to relocate from its long-time location to a new building in an adult-use zone on Church Street, in a Midtown Nashville, Tennessee, neighborhood.

A city council member opposed the move and drafted a proposal to eliminate “adult use” zoning in the area. That ordinance was withdrawn, though, and DV was granted a license to begin operations in May 2017.

DV then entered into an agreement with The Parking Guys Inc. (TPG) to provide valet services on Church Street and the intersecting 15th Avenue. TPG applied for a valet permit, which the Metropolitan Government of Nashville and Davidson County (Metro) initially denied. It found that parking wasn’t allowed on Church Street or 14th Avenue at the property.

TPG appealed the denial, and a hearing was set with the Metro Traffic and Parking Commission (MTPC). In the meantime, TPG received temporary permits to operate the valet service near DV’s club while the appeal was pending.

Before and during the appeals process, DV claimed that several individuals—a local businessman, a building owner, and a city council member—conspired to deny the valet permit.

In support of the allegations, DV pointed to statements two of the individuals had made to the local newspaper about DV and emails advocating for the denial of the valet permit.

At the hearing, Metro employees testified that the requested valet permit could meet the technical requirements of the Metro Code. The MTPC then deferred the matter and hired an engineering company to study the traffic impacts of the valet permit.

The firm reviewed TPG’s valet maneuvers over the course of one weekend and found minimal traffic disruptions. But, in an email to the public works engineer, the firm noted that area property owners had shown “an extraordinary amount of inappropriate vehicular activity at the intersection in question” and he believed that “a valet here would present unfortunate public safety concerns, traffic and parking issues that could affect performance of

emergency vehicles, and general negative traffic and parking issues for area users of the public right of way.”

Ultimately, the MTPC denied the permit request. TPG asked the Chancery Court for Nashville and Davidson County to review the matter. The court denied its request.

Then a federal lawsuit was filed, asserting that Metro and the three individual alleged conspirators were liable for violations under sections 1983 and 1985 of the U.S. Code. Two of the individual defendants claimed they were immune from being sued.

The lower court dismissed the sections 1983 and 1985 claims but didn’t rule on the immunity issue. DV appealed the dismissal of the section 1985 claims.

DECISION: Affirmed.

The section 1985 claims had not been properly stated.

Under section 1985(3), “a private right of action [existed] against those who conspire to violate civil rights,” the appeals court noted. To state a valid section 1985 claim, DV had to allege “a conspiracy . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges or immunities of the laws . . . an act in furtherance of the conspiracy . . . whereby a person [wa]s either injured in his person or property or deprived of any right or privilege of a citizen of the United States.”

In addition to there being a conspiracy, the claim had to allege a “class-based, invidiously discriminatory animus.” “The alleged class must be based upon race or other ‘inherent personal characteristics,’” the court added.

In addition to there being a conspiracy, the claim had to allege a “class-based, invidiously discriminatory animus.”

Here, the lower court had dismissed the section 1985 claim “because [the] ‘complaint contain[ed] not a single allegation about a group of individuals that share[d] their desire to engage in the same First Amendment activity opposed by [d]efendants, let alone that the amorphous group was subjected to racially discriminatory animus because of their desire.’”

Also, the plaintiffs here couldn’t show they were a protected class. They argued that “they belong[ed] to a ‘class’ of organizations engaged in the presentation of female dance or a ‘class’ of gentlemen’s clubs, citing only to the complaint’s descriptions of [DV]. The complaint does not allege membership in a protected class, or that there was any discriminatory animus on account of class membership,” the appeals court noted. Without an “indication of any class membership at all” the plaintiffs had failed to state a section 1985 claim against any of the defendants.

Abatement

County launches abatement process against billboard sign displayer

Citation: *Citizens for Free Speech, LLC v. County of Alameda*, 953 F.3d 655 (9th Cir. 2020)

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

In 2014, Citizens for Free Speech LLC (CFS) entered into an agreement with an Alameda County-based property owner, Michael Shaw, to display billboards expressing political messages.

Alameda County officials determined the billboards violated local zoning ordinances, so they began an abatement process against CFS. A hearing before the zoning board ensued, and the results were favorable to CFS, so it filed suit to block the abatement.

Through the litigation, CFS failed to get a permanent injunction barring the county from enforcing its ordinances. Then, the county launched a new abatement proceeding.

CFS filed a second lawsuit—this time alleging constitutional violations. It sought both equitable and monetary relief.

The lower court concluded that the county was entitled to dismissal. The court was awarded costs and fees, and CFS appealed.

DECISION: Affirmed.

Under case law precedent the Supreme Court had established in *Younger v. Harris*, the county was entitled to attorney's fees.

The "abstention doctrine" had been introduced in *Younger*. The doctrine of abstention "applie[d] to state civil proceedings when the proceeding":

- "[wa]s ongoing";
- "constitute[d] a quasi-criminal enforcement action";
- "implicate[d] an important state interest"; and
- "allow[ed] litigants to raise a federal challenge."

"If these elements [we]re met, . . . then [the court would] consider whether the federal action would effectively enjoin the state proceedings," the Ninth Circuit explained.

Here, the county's abatement proceeding was ongoing under *Younger*. In addition, it was a quasi-criminal enforcement action, the court found. For instance, its "abatement action included an investigation, alleged violations of nuisance ordinances, notice to appear before a zoning board, and the possibility of monetary fines and/or forcible removal of [CFS'] billboards," the court explained.

In addition, there was a state interest in the abatement proceeding. That is, the county had a "strong interest in its land-use ordinances and in providing a uniform procedure for resolving zoning disputes." And, "[t]he abatement proceeding also allowed [CFS] adequate opportunity to

raise its federal challenges; under California law, a litigant may seek judicial review of an adverse decision and, in doing so, may raise federal claims."

The county had a "strong interest in its land-use ordinances and in providing a uniform procedure for resolving zoning disputes."

The bottom line: CFS' "federal action could substantially delay the abatement proceeding, thus having the practical effect of enjoining it." And, because there was no evidence the county was acting in bad faith or using the abatement proceeding as a way to harass or overstep on CFS' constitutional rights, it was lawful.

PRACTICALLY SPEAKING

The lower court didn't abuse its discretion in awarding the county fees and costs. A court had the authority to do so when a plaintiff's filing was frivolous, which appeared to be the case here. CFS' "initiation of this action and its arguments were wholly without merit. The action appears to be little more than an attempted end-run around the parties' previous three years of litigation that resolved [CFS'] constitutional objections," the appeals court wrote.

The case cited is Younger v. Harris, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971).

Case Note:

The Ninth Circuit found the lower court had not abused its discretion in awarding the county \$101,000 in fees and \$1,200 in costs. It recognized, though, that the lower court had stopped short of explicitly calling CFS' claim frivolous, but in its fee orders, it stated "that the claim was 'frivolous,' 'unreasonable,' without 'substantive merit,' and 'meritless.' "

Signage

Ruling in case stemming from tenants' squabble over building's signs up for appellate review

Citation: *150 4th Ave N. Tenant, LLC v. Metropolitan Nashville Board of Zoning Appeals*, 2020 WL 1278226 (Tenn. Ct. App. 2020)

One Nashville Place (known as the R2-D2 Building) was a prominent structure on the Nashville skyline. At 25 stories high it sat in the heart of downtown Nashville on a lot abutting Fourth Avenue North, Commerce Street, and the south end of Printers Alley.

In 2010, the Metropolitan Planning Commission codified a set of development standards for several sub-districts in downtown Nashville, including the area where One Nashville Place was located. Section V of the Downtown

Code included two design standards related to the width and area of “skyline” signs:

- a skyline sign could not exceed 60 percent of the building width; and
- the maximum area of all skyline signs on a building was determined by the number and type of abutting streets.

In 2013, Regions Bank Corp. (RBC) moved its headquarters to One Nashville Place. It applied for and was granted a permit to install two 495-square-foot skyline signs, one on the northeast facade and one on the southwest facade. The RBC signs were installed shortly thereafter.

In January 2017, 150 4th Ave N Tenant LLC, a workspace provider doing business as WeWork (WeWork), became a tenant of One Nashville Place. On February 12, 2017, WeWork applied for a permit to install two 45-foot-long skyline signs, one on the northwest facade and one on the southeast facade.

The zoning administrator denied the application after finding that the width of each sign exceeded 60 percent of the facade to which it was to be attached, and the sign needed the approval of the Downtown Code Design Review Committee (DRC) because of the sub-district where the building was located.

WeWork then filed an application with the DRC. The DRC construed the octagonal building as effectively having four longer facades rather than eight shorter ones and determined that the signs were within the 60 percent limit. Based upon that determination and approval, the zoning administrator approved WeWork’s application and issued the permit in June of 2017, and WeWork completed the installation of the signs in August of 2017.

RBC wasn’t happy about WeWork’s signs, and it appealed the decision to grant WeWork the permit to the Board of Zoning Appeals (BZA). It contended that its brand had been harmed because the juxtaposition of the new and existing signs blurred the relationship between the two tenants and caused the building to exceed the maximum signage permitted under the zoning code.

RBC wasn’t happy about WeWork’s signs, and it appealed the decision to grant WeWork the permit to the Board of Zoning Appeals (BZA).

The BZA ruled the new signs violated the zoning code and revoked the permit. A court ruled the BZA had erred by relying on a zoning map rather than the code’s plain language and found the new signs complied with the code’s requirements. Then, the case went up for appeal.

DECISION: Reversed.

RBC didn’t establish standing to bring its claim because it couldn’t show it had been aggrieved by the issuance of the permit.

There wasn’t any “competent evidence to show that the

signs’ juxtaposition would create public confusion about or signal a business relationship between the two tenants,” the Court of Appeals of Tennessee ruled.

The bottom line: There wasn’t evidence that RBC’s alleged injury “[f]ell within the zone of interests protected or regulated by the [law] in question.” The court sent the case back to the lower court directing it to order the BZA to dismiss RBC’s application and reinstate permit for WeWork’s new signs.

Zoning News from Around The Nation

Alabama

Athens-based church seeks a change to local ordinance so it can have an electronic sign

The First Baptist Church of Athens in Alabama is asking the local city council to permit the installation of an electronic sign, *The News Courier* reported recently. The church, which sits in a traditional institutional district where electronic signs are prohibited, is asking for permission to use an electronic sign rather than asking for a rezoning of the property, the news outlet reported.

According to the zoning ordinance, the city council, its planning commission or the board of zoning adjustment has the authority to determine the fate of proposed amendments.

Source: enewscourier.com

Illinois

Batavia officials suggest zoning-map changes to accommodate battery pack maker that wants to move into the area

An undisclosed company that makes battery cells and packs wants to build a 950,000 square-foot facility in Batavia, Illinois, the *Daily Herald* reported recently. Batavia’s city administrator told the news outlet the company would also need a lot of electricity to produce its products, which are designed for the transportation industry.

The city administrator also told the news outlet that a 37-acre parcel in the Fabyan Parkway and Kirk Road area appears to be a prime site for consideration. She added that the city became interested in the prospect of having the manufacturer come into the city through the Department of Commerce and Economic Opportunity’s Intersect Illinois recruitment initiative. More on Intersect Illinois can be found at intersectillinois.org.

Now, city alderman have directed staff to work on a zoning amendment that would permit industrial use on the now commercially zoned site, the *Herald* reported.

If the deal goes through, the company said it will invest around \$90 million into the property, bringing 480 full-time jobs to the facility within three years of when construction would begin—in 2022.

Source: dailyherald.com

Massachusetts

Witch City's push for affordable housing gaining community support; Groveland scores \$15K in grant funding to study parking

At a recent Salem City Council Planning Board meeting, an inclusionary zoning measure got a good reception, with both bodies expected to pass with a May 4 vote, *The Salem News* reported recently. Another zoning issue currently up for public hearing on accessory dwelling units (ADUs)—in-law apartments—may face a more uphill battle, the news outlet noted.

Witch City wants to pass the inclusionary zoning so that developers of six-plus housing units would need to designate 10% or more of the units as affordable for those making under 60% of the median income in the area, the news outlet explained.

On the other front, the zoning rules currently permit ADUs for in-laws and caretakers only. If the ADU measure passes, homeowners would be permitted to add small units to existing dwellings.

ADU zoning change supporters said this will increase the city's affordable rental inventory, the news outlet reported. Opponents worry ADU amendments would remove the choice from homeowners who want to reside in single-family neighborhoods, one resident told *The Salem News*.

In other news out of Massachusetts, Groveland has been awarded a state grant of \$15,000 to revitalize its Elm Square Business District, *WHAY* reported recently.

In 2019, the town conducted a survey to "help inform future economic development efforts in the Elm Square Business District," its website states. For more on that survey, visit grovelandma.com/news-archive/news/elm-square-economic-development-survey.

The grant funding, which was made possible through Massachusetts' Downtown Initiative Technical Assistance program, will be applied to the town's parking-management strategy for the district, the news outlet reported. The grant may be used to pay for consultant services to access parking locations and number of spots.

This is not the first time the town has been awarded this type of grant; the news outlet explained. In 2019, it used state funding to conduct an economic development study (available at grovelandma.com/sites/grovelandma/files/uploads/200107_mkt_biz_assess_final.pdf), which surveyed residents on what types of businesses they wanted in the business district. In responding to the study, many residents expressed concern over parking in the area. So, the hope is that this new study will provide town officials with a framework for how to address parking in the business district.

Sources: salemnews.com; grovelandma.com; whav.net

Michigan

Kalamazoo takes up issue of permitting adult-use marijuana; Escanaba halts zoning permit issuances until further notice

The Kalamazoo Planning Commission (KPC) recently took up the issue of whether to allow adult recreational

marijuana shops, *WKZO* reported recently. The discussion came after a city commission vote on the matter had been postponed in 2019, which gave city officials more time to hear from concerned citizens and proponents of the measure.

The KPC approved recommendations for what zoning rules on recreational marijuana shops would have included, the news outlet explained.

The recommendations would include new categories of shops, including those for designated consumption lounges when marijuana usage is permitted onsite (but not available for purchase), excess growers, and micro-businesses. The city already had ordinances covering growers, processors, transporters, and medical marijuana businesses, the news outlet reported.

The KPC noted that retailers and consumption lounges would not be allowed to operate in the city's commercial central business district zone. Also, a "500 foot distance" rule would not apply to micro-businesses in limited or general manufacturing areas (designated as M-1 and M-2, respectively).

To read the draft ordinance, including restrictions on operation in residential areas, visit kalamazoo.city.org/docman/marihuana-businesses-and-licensing/6150-all-marihuana-ordinance-draft/file. And, for additional resources on this issue, including questions and answers, proposed land area maps for facility license types in proposed ordinances, and the KPC's meeting packet dated April 15, 2020 (without maps), visit kalamazoo.city.org/adultusemarihuana.

In other news out of Michigan, the city of Escanaba announced recently that zoning permits won't be issued until further notice, following Gov. Whitmer's executive order related to the COVID-19 pandemic. However, exceptions may be made if an immediate safety concern is demonstrated or the work would be important to the essential functions of essential businesses in the city, the *Daily Press* reported recently.

Sources: wkzo.com; dailypress.net

Montana

Public input sought on proposed county-initiated zoning

In April 2020, Lewis and Clark County published draft regulations, "An Implementation Element of the Lewis and Clark County Growth Policy." Available at lccountymt.gov/fileadmin/user_upload/County_Com_Dev/Documents/Helena_Valley_Zoning_Regulations_DRAFT_4-14-2020.pdf, the regulations stated that they're designed to address issues such as "the height and size of buildings and structures, the size of yards and open space, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes in a manner consistent with the goals and objectives of the Growth Policy."

To view the draft regulations and map, visit lccountymt.gov/cdp/zoning.html.

Source: lccountymt.gov

Oregon

Is there a growing need for multigenerational housing?

A recent article published by *Oregon Business* posits that

multigenerational housing could become a more attractive prospect heading forward. It cited a 2018 Pew Research Center (Pew) study indicating that nationwide multigenerational housing is increasing. According to Pew, 20% of Americans (around 64 million people) live in multigenerational households.

“Recognizing that the aging of its population will reshape housing needs, the city of Washington, DC, has fostered numerous options for older residents, including some that are intentionally multigenerational,” Housing and Urban Development notes on its website. “Breaking down barriers to [accessory dwelling units] and constructing multifamily, multigenerational housing are among the strategies that communities might pursue to accommodate the housing needs of an aging population and an increasing number of multigenerational households,” HUD stated. “These options give families greater flexibility to cope with changing health needs, affordability pressures, childcare needs, social isolation, and other challenges. Beyond addressing these needs, multigenerational housing options can create rich opportunities for social interaction, deepened community ties, and other benefits for families and communities,” it added.

Oregon Business reported that multigenerational housing rose 5% between 2015 and 2016 (to 20%).

For more on the Pew study, visit [pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/](https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/).

Source: oregonbusiness.com

Pennsylvania

Online map gives sneak peek at zoning in Greensburg; Meadville's Zoning Hearing Board meetings go virtual

Greensburg, Pennsylvania has released an online map that may be of interest to local property owners and developers, [TribLive.com](https://triblive.com) reported recently. Designed to cut down on confusion and “red tape,” users can search a specific property on the map. And, they can view Greensburg's zoning districts, including four special zoning overlay districts, which may be subjected to stricter scrutiny, the news outlet reported.

The decision to put the map online came after members of the public called the planning department confused about which zoning rules applied to particular parcels within the city. The map, developed in conjunction with the Westmoreland County Department of Planning and Development, is designed to alleviate such confusion, a city official told the news outlet.

To view the map, visit greensburgpa.org/planning-development/pages/zoning-information.

In other news out of Pennsylvania, Meadville's Zoning Hearing Board (ZHB), which processes zoning appeals, variances, and special-exception requests, will conduct meetings virtually amid the COVID-19 pandemic—like many other local boards nationwide are doing. Also, through May 20, deadline requirements for board requests and appeals have been suspended, *The Meadville Tribune* reported recently.

The news outlet reported that the ZHB said recordings and meeting minutes will be available at cityofmeadville.org.

Sources: triblive.com; meadvilletribune.com

Vermont

Mixed-use development on the table for Manchester

The *Manchester Journal* reported recently that the town of Manchester, Vermont, retained a Burlington, Vermont-based real estate and investment advisory firm to assist with drafting plans that would show the financial impact of two mixed-use projects in the town's downtown area.

The work is designed to support a study released in the first quarter of 2020, which concluded that the evidence was to support a hypothetical mixed-use zone featuring apartments for tenants of varied income levels and 10,000 square feet designated for commercial use.

The advisory firm, White + Burke, will be paid \$17,500 for its services through grant funding from the state's Department of Housing and Community Development. For more on grant funding opportunities, visit vermont.gov/community-development/funding-incentives/vcdp. And, for more on the “Downtown Manchester Mixed Use Development Market Feasibility Study Phase 1 Released by Town” visit manchester-vt.gov/downtown-manchester-mixed-use-development-market-feasibility-study-phase-1-released-by-town/.

Manchester, which is based on southeastern Vermont, explained on its website that the town “needs more housing options for its workforce. Local businesses and institutions report difficulty attracting young professionals to accept job offers because of the lack of desirable housing options and lack of vibrancy in Manchester. A large majority of the workforce in Manchester lives outside of the town due to a lack of affordable housing options in Manchester. To address this problem and to meet other planning goals for a vibrant downtown, Manchester is committed to finding ways to encourage mixed-use downtown development that includes a range of housing options along with commercial enterprises that are attractive to a diversity of population segments.”

Source: manchesterjournal.com

Zoning Bulletin

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Agricultural Usage

Land owner challenges order for him to remove chickens from his R-1-designated property

Citation: *Sabatini v. Zoning Hearing Board of Fayette County*, 2020 WL 1969466 (Pa. Commw. Ct. 2020)

Andrew Sabatini owned 1.85 acres located at 120 Fawn Lane in Acme within Fayette County, Pennsylvania, which was zoned as “R-1.” The applicable zoning ordinance described R-1 as a “moderate density” residential district.

In March 2017, Sabatini received a letter from the municipality’s planning/zoning technician stating that the property was in violation of the zoning ordinance. Specifically, the notice cited him for “[k]eeping agricultural animals” on a residentially zoned property. The notice stated that he was required to remove all “agricultural” animals from the property, i.e., 18 chickens.

Sabatini appealed this notice to the Zoning Hearing Board of Fayette County (ZHB). The ZHB denied his request, so he appealed to court.

DECISION: Reversed.

Sabatini wasn’t engaged in agriculture as defined by the ordinance, so he didn’t violate it by keeping chickens on his property, which was zoned as being part of the R-1 residential district.

The Commonwealth Court of Pennsylvania explained that the facts of this case showed that raising chickens wasn’t commercial in nature. For instance, the board had found that the Sabatini family considered each and every one of its chickens as family pets.

The board had found that the Sabatini family considered each and every one of its chickens as family pets.

Also, Sabatini and his wife’s testimony indicated that no “chicken eggs, meat, and feathers were [n]ever advertised for sale.” The “chickens were never butchered or consumed; each chicken ha[d] a name; and the chickens [we]re not confined full-time like commercial chickens.”

In addition, there were “numerous pictures that show[ed] the chickens interacting with [Sabatini’s] children, as if they were pets,” the court found.

The bottom line: The record didn’t contain evidence that Sabatini “was engaged in the buying or selling of chickens or chicken-related products, nor was [he] engaged in a business to place the chickens on the ‘market’ to make a profit from chickens or chicken-related products.”

The “plain language of the [o]rdinance . . . require[d] agriculture to be commercial in nature,” the court ruled. So, keeping the chickens in this case was not commercial in nature and didn’t constitute an agricultural use as defined by the ordinance itself.

Practically Speaking:

The ordinance’s plain language was clear in that it applied to commercial use of farm animals. Here, the chickens were clearly pets, so the ordinance didn’t apply.

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Primary Use

Did primary use of barn permit owner to take advantage of agricultural exemption to local zoning rules?

Citation: Litchfield Township Board of Trustees v. Forever Blueberry Barn, L.L.C., 2020-Ohio-1508, 2020 WL 1918145 (Ohio 2020)

Forever Blueberry Barn LLC (Blueberry Barn), owned a barn in Litchfield Township, Ohio, on land designated as residential. Blueberry Barn rented the barn for “barn weddings” and other social gatherings.

The Litchfield Township Board of Trustees (the trustees) did not believe that the use was permitted in the residential district, so it filed a complaint in the Medina County Court of Common Pleas seeking to bar Blueberry Barn from using its land for weddings and other social gatherings. The court issued an injunction prohibiting Blueberry Barn from using the land for weddings and other social gatherings, but the court later rescinded the injunction after hearing evidence that Blueberry Barn had planted grapevines on the land and planned to sell wine made from the grapes to its renters as a condition of renting the barn.

The court found that, therefore, Blueberry Barn’s use of the land met a “vinting and selling wine” exemption under the applicable zoning regulation.

On appeal, the court reversed, finding that the lower court had not determined whether the barn, as opposed to the land on which it was located, was being used primarily for the purpose of vinting and selling wine.

The appeals court sent the case back so the lower court could conduct a hearing on that issue. Following the hearing, the lower court determined that Blueberry Barn had produced wine and stored it in the barn, along with the equipment used for the production of the wine, and that those who rented the barn were required to buy the wine to have exclusive use of the barn. Since the ability to rent the barn was contingent on buying Blueberry Barn’s wine, the court found that the barn was primarily for vinting and selling wine, so the exemption applied.

The appeals court affirmed this finding, noting that the weight of the evidence supported the lower court’s conclusion. The trustees appealed to the Supreme Court of Ohio.

DECISION: Affirmed.

The lower court had properly applied the “primary-use test” regarding the barn’s use.

While only 4% of the overall space being used was devoted to vinting and selling wine—that is, to agricultural purposes—the primary purpose was agricultural in nature, so the exemption applied.

That’s because to rent and use the barn, an individual was obligated to purchase Blueberry Barn’s product, so the space rental contributed to the primary use of the property.

PRACTICALLY SPEAKING

This ruling illustrates when an agricultural exemption may entitle a property owner to bypass local zoning regulations when his or her structures have many uses that further an underlying agricultural use.

A CLOSER LOOK

In 2011, this court had previously ruled—in *Terry v. Sperry*—that an “exemption from township zoning . . . d[id] not require for its application that viticulture be the primary use of property engaged in the vinting and selling of wine.” In that case, the court noted there were two ways a property owner could be exempt from township zoning regulations:

- “the property [wa]s used for agricultural purposes”; or
- “the construction or use of buildings or structures on the property [wa]s incident to an agricultural use of the land.”

The court found that a township couldn’t bar “the use of a property for vinting and selling wine if any part of the property [wa]s used for viticulture.” Also, “any” could mean one vine, the court explained, citing *Terry*.

“Use of the land for viticulture clearly f[e]ll within the . . . exemption from zoning restriction,” it added, noting that this case asked “whether the barn itself [wa]s used primarily for vinting and selling wine.”

The present case differed from *Terry* in that it involved the use of a barn “as opposed to the use of the land itself for viticulture.” “Blueberry Barn had produced wine and stored it in the barn, along with the equipment used for the production of the wine, and it intended to require its renters to purchase the wine as a condition of having exclusive use of the barn,” the court stated. “Use of the land for viticulture clearly f[e]ll within the . . . exemption from zoning restriction,” it added, noting that this case asked “whether the barn itself [wa]s used primarily for vinting and selling wine.”

The applicable regulation didn’t “define the word ‘primary,’ so we give the word its usual and ordinary meaning,” the court stated. “The word ‘primary’ means ‘of first rank, importance, or value,’ ” the court added, citing *Merriam-Webster’s Collegiate Dictionary* (11th Ed. 2003). “We determine that whether a building is used primarily for vinting and selling wine is a question of fact that must be proven by a preponderance of the evidence,” it stated.

The case cited is *Terry v. Sperry*, 130 Ohio St. 3d 125, 2011-Ohio-3364, 956 N.E.2d 276 (2011).

Land Use

Neighbors contest community development department’s approval of mountain coaster ride on land used for horse trails

Citation: *Langer v. Board of Commissioners of Larimer County*, 2020 CO 31, 2020 WL 1983198 (Colo. 2020)

Yakutat Land Corporation (YLC) wanted to place a gravity-driven roller coaster and related infrastructure, which included a roller coaster storage building, ticketing office, restroom facilities, and parking area, on its property located in Estes Park in Larimer County, Colorado. YLC submitted a development plan to the Estes Park Community Development Department (EPCD), seeking approval for the mountain coaster project.

The EPCD found that the project had been properly classified under the Estes Valley Development Code (the code) as a park and recreation facility, which was a use by right (or permitted use) rather than as an outdoor commercial recreation or entertainment establishment, which was not a permitted use under the code.

Randy Hunt, Estes Park’s community development director, and his staff determined this for three reasons:

- the property had previously been classified as a park and recreation facility because it had been used for horse trail rides previously;
- the proposed use was a “less intense use” in terms of proportionality, scale, and density than would be typical of an outdoor commercial recreation or entertainment establishment—for instance, the mountain coaster would occupy a total footprint of less than eight acres in the interior of Yakutat’s 160-acre tract of land, which would leave the vast majority of the land undisturbed; and
- the common law rule was to construe property restrictions in favor of a free, as opposed to the more restrictive, use of land.

Owners of neighboring properties appealed the EPCD’s determination to the Larimer County Board of County Commissioners (BOCC). After a hearing, the BOCC affirmed the original determination. The neighbors sought additional review of that finding.

The Larimer County District Court affirmed, and the neighbors appealed. The appeals court filed requests with the Colorado Supreme Court for a determination as to jurisdiction. The appeals court noted that the lower court had found a portion of the code to be unconstitutional, which raised a question as to the appeals court’s jurisdiction to hear the case because that statute restricted the jurisdiction of the court of appeals in cases where a municipal charter provision had been declared unconstitutional.

Therefore, the appeals court asked the Colorado Su-

preme Court to determine where jurisdiction of the case properly lay.

DECISION: Affirmed.

The BOCC had correctly construed the provisions of the code and properly exercised discretion in applying those provisions to the facts; also, the district court had correctly upheld the BOCC's determination that the mountain coaster project was properly classified as a park and recreation facility.

Here, the Yakutat property fell within an RE-1 Rural Estate Zoning District. The code defined such a district as one "established to protect and preserve some of the most rural areas of the Estes Valley in which significant view sheds, woodlands, rock outcroppings, ridgelines, other sensitive environmental areas and low-density residential development comprise the predominant land use pattern."

Also, under the code, "certain uses [we]re expressly permitted in a RE-1 Rural Estate Zoning District," the court explained. For instance, "a [p]ark and [r]ecreation [f]acility [wa]s one such permitted use," it added, whereas an outdoor commercial recreation and entertainment establishment was not.

And, the code defined "'[p]ark and [r]ecreation [f]acilities' as '[p]arks, playgrounds, recreation facilities and open spaces.'" While previously that provision had "required that such uses be non-commercial, the definition was amended to eliminate that restriction." Conversely, commercial recreation or entertainment establishments (outdoor) were defined as "[a]ny outdoor enterprise whose main purpose [wa]s to provide the general public with an amusing or entertaining activity, where tickets [we]re sold or fees collected at the gates of the activity." "The [c]ode list[ed] as examples of this classification 'go-kart tracks, outdoor mazes, riding academies, roping arenas, livery stables, equestrian arenas, amusement parks, golf driving ranges, miniature golf facilities and zoos.'" "

To determine a use classification, several factors were considered, including:

- the relative amount of the site area that would be devoted to the requested use;
- how many employees would be needed for the use(s);
- hours of operation;
- building and site arrangement;
- vehicles to be needed for the use;
- the relative number of vehicle trips generated by the use;
- the potential impact the subject use had relative to other specified uses included in the classification and permitted in the applicable zoning district; and
- whether the subject use was consistent with the stated intent, the purposes of the code, and the zoning district in which it was to be located.

THE BOTTOM LINE

Applying these and other factors to the subject prop-

erty, the EPCD and the BOCC both found that classifying the mountain coaster project as a park and recreation facility was warranted.

Applying these and other factors to the subject property, the EPCD and the BOCC both found that classifying the mountain coaster project as a park and recreation facility was warranted.

The plaintiffs argued that the BOCC had misconstrued the code and abused its discretion. "We are unpersuaded," the court stated.

While the mountain coaster project could have arguably been classified as either a park and recreation facility or an outdoor recreation or entertainment facility, when "[f]aced with this potential overlap, both the [EPCD] and the BOCC looked to the purposes of the [c]ode, as well as to the [factors] . . . used to determine a particular use's classification," the court noted.

PRACTICALLY SPEAKING

The court ruled that the EPCD's and BOCC's analysis "was not only proper but also it was mandated by the [c]ode." "[I]n considering the intensity of the mountain coaster's use, the increase in intensity resulting from that use, the consistency of the use with the definition of a [p]ark and [r]ecreation [f]acility, the contrast between this use and uses such as an amusement park (which would be an [o]utdoor [c]ommercial [r]ecreation or [e]ntertainment [e]stablishment), and the applicable law, the BOCC complied with the requirement that it consider both the purposes of the [c]ode and the pertinent factors."

CASE NOTE

The BOCC's analytical framework wasn't flawed, and it didn't abuse its discretion in applying that framework because the mountain coaster was a low-intensity use—it would only use up about eight of a 160-acre tract of land and there would be a minimal impact on the area given the visual and noise impacts it presented. Also, the coaster would follow existing horse trails and wouldn't constitute an intense modification to the land. And, as a single attraction, it wouldn't constitute an amusement part. Finally, "the common law favor[ed] construing property restrictions in favor of the free use of land," the court found. And, the neighbors' argument didn't substantially challenge these findings.

Conflict Preemption Doctrine

Michigan's highest court rules on whether town can enforce zoning ordinance with respect to medical marijuana growers

Citation: *DeRuiter v. Township of Byron*, 925 N.W.2d 202 (Mich. 2019)

Byron Township, Michigan's zoning ordinance required that a primary caregiver obtain a permit before cultivating medical marijuana. Christie DeRuiter rented a commercially zoned property in the township where she cultivated marijuana in an enclosed, locked facility.

DeRuiter did not obtain a permit from the township before cultivating the medical marijuana as a primary caregiver. At the township's direction, DeRuiter's landlord ordered her to stop cultivating medical marijuana at the property or face legal action.

DeRuiter asked the Kent County Circuit Court to issue a declaratory ruling in her favor. The township also petitioned the court, arguing that the ordinance didn't conflict with the Michigan Medical Marijuana Act (MMMA).

The court found that the township's ordinance was in conflict with the state's marijuana law, so the state law preempted it. The appeals court affirmed the court's ruling, finding that the ordinance overstepped by imposing restrictions on individuals who were acting in accordance with the state law.

On appeal, the Supreme Court of Michigan had a different view.

DECISION: Reversed.

The state's medical marijuana law did not preempt local laws, the Michigan Supreme Court ruled.

Under "the conflict-preemption doctrine" the MMMA didn't "nullify a municipality's inherent authority to regulate land use under the Michigan Zoning Enabling Act (MZE)" if:

- the municipality didn't bar or penalize the cultivation of medical marijuana; and
- the municipality didn't impose regulations that were unreasonable.

A CLOSER LOOK

Under state law, "primary caregivers and qualifying patients [had to] keep their plants in an enclosed, locked facility . . . for those individuals to be entitled to the MMMA protections." "Because an enclosed, locked facility [could] be found in various locations on various types of property, the township's ordinance limiting where medical marijuana must be cultivated within the locality did not directly conflict with the MMMA's requirement that marijuana plants be kept in an enclosed, locked facility," the court found.

Also, the requirement under the township's ordinance for "primary caregivers to obtain a permit and pay a fee before using a building or structure within the township to cultivate medical marijuana . . . did not directly conflict with the MMMA because the ordinance did not effectively prohibit the medical use of marijuana."

THE BOTTOM LINE

A local government generally could "control and regulate matters of local concern" if the state conferred that power on it. But, state law could "preempt a local regulation either expressly or by implication," the court explained.

The requirement under the township's ordinance for "primary caregivers to obtain a permit and pay a fee before using a building or structure within the township to cultivate medical marijuana . . . did not directly conflict with the MMMA because the ordinance did not effectively prohibit the medical use of marijuana."

Implied preemption occurred when the state "occupied the entire field of regulation in a certain area (field preemption) or when a local regulation directly conflicts with state law (conflict preemption)." "A direct conflict exist[ed] when the ordinance permits what the statute prohibit[ed] or the ordinance prohibit[ed] what the statute permit[ted]; there [wa]s no conflict between state and local law when a locality enact[ed] regulations that [we]re not unreasonable and inconsistent with regulations established by state law so long as the state regulatory scheme d[id] not occupy the field."

Practically Speaking:

"[W]hile a local ordinance [wa]s preempted when it ban[ned] an activity that [wa]s authorized and regulated by state law, a local governmental unit [could] add to the conditions in a statute as long as the additional requirements d[id] not contradict the requirements set forth in the statute." In that case, the court would review the state law and the local ordinance to determine if conflict preemption applied.

Demolition

Building and development company and its president appeal order to demolish and/or remove newly constructed home

Citation: *Bylinski v. Building Commissioner of Douglas*, 97 Mass. App. Ct. 1113, 2020 WL 1969933 (2020)

In 1989, Guaranteed Builders & Developers Inc. (GBI) bought property located at 103 Shore Road, on Wallum Lake in Douglas, Massachusetts, and GBI, along with its president, Louis Tusino, took possession of the property. Joseph Bylinski owned a home adjacent to 103 Shore Road at 105 Shore Road.

The property at 103 Shore Road lacked the requisite frontage and area to be buildable under Douglas' zoning bylaw. But, in 2008, the building commissioner went ahead and issued a permit so GBI could construct a single-family home on the property.

In 2009, after GBI began excavation, Bylinski asked that the building permit be revoked.

The building commissioner refused Bylinski's request, and Bylinski appealed to Douglas' zoning board of appeals (BOA) in February 2009. The BOA failed to decide Bylinski's appeal within 100 days, which meant constructive revocation of the permit occurred under the applicable state law (G.L. chapter 40A section 15).

GBI appealed the constructive revocation to a Massachusetts superior court. In the meantime, Bylinski filed suit in land court seeking an order to compel GBI to take down construction already completed. GBI didn't budge, though, and the house was completed before February 2, 2012.

GBI then applied for a variance, which the zoning board denied.

In June 2014, a land court judge dismissed Bylinski's lawsuit without prejudice, on the ground that he had failed to exhaust available administrative remedies. The judge found he should have requested enforcement from the building commissioner and appeal to the board if necessary.

Bylinski appealed that dismissal, but while that was pending he pursued his administrative remedies. And, on June 26, 2014, Bylinski asked the building commissioner to enforce the town's zoning bylaw. The commissioner refused his request without supplying any reasoning.

Bylinski then appealed to the BOA. The BOA sided with Bylinski and issued a demolition order.

GBI appealed the BOA's decision to a local district court, which affirmed. Then, GBI appealed to the Appeals Court of Massachusetts.

In August 2016, the court disposed of GBI's appeal of the decision to affirm the demolition order and Bylinski's appeal of his lawsuit for failure to exhaust administrative remedies.

When the court dismissed GBI's appeal, it stated that the appeal should have gone to the District Court's Appellate Division and that "[b]ecause the board's demolition order [wa]s final" Bylinski's appeal was moot—that is the relief he sought had already been obtained.

But, the house was never torn down. So, in February 2017, Bylinski asked to have the dismissal of his land court case vacated. His request was permitted and he filed an amended complaint with the land court adding Tusino as a defendant and asking for an injunction to compel the defendants' compliance with the zoning board's order.

In December 2017, the land court ruled in Bylinski's favor, ordering the defendants to file for the appropriate permits for removal and/or demolition of the dwelling within 30 days and to complete the demolition or removal within 120 days. The defendants appealed.

DECISION: Reversed.

Bylinski's action had not been brought in accordance with any relevant section of the state's Zoning Act (the act).

Bylinski asked for two forms of relief in his amended complaint against two different parties, that is "a direct injunction against the landowner, and mandamus relief against the building commissioner," the appeals court noted. "The motion judge noted that Bylinski sought summary judgment not only on his claim for a direct injunction against Tusino, but also on his claim for mandamus relief against the building commissioner."

The judge also noted that although the town took no position on Bylinski's action against Tusino, it "[d]id oppose and object to any request or order that would otherwise require it to pursue, or assist in the pursuit of, the demolition of the house."

The judge had not considered "Bylinski's mandamus claim on the ground that such relief was unnecessary because Bylinski had standing to pursue a direct injunction against Tusino. The judgment entered is silent as to any disposition of the mandamus claim," the appeals court also explained.

"Because the action involved multiple parties, the court should not have entered judgment against fewer than all the parties without 'an express determination that there is no just reason for delay and upon an express direction for the entry of judgment,'" the court ruled.

A CLOSER LOOK

The court examined the issue of granting a direct injunction against the landowner of 103 Shore Road. "Under the act, a zoning enforcement action may be initiated through a written request directed to the officer charged with enforcing a zoning bylaw (in Douglas, the building commissioner)," the court explained. "That officer [wa]s then required to notify the requesting party, in writing, 'of any action or refusal to act, and the reasons therefore, within 14 days of receipt of such request.' . . . After the officer ha[d] responded to the request, any 'person aggrieved by reason of his inability to obtain a permit or enforcement action' [could] bring an appeal to 'the permit granting authority as the zoning ordinance or by-law [could] provide.'"

In this case, the board was the "appellate authority," the court ruled. "Any person 'aggrieved by a decision of the board,' or aggrieved by the failure of the board to timely take action, [could] appeal under . . . the act to an appropriate court."

According to Tusino, when an abutter initiated a zoning-enforcement action that resulted in a demolition order by the local zoning board being initiated, the town then had "unfettered discretion to decline to enforce the order." So,

in it Tusino's view, "where the landowner against whom the order [wa]s directed [wa]s recalcitrant and municipal officials decline[d] to force the issue, the abutter whose efforts resulted in the order [wa]s without a remedy." "With that broad proposition, we disagree," the court found.

According to Tusino, when an abutter initiated a zoning-enforcement action that resulted in a demolition order by the local zoning board being initiated, the town then had "unfettered discretion to decline to enforce the order."

The act allowed "a judge to annul a zoning board's decision upon a finding that the decision exceeded the board's authority," and it "empower[ed] courts with jurisdiction over zoning appeals to 'make such other decree as justice and equity may require.'"

THE BOTTOM LINE

"[A]ggrieved persons seeking zoning enforcement [could] obtain direct injunctive relief against landowners by commencing a zoning enforcement action" by following defined steps outlined in the act and launching an appeal in superior court.

CASE NOTE

In another case, *Castelli v. Board of Selectmen of Seekonk*, the court affirmed a judgment vacating a stop-work order in a case filed by private citizens whose project was affected by the order—"but only because the action was not one to enforce the local bylaw." In *Castelli*, the chairman of the Seekonk board of selectmen had influenced, through a third party, the building inspector to sign the order, stopping renovations that had previously been permitted. The plaintiffs in that case went to the superior court to ask that the order be revoked and to provide injunctive relief against the inspector. The court ruled that "the matter fell within the Superior Court's jurisdiction [under the act] because '[i]t d[id] not appear to have been [a] judicial enforcement action of a type specifically forbidden by [the act].'"

The court, however, reversed the superior court's ruling in part—that is, where the court had ordered the renovations could proceed.

The reasoning in *Castelli* supported the court's "view that a private citizen ha[d] no standing to directly seek an injunction to enforce a local zoning bylaw" under the act. "Instead, the administrative process [in the act] must be followed," the court wrote here. "Because this action was not brought pursuant to any provision of the act, the judgment ordering injunctive relief against Tusino must be reversed," the court found.

The case cited is *Castelli v. Board of Selectmen of Seekonk*, 15 Mass. App. Ct. 711, 448 N.E.2d 768 (1983).

Zoning News from Around The Nation

Arizona

Issue of whether Apache Junction should become a "dark skies community" being explored

A dark sky community is dedicated to preserving the night sky through local zoning ordinances addressing limitations on outdoor lighting. Right now, there's a question as to whether Apache Junction should become a member of the International Dark Sky Community (IDSC), the *Daily Independent* reported recently.

Apache Junction's city council voted to explore the cost to join the IDSC and what changes would be necessary to the local zoning ordinance to make the commitment. The city's mayor told the news outlet that given Apache Junction's location, if it becomes a dark-skies community it will benefit neighboring Gold Canyon and Peralta, too.

For more on the IDSC, including resources on light and lighting pollution, visit darksky.org. There, you'll find FAQs on how to identify whether your community has an outdoor lighting ordinance, how to ensure such an ordinance is enforced, and how to advocate for an outdoor lighting ordinance, and more.

Source: yourvalley.net

California

Student-housing project legal, court rules

An appeal over a lower court's decision to permit a voter-approved student-housing project (Nishi 2.0) to proceed has been abandoned, the *Enterprise* reported recently. Practically speaking, this means the legal battle over the housing project is over.

The 47-acre, 2,200-bed apartment complex was proposed for the University of California's Davis campus near Olive Drive and Interstate 80, the news outlet explained. But, the Davis Coalition for Sensible Planning sued, claiming the city council had erroneously placed the proposal on the June 2018 ballot. In its view, the city violated the California Environmental Quality Act (EQA) and its own zoning laws, the news outlet reported.

The group later claimed that Nishi 2.0 violated fair housing laws because it would limit housing to full-time college students.

In October 2019, a judge concluded Nishi 2.0 met the requirements under Yolo's affordable housing requirements and didn't discriminate against families or violate the EQA.

The group appealed, but in March it abandoned the appeal, so the lower court's ruling stands.

Source: davisenterprise.com

Maryland

State's highest court weighs in on whether county liable for \$45.4 million judgment related to rubble fill project

The Maryland Court of Appeals has ruled that Hartford

County wasn't liable for a \$45.4 million jury verdict related to a dispute over Maryland Reclamation Associates Inc.'s (MRAI) request to build a rubble fill near Havre de Grace, the *Baltimore Sun* reported recently. MRAI's request to proceed with the project began more than 30 years ago, and it's vowed to appeal the decision by the state's highest court to the U.S. Supreme Court, the *Sun* reported.

A lower court had reversed the jury award, which was based on a finding that the county government had engaged in a regulatory taking of a property that had been bought to develop the rubble fill. That rubble fill was intended to be used to house debris and waste from construction sites and demolished structures.

In the court's view, MRAI erred in asserting the regulatory taking claim. Instead, it should have sought a variance from the county, the news outlet reported. Therefore, it never exhausted its administrative remedies concerning the issue.

Source: baltimoresun.com

Massachusetts

Zoning board in Eastham denies permit to expand storage facility

Eastham's Zoning Board of Appeals has voted to deny a request to build additional storage facilities at a self-storage facility located on one of the main highways on Cape Cod—Route 6, the *Cape Cod Times* reported recently.

The owner of the Stow Away had filed a special use permit application, and following a four-month process consisting of zoning meetings and its request for additional information, the board concluded that allowing the construction would intensify the nonconforming storage use on the mixed-use property, *The Times* reported. Specifically, the property would go from four storage buildings to 10, resulting in approximately a 200% increase in nonconforming use, Edward Schneiderham, the chairman of the zoning board, told the news outlet.

An attorney for the storage facility owner told the news outlet that his client had paid for a predevelopment study, which showed an unmet need for this type of facility within 5 miles of the current Stow Away location.

The owner had 20 days to appeal the ruling.

Source: capecodtimes.com

New York

Real estate development firm said it will sue town board following its decision to stop reviewing a rezoning request

Real estate development firm Hudson View Park Co. (HVPC) said it may sue the Fishkill Planning Board to recoup \$1 million in losses following the board's decision to end review of HVPC's request to rezone a 16-acre parcel, the *Highland Current* reported recently.

The rezoning would have permitted HVPC to construct the Rolling Hills 463-unit development project consisting of 30 buildings along Route 9D. But, in April 2020, with a unanimous vote, the board opted to cease review, the news outlet reported.

HVPC contends the town breached a 2017 memo requiring it to engage in good-faith commitments concerning the rezoning request. But, the current board asserted it couldn't be held to a decision a previous board had made, the news outlet noted.

And in other news out of the Empire State, Manhattan's 200 Amsterdam Avenue tower can proceed with construction now that the New York Department of Buildings (DOB) has granted the developers approval to resume construction, *The City* reported.

In February 2020, a judge ruled the Upper West Side building project had to be downsized by about 20 stories.

The DOB's decision in April 2020 granted the developer, SJP Properties, permission to continue as "emergency work" in the COVID-19 era. The DOB said that there were concerns over wind forces, water infiltration, and over issues warranting the decision to permit emergency work on the project, the news outlet reported.

To reduce the risk of spreading COVID-19, the developer said that every construction worker onsite would be provided with personal protective equipment, would have their temperatures taken as they entered the worksite, and would need to practice social distancing.

Sources: highlandscurrent.org; thecity.nyc

Pennsylvania

State's highest court to weigh in on whether billboard is legal

The Pennsylvania Supreme Court will hear a city appeal of a Commonwealth Court ruling indicating that there was a legal basis for having a vinyl advertising banner over a billboard in Mount Washington, the *Pittsburgh-Post Gazette* reported recently.

The court will limit arguments in the case to just one issue—whether the lower court's ruling aligns with another ruling concerning Monroeville, Pennsylvania and Lamar Advertising, which operates billboards. In the other case, the lower court had ruled that electronic billboards and static vinyl billboards weren't one in the same, that is, one couldn't be substituted for the other since they were different uses, the news outlet reported.

The court's decision to hear this case is a "win" for the Mount Washington neighborhood of Pittsburgh, the news outlet reported, since it had lost appeals previously, a city spokesperson told the news outlet.

Source: post-gazette.com

Zoning Bulletin

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Sound Ordinance

Outdoor amphitheater owner sues town after request to hold live musical performances denied

Citation: *Harbourside Place, LLC v. Town of Jupiter, Florida*, 958 F.3d 1308 (11th Cir. 2020)

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

Harbourside Place LLC (Harbourside) owned Harbourside Place, an 11-acre commercial development located in Jupiter, Florida, along the Intercoastal Waterway. Harbourside Place contained a mix of retail, hotel, and office space that encompassed some open public spaces, including a riverwalk and an outdoor amphitheater.

Water's Edge Estates (WEE), a residential development, was located across from Harbourside Place on the Intercoastal Waterway.

Harbourside filed suit against the town of Jupiter, Florida and its Community Redevelopment Agency (CRA) after it blocked its request to hold live musical performances at its venue. Following the filing of the lawsuit, Jupiter enacted Ordinance 1-16 to deal with the regulation of amplified sound and other issues.

Harbourside requested a pre-enforcement preliminary injunction, alleging in part that certain sections of Ordinance 1-16 constituted content-based regulations of speech that violated the First and Fourteenth Amendments of the Constitution. It also contended that contrary to Jupiter's administrative findings, it had satisfied the criteria to be considered a certified outdoor venue (which, among other things, would have allowed it to hold live musical performances under the Jupiter Code).

The lower court denied the request for an injunction. It ruled that Harbourside had not met the criteria to be an outdoor venue and that the challenged sections of Ordinance 1-16 were content-neutral and didn't not violate the First Amendment.

Harbourside appealed.

DECISION: Affirmed.

The lower court didn't abuse its discretion in ruling that Harbourside hadn't established a likelihood of success on its claims that it qualified as an outdoor venue and that the challenged sections of the Jupiter Code were content-based, the Eleventh U.S. Circuit Court of Appeals ruled.

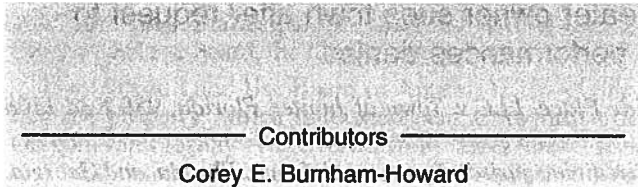
A CLOSER LOOK AT ORDINANCE 1-16

"Ordinance 1-16 establishe[d] a two-tiered scheme for the use of amplified sound at non-residential properties and contain[ed] a separate section relating to outdoor live musical performances," the court explained. The Jupiter Code "restrict[ed] the use of outdoor sound amplification devices—in all circumstances—between the hours of 11:00 p.m. and 7:00 a.m. It [was] 'unlawful to use,

operate or permit to be played . . . any outdoor sound amplification machine or device . . . for the production or reproducing of sound between the hours of 11:00 p.m. and 7:00 a.m., except if approved as an outdoor venue,” the court added.

The Code further provided that a venue could be “‘approved to operate outdoor sound amplification devices with extended hours up to 12:00 a.m.’ (i.e., for an extra hour) if it me[t] the criteria for an outdoor venue and complie[d] with applicable ‘[e]xterior sound standards.’”

Also, “[o]utside live musical performances associated with a non-residential establishment [had to] meet the outdoor venue regulations . . . or obtain special permits.” Therefore, “Jupiter require[d] [anyone] wanting to have an outdoor live musical performance on . . . non-residential property [to] obtain a special event permit from the Town or approval from the Town Council for an outdoor venue.”



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To obtain a preliminary injunction, Harbourside had to show that:

- a substantial likelihood of success on the merits;
- it would suffer irreparable injury if the injunction wasn't issued;
- the threatened injury to the venue outweighed the damage the injunction could cause to the town; and
- if the injunction was issued, the impact wouldn't have an adverse impact on the public.

The abuse-of-discretion standard of review applied to a case like this, the Eleventh Circuit explained. So, the main question it asked was whether the Harbourside failed to establish a substantial likelihood of success on the merits of its claims.

“We hold only that the district court did not abuse its discretion in denying injunctive relief due to Harbourside’s failure to show a substantial likelihood of success on the merits,” it explained.

Finding that it had not, the appeals court explained that:

- Jupiter’s director of zoning had testified that the approval of Harbourside’s amphitheater as an outdoor venue “did not permanently establish Harbourside as a certified outdoor venue,” so it “still had to satisfy all relevant code requirements to be considered an outdoor venue”;
- the Jupiter building officer who issued the certificate of occupancy for Harbourside Place confirmed that the “certificate of occupancy did not certify Harbourside Place’s compliance with any aspects of the Jupiter Code relating to uses of the property”;
- Harbourside had failed to satisfy several of the outdoor venue requirements, as explained by Jupiter’s assistant director of zoning and planning—for example, it hadn’t satisfied “the applicable exterior sound standards and its site plan did not identify all the items required by the Jupiter Code”; and
- acoustical engineering and sound architects who consulted with Jupiter testified that “Harbourside Place exceeded applicable sound standards during a number of special-permit and non-permit events in March, May, and October of 2015 and February and August of 2016”—and one of them also noted that “during certain events at Harbourside Place, the sound limiter sometimes did not work and was being bypassed.”

Ultimately, Harbourside hadn’t successfully challenged the “deficiencies that prevented it from achieving outdoor venue status under Resolution 2-13.”

THE ‘CONTENT NEUTRAL’ ISSUE

The court avoided making a determination as to the

sound ordinance “on its face [was] a content-based or content-neutral regulation of speech.” “We hold only that the district court did not abuse its discretion in denying injunctive relief due to Harbourside’s failure to show a substantial likelihood of success on the merits,” it explained.

Taking

Pipeline company that asserted eminent domain challenges pre-taking valuation of subject property

Citation: Rover Pipeline LLC v. Rover Tract No. PA WA HL-004.500T, Comprised of Permanent Easement(s) Totaling 0.9 Acres, more or less, and Temporary Easement(s) Totaling 1.33 Acres, more or less, Over a Parcel of Land in Hanover Township, Washington County, Pennsylvania, Totaling 49.571 Acres, more or less, 2020 WL 2214132 (3d Cir. 2020)

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.

Rover Pipeline LLC (Rover) used eminent domain to take several easements for the natural-gas pipeline that it planned to bury across the middle of James and Diane Buchanan’s farm.

Neither party could agree on a fair price for the easements, so the lower court appointed a commission to settle the issue. The commission calculated the farm’s pre-taking value after visiting the farm and conducting a hearing.

At the hearing, the Buchanans testified as did experts for both sides. Experts’ valuation reports, maps, and evidence about the surrounding area was used to assess the potential for future development.

The commission found that the farm’s best pre-taking use was “rural recreational and residential uses, which included . . . multi-family residential and recreational use.” It unanimously valued that best use at \$6,400 per acre, for a total pre-taking value of \$790,048.

The commission also found that the farm’s best post-taking use was the farm’s “long-standing existing rural recreational and residential uses,” rather than “multi-family residential” development. It based this finding on the fact that Rover could block residential development—the permanent easement would give Rover sole discretion to grant or deny construction requests, and Rover was unlikely to grant those requests. Also, since Rover’s easements cut the farm right down the middle, they would substantially impede the Buchanans’ efforts to link utilities from the upper to the lower part of the farm. Therefore, the farm’s post-taking value was calculated at \$3,400 per acre, for a total post-taking value of \$419,713.

The commission subtracted the post-taking value from the pre-taking value to arrive at a difference of \$370,335. After adding \$4,224 for Rover’s temporary workspace easement and subtracting the \$65,628 that Rover had already paid the Buchanans for its initial right of entry, the commission set Rover’s final bill at \$308,931.

The Buchanans and Rover contested the commission’s findings with the lower court. That court adopted the commission’s findings. Rover appealed, claiming the commission and lower court had overestimated the farm’s pre-taking value and underestimated its post-taking value.

DECISION: Reversed; case sent back for further proceedings.

The lower court erred in affirming the commission’s pre-taking estimate as it assumed the farm could be developed in ways local zoning rules barred.

Rover contended that the commission had identified the wrong best use and overestimated the farm’s pre-taking value. “We agree,” the Third U.S. Circuit Court of Appeals wrote.

The commission had found that the “best pre-taking use was ‘rural recreational and residential uses, which include[d] a less dense multi-family residential and recreational use.’” “We cannot find any evidence in the record to support a ‘multi-family residential’ use,” though, the court noted.

Here, the farm wasn’t zoned for multi-family-residential use. The term “multifamily dwelling” was defined in the local zoning ordinance as “[a] residential building designed exclusively for occupancy by three (3) or more families living independently of each other and containing three (3) or more dwelling units.” This included structures such as apartments, townhouses, and condominiums, the court explained.

But, the farm was *now* zoned for “rural residential use and was (at the time of the taking) zoned for rural preservation use, both of which allow[ed] only single-family dwellings.”

The farm was now zoned for “rural residential use and was (at the time of the taking) zoned for rural preservation use, both of which allow[ed] only single-family dwellings.”

There was no indication that the designations were “reasonably likely to change.” In fact, the township “had previously rejected the Buchanans’ requests for a zoning variance. Neither the [c]ommission nor the [lower] [c]ourt considered this problem in valuing the pre-taking best use,” the court found.

The bottom line: When the commission choose a use that didn’t have any “rational relationship to the supportive evidentiary data,” an error clearly occurred, the court found.

As a result of the appeals court’s ruling, the case was sent back for a “fresh” evaluation of the pre-taking valuation.

Case Note:

The appeals court ruled the post-taking valuation the lower court and the commission had arrived at was proper.

Easement

Did zoning regulation provide an easement under which protestors weren't subject to a lawful disbursement order?

Citation: *Meyers v. City of New York*, 2020 WL 2079458 (2d Cir. 2020)

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

From September 2011 and November 2011, the "Occupy Wall Street" protest went on in New York City. The protestors demonstrated over increasing economic inequality and the improper influence of corporations on government. During this time, many of the protestors camped out in Zuccotti Park (the park), a privately-owned plaza in Manhattan's Financial District.

The protestors erected tents and other structures, which the City of New York claimed violated its sanitation laws and limited the public's access to the park. Over time, the conditions became hazardous, with protestors using gasoline and diesel generators near large quantities of flammable materials.

New York Police Department officers were dispatched to the park to order the protestors to leave with their personal belongings or face arrest. About 150 of the protestors refused to leave and were arrested.

The arrested protestors filed suit, alleging they were denied due process in being evicted from the park. The lower court granted judgment on the pleading in the city's favor, alleging the protestors hadn't sufficiently alleged constitutional violations. Then, the protestors appealed.

DECISION: Affirmed.

The protestors didn't have property interests to occupy the park.

The protestors argued that a city zoning regulation granted them an "easement" to the park. Also, they contended New York's mayor had "publicly announced that so long as the camping demonstrators continued to obey the law they must and would be allowed to stay." "Neither source created an individualized right to remain in the [p]ark, let alone to do so while flouting [c]ity rules," the Second U.S. Circuit Court of Appeals found.

"Neither source created an individualized right to remain in the [p]ark, let alone to do so while flouting [c]ity rules," the Second U.S. Circuit Court of Appeals found.

To assert a due process claim, the protestors had to show that they had been "deprived of a protected interest in 'property' or 'liberty.'" "Such an interest must be 'individual in nature,'" the court noted. Therefore, "where the 'intended beneficiaries' of a particular law '[we]re entirely general-

ized,' . . . the law d[id] not create a property interest protected by the Due Process Clause."

The bottom line: The city's zoning laws granting access to the park ran to the public generally. And, such "universal benefits [we]re not property interests protected by the Due Process Clause."

And, without addressing the mayor's statement—which the protestors contended created individual entitlement to use to the park—they "ignore[d] the [m]ayor's qualification that they could remain . . . only so long as they obeyed the law." Since the protestors refused to comply with a lawful order to disperse given their "habitual violation of [c]ity rules," the mayor's statement didn't provide any weight as to their property interest claim.

CASE NOTE

The protestors also alleged they had been falsely arrested, maliciously prosecuted, and retaliated against for exercising their free speech rights. The court disagreed, noting that:

- 1) "the NYPD officers had probable cause to arrest [them] for, among other offenses, disorderly conduct . . . and trespass" under state law after they wouldn't leave the park despite the dispersal order; and
- 2) the existence of probable cause to arrest the protestors defeated their First Amendment claims, which were "premised on the allegation that [officers] arrested [them] based on a retaliatory motive."

There was "a narrow exception . . . where there [wa]s 'objective evidence' that the police refrained from arresting similarly situated people not engaged in speech," but no such facts were present here. The protestors admitted that the officers "arrested 'everyone who remained in the [p]ark' following the dispersal order."

Also, the closing of the park following the protestors' arrest wasn't discriminatory. The temporary closing of the public forum was "content neutral" and "narrowly tailored to serve a significant government interest" since the protestors had other modes of communication they could use.

A CLOSER LOOK

The court found, the dispersal order was lawful as it "was intended to promote several legitimate governmental goals and was therefore not arbitrary." The city also had "significant . . . interests, including the need to address mounting fire hazards and reduce congestion," the court explained. And, that order "was appropriately tailored to achieve those interests and the [c]ity was not required to use the absolute 'least restrictive or least intrusive means' possible."

Special Use Permit

Citizens take issue with how city council proceeded after approving zoning amendment granting special-use permit

Citation: *Open Meeting Law Complaint, 2020 Mass. Op. Atty. Gen. No. 51 (Mass.A.G.), 2020 WL 2096510 (2020)*

A recent Massachusetts Opinion Letter by that state's attorney general discussed the issue of whether a local city violated the state's Open Meeting Law (OML) in how it handled a special use permit request.

THE FACTS

During a December 2, 2019, meeting, the Newton City Council approved by majority vote a special permit for a mixed-use development project and a request to rezone three parcels of land for business use at Oak Street, Needham Street, and Tower Road in Newton. The mixed use development project, the "Northland Project," was expected to transform a mill factory into 800 units of apartments, 140 of which would be deemed affordable, and include public parks, a spray park, and restaurant and office space, as well as a shuttle service to the subway.

Following this approval, several Newton residents who opposed the project, sought to overturn the decision and repeal the zoning change. The city clerk certified the number of signatures obtained on their petition and concluded they had enough to put a ballot measure to the voters.

Under the city charter, the council had 30 days to review the zoning amendment decision. On January 2, 2020, the council posted notice of a meeting scheduled for January 6, 2020 at 7 p.m. The last topic listed on the notice was described as "#425-18(2)—Request to set the date for a special election." It added, "in the event that it becomes necessary to call an election to refer to the voter's docket item #425-18, passed by the City Council on December 2, 2019."

On January 3, the council amended its notice to include one additional topic: "#425-18-Request to rezone three parcels for Northland Development." The notice stated this item would be before the city council for action at a special meeting of the council on January 8 where "the [c]ouncil must decide whether it will vote to repeal or rescind its decision on Board Order #425—18 or refer the measure to a public vote."

A few minutes later on January 3, the council posted the notice of the additional meeting to be held at 6 p.m. on January 8. The notice included:

- "#425-18-Request to rezone three parcels for Northland Development";
- #425-18(2)—Request to set the date for a special election."

The notice stated that the city clerk had found that the petition requesting the council repeal or rescind the special permit and zoning amendments for the Northland project

had the requisite number of signatures, so the council had to decide if it would vote to repeal or rescind its decision or refer the matter for a public vote.

The January 6 meeting proceeded as planned, with various committee members discussing whether to refer the Northland Project matter to the whole committee for a decision on whether to repeal the zoning amendment or refer it for a public vote. Three members were concerned about referring it to the committee. Then, with a majority vote, the committee voted to refer it to the whole committee on January 8.

At the January 8 meeting, a city councilor reviewed the history on the Northland project and motioned to repeal the council's December 2, 2019, decision approving the zoning amendments.

The whole committee voted against the repeal, which meant the issue would be put on a ballot for the voters.

Another councilor explained the process for setting a date for a special election. He noted that the election had to be set within 120 days, and since an election was already scheduled for March 3, a motion to set March 3 as the special election day was made. That motion was approved.

During a January 21 meeting, the council reaffirmed the vote of the whole committee to set March 3 as the special election date.

On March 3, voters approved the council's December 2, 2019 decision to grant the special permit and approve zoning amendments for the Northland project.

The issue for the attorney general's office to issue its opinion on whether Newton violated the OML.

OPINION: No OML violation occurred.

The OML required public bodies to "post notice of each meeting 'at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays' and that every notice include 'the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting,'" wrote Assistant Attorney General KerryAnne Kilcoyne.

"A public body may amend the notice within 48 hours of a meeting if a previously unanticipated topic comes to the [c]hair's attention," she added. Also, public bodies had to list topics for discussion in a way that had "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting."

DID THE TOPIC INCLUDE SUFFICIENT SPECIFICITY?

Sufficient specificity generally existed "when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion," the opinion noted.

Public bodies had to list topics for discussion in a way that had "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting."

Here, the complaint alleged the council violated the OML by discussing the Northland project where that topic was not listed on the original notice but rather was added within 48 hours of the January 6 meeting. "A public body may amend a meeting notice within 48 hours of a meeting to include an unanticipated topic and then discuss that topic during the meeting," the letter explained. "We find that the topic was not anticipated by the chair 48 hours in advance of the meeting." It added.

On Friday, January 3, the clerk certified that a sufficient number of signatures had been collected by citizens to put a ballot measure on for a vote. "At that point, the [c]ouncil was required to review its special permit and zoning amendment decision with respect to the Northland project within 30 days of receiving confirmation of the certified signatures."

"Where the chair was notified and became aware of the need for discussion and review of the [c]ouncil's December 2, 2019, decision regarding the Northland project within the two business days prior to the January 6 meeting, she could not have reasonably anticipated the discussion 48 hours prior to the meeting, not including Saturdays, Sundays, and holidays."

Therefore, the attorney general's office found that the council hadn't violated the OML by amending the notice to include the unanticipated topic.

A Closer Look:

The [c]ouncil could have discussed the unanticipated topic without adding it to the meeting notice at all, the [c]ouncil followed our recommended best practice of amending its meeting notice to include topics that arise fewer than 48 hours before a meeting, so that members of the public are given advance notice of agenda items."

Right to Know Laws

Borough denies request to copy architect's and land surveyor's plans—but did the denial constitute RTKL violation?

Citation: In the Matter of Adrian Jadic, Requester v. Wyomissing Borough, Respondent, 2020 WL 2235454 (Pa. Off Open Rec 2020)

Adrian Jadic filed a request for records for special exception applications submitted to the Zoning Hearing Board (ZHB), including public hearing notices, ZHB memos, e-mails, proofs of advertisement and applications. Wyomissing Borough (the borough) told Jadic that he could inspect the plans but not copy them as they were protected by the Pennsylvania Uniform Construction Code.

On March 10, 2020, the Jadic appealed to the Office of Open Records (OOR), challenging the partial denial and stating grounds for disclosure. The OOR invited both parties to supplement the record and directed the borough to notify any third parties of their ability to participate in the appeal.

On March 30, 2020, the borough submitted a position statement reiterating why it would not bring copies of the plans to Jadic. It also asserted that the Federal Copyright Law (FCL) protected the plans and submitted the open records officer's affidavit.

Jadic submitted a position statement arguing that the plans weren't subject to copyright protection.

In April 2020, the borough submitted a supplemental affidavit. Jadic resubmitted a position statement, arguing that duplication of a sketch that was presented at a public meeting couldn't be prohibited because it had already been disclosed.

The issue for the OOR to decide was whether Jadic was entitled to copy the plans under the OOR.

DECISION: Appeal denied.

The borough met its burden of proving the FCL limited disclosure of the requested records to inspection only; reproduction wasn't permitted.

The Right to Know Law (RTKL) was designed to "empower citizens by affording them access to information concerning the activities of their government." And, it was "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions."

The Right to Know Law (RTKL) was designed to "empower citizens by affording them access to information concerning the activities of their government."

The OOR was authorized to hear appeals, with an appeals officer having the authority to conduct a hearing to resolve an appeal. "The decision to hold a hearing is discretionary and non-appealable." "The law also state[d] that an appeals officer may admit into evidence testimony, evidence and documents that the appeals officer believe[d] to be reasonably probative and relevant to an issue in dispute. Here, neither party requested a hearing; however, the OOR ha[d] the requisite information and evidence before it to properly adjudicate the matter."

The bottom line: The borough, a local agency subject to the RTKL, was required to disclose public records. "Records in the possession of a local agency [we]re presumed public unless exempt under the RTKL or other law or protected by a privilege, judicial order or decree." Also, "[u]pon receipt of a request, an agency [wa]s required to assess whether a record requested is within its possession, custody or control and respond within five business days." And, it was the borough's burden to show that any applicable exemptions applied.

To show an exemption applied, the borough had to show by a preponderance of the evidence that the documents were protected under the FCL and could not be reproduced. Previously, a state court had found that the FCL didn't exempt materials from disclosure; it merely limited the

level of access to the records “with respect to duplication, not inspection.”

The OOR didn’t have jurisdiction under federal law to resolve the issue of whether the borough’s disclosure of copyrighted material under the RTKL without the owner’s consent constituted a copyright infringement, “where a local agency has refused to duplicate a public record in response to a RTKL request by invoking the Copyright Act, our review must be confined to determining whether the local agency has met its burden of proving facts sufficient to show that forced duplication of copyrighted material under the RTKL implicates rights and potential liabilities arising under the Copyright Act that can only be resolved by the federal courts.”

Here, since the borough involved the copyright act to limit access to inspection only, “the absence of consent by the copyright owner to duplication in response to a RTKL request should be presumed.”

A CLOSER LOOK

The open records officer attested that the requested documents had been prepared by an architect whose seal and handwritten initials were included on the plans. She also provided correspondence showing that the architect had indicated copyright protection of his work and barring reproduction of the plans.

Zoning News from Around the Nation

California

Court rules on whether city’s provisional use permit approval was an abuse of discretion

The tale of two hoteliers unfolded in a Santa Clara County courthouse recently. On the one side was Country Inn owner Chandrakant Shah; on the other, the developer of a proposed Holiday Inn right next door.

Shah filed suit to block the developer from moving forward with the proposed three-story hotel, claiming the city’s zoning administrator should not have provided a provisional use permit because it provided the developer with too many parking and building height exemption, the *Mountain View Voice* reported recently.

A Santa Clara County Superior Court judge reversed the city council’s approval of the project, the news outlet reported. The court found that it was an abuse of discretion to award the permit because the local zoning ordinance didn’t allow a three-story hotel.

But, that doesn’t mean the developer is completely out of luck. The area is commercially zoned, so a two-story hotel is not out of the question.

Source: mv-voice.com

Indiana

Controversial proposal for mixed-use proposal dealt a crushing blow

A Johnson Superior Court judge recently ruled that the

Indianapolis City-County Council erred in approving a proposal for a mixed-use development that would include office, retail, and restaurant space on heavily wooded land in the Haverstick Woods area, the *Indy Star* reported recently.

The court had to decide whether a “call down” used to approve the project had been handled properly, the news outlet explained. The judge found that the city-county council should have sent the issue back to the Metropolitan Development Commission (MDC) for public review.

Those opposed to the project claimed that the loss of 16 acres of trees would have a detrimental impact on the local ecosystem, and they filed suit alleging they had been denied the right to a full hearing before the MDC.

Since the judge found that a procedural misstep occurred, the project’s approval has been nullified, the *Indy Star* reported.

For background on the battle over Haverstick Woods, visit indianaforestalliance.org/haverstick-road-woods/.

Source: indystar.com

Massachusetts

Eastham’s ZBA votes to deny special permit for storage facility

On an application for a special-use permit to erect six new storage structures at Eastham, Massachusetts’ Stow Away self-storage facility, by unanimous vote, the Zoning Board of Appeals (ZOA) decided to deny the request, the *Cape Cod Times* reported recently.

Prior to voting to deny the permit, the ZBA held meetings and requested reports concerning the proposal to build a half-dozen structures (which would bring the total number of buildings to 10) along Route 6 in Eastham, the news outlet reported. Its decision was based on the town planner’s findings of facts that the building of the six additional structures would result in an intensification of the existing nonconforming storage use on a mixed-use property, the *Times* reported.

Zoning Board Chairman Edward Schneiderhan told the *Times* that the nonconformity of use was calculated at around 200%, representing a tremendous increase. The storage facility’s attorney asserted that his client had paid for a predevelopment study concerning area storage facilities and found that there was an unmet need within five miles of the current Stow Away location, the news outlet reported.

It was unclear as of print time if the storage facility’s owner would appeal the ZBA’s decision.

Source: capecodtimes.com

North Dakota

Cass County seeks rural residents’ input on planning and zoning survey

Cass County, North Dakota has asked rural residents to complete an online survey to provide insights into how regulations regarding land-use management should be updated to enhance outreach and services in local communities, *WZFG* reported recently.

The county is in the process of updating its subdivision ordinance and seeks to develop a model zoning ordinance for the local townships, the news outlet explained. The

request for feedback comes following the 2018 adoption of its Comprehensive & Transportation Plan, which had last been updated in 2005. According to Cass County's website, "The comprehensive plan has established livability, resilience, and regional collaboration as the three core guiding principles that provide the framework to address transportation, community development, intergovernmental coordination, and growth management strategies. This plan is the result of an extended process involving a wide variety of stakeholders in multiple meetings and other forms of public engagement."

To download Cass County's plan, visit casscountynynd.gov/home/showdocument?id=5508. For more information about the project, visit cassnewregs.com/. And, to view the survey, visit surveymonkey.com/r/CassTwpSurvey.

Source: am1100theflag.com

Oregon

LUBA finds 108-acre farm won't be split up after all

A county zoning decision to permit the splitting up a 108-acre farm into smaller parcels has been reversed by an Oregon land use board, the *Capital Press* reported recently.

The Oregon Land Use Board of Appeals (LUBA) ruled that the property, which is located near Crawfordsville, Oregon, can't legally be converted from "farm forest" zone to a "non-resource" zone, the news outlet explained. Non-resource zone would have met the property could be divided into five-acre tracts, it added.

Granting the right to do this would have violated the county's land-use plan, the LUBA found. That's because the zoning code provided farm and forest zoning for big game habitat, the news outlet reported.

Source: capitalpress.com

Rhode Island

Green energy developer's lawsuit tossed out

A Rhode Island Superior Court has thrown out a lawsuit filed by Green Development LLC (GD), one of the state's biggest renewable energy developers, *Eco RI* reported recently. GD filed suit challenging the town of Exeter's decision to reject its proposal for a multi-acre solar installation, the news outlet explained.

The court found that the plans hadn't been certified before the town enacted a moratorium so no vested right to move forward with the project existed, the news outlet reported.

Source: ecori.org

Virginia

Outdoor dining to soon become a reality due to temporary COVID-19-related ordinance

In May 2020, Gov. Ralph Northam's initiated Phase 1 of the state's Forward Virginia plan. On the heels of that plan's roll out, the City of Williamsburg issued emergency temporary zoning guidance to local business owners and managers.

"The [g]overnor's order allows for food and beverage facilities to reopen to onsite service using outdoor seating areas. Occupancy at the facilities cannot exceed 50% of the lowest occupancy load on the certificate of occupancy, if applicable. No more than ten people may be seated as a party. Dining parties must be seated at least six feet apart from each other. Patrons may not self-serve food or condiments. Buffets must be staffed by servers. Bar seats must be closed to patrons. Employees must wear face coverings at all times. Frequently contacted surfaces must be disinfected and cleaned hourly. Tabletops, chairs and credit card terminals and bill folders must be cleaned between each patron's use. Businesses that do not adhere to the requirements will close," the city explained in a press release.

Through the city's emergency temporary zoning guidelines, many hospitality-focused businesses may reopen, the press release explained. "The [c]ity's emergency offer clear procedures pertaining to outdoor seating at all properly licensed restaurants, dining establishments, food courts, breweries, microbreweries, wineries and tasting rooms," it added.

"As the [g]overnor relaxes restrictions on businesses across Virginia, it has become obvious the [c]ity would need to provide guidance to our local entrepreneurs on best practices," City Manager Andrew Trivette said.

The guidelines, which are categorized by facility type and effective immediately, expire upon direction of the city manager, the adoption of an ordinance by the city council, or by July 31, 2020.

For additional information, visit williamsburgva.gov/Home/Components/News/News/12065/85?backlist=%2F.

Source: williamsburgva.gov