



# CITY OF ELKO

## Planning Department

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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, August 3, 2021 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, beginning at 5:30 P.M., P.D.S.T. and by utilizing GoToMeeting.com.

Please join the meeting from your computer, tablet, or smartphone: <https://global.gotomeeting.com/join/228952349>. You can also dial in using your phone. **+1 (571) 317-3122**. Access Code: **228-952-349**. Comments can also be emailed to [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov).

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 COUNTY COURTHOUSE – 571 Idaho Street, Street, Elko, NV 89801

Date/Time Posted: July 28, 2021 2:10 p.m.

ELKO COUNTY LIBRARY – 720 Court Street, Elko, NV 89801

Date/Time Posted: July 28, 2021 2:05 p.m.

ELKO POLICE DEPARTMENT – 1448 Silver Street, Elko NV 89801

Date/Time Posted: July 28, 2021 2:15 p.m.

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

Date/Time Posted: July 28, 2021 2:00 p.m.

Posted by: Shelby Knopp, Planning Technician  
Name Title

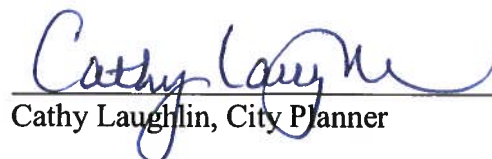
  
Signature

The public may contact Shelby Knopp by phone at (775) 777-7160 or by email at [sknopp@elkocitynv.gov](mailto:sknopp@elkocitynv.gov) to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV.

Dated this 28<sup>th</sup> day of July, 2021.

### NOTICE TO PERSONS WITH DISABILITIES

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

  
Cathy Laughlin, City Planner

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**REGULAR MEETING AGENDA**  
**5:30 P.M., P.D.S.T., TUESDAY, AUGUST 3, 2021**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**  
**<https://global.gotomeeting.com/join/228952349>**

**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**

July 6, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

**I. NEW BUSINESS**

**A. PUBLIC HEARING**

1. Review, consideration, and possible action on Zoning Ordinance Amendment 3-21, Ordinance No. 864, an amendment to the City Zoning Ordinance, specifically Title 3, Chapter 2, Section 17 (Traffic, Access, Parking, and Loading Regulations), and matters related thereto. **FOR POSSIBLE ACTION**

At the July 6, 2021 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance Section 3-2-17.

**B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**

1. Review and consideration of Division of Large Parcels 1-21, a Tentative Map filed by Section Five Associates, LLC for the division of approximately 590.258 acres of property into eight lots for future development. Approximately 314.652 acres fall within an A (General Agriculture) Zoning District in the City of Elko and approximately 275.60 acres of property fall within Elko County. **FOR POSSIBLE ACTION**

Subject property is located at the northern terminus of North 5<sup>th</sup> Street. (APNs 001-01D-001 and 006-09L-002)

## 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, JULY 6, 2021**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**  
**<https://global.gotomeeting.com/join/114164549>**

**NOTE:** The order of the minutes reflects the order business was conducted.

**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  
Mercedes Mendive  
Tera Hooiman  
John Anderson  
Stefan Beck  
Gratton Miller

**Excused:** Giovanni Puccinelli

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

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

*There were no public comments made at this time.*

**APPROVAL OF MINUTES**

June 1, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

**\*\*\*Motion:** Approve the June 1, 2021 minutes as presented.

**Moved by Commissioner Tera Hooiman, Seconded by Commissioner Mercedes Mendive.**

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

## I. NEW BUSINESS

### A. PUBLIC HEARING

1. Review and consideration of Tentative Map 3-21, filed by Bailey and Associates, LLC for the development of a subdivision entitled Cedar Estates Phase 3 involving the proposed division of approximately 7.31 acres of property into 34 lots for residential development within the RMH (Residential Mobile Home) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located at the northern terminus of both Primrose Lane and Daisy Drive. (APN 001-926-111)

Sheldon Hetzel, Bailey & Associates, 780 W Silver Street, explained that this was the third phase of a project that they took over. They didn't do Phase 1, but they did Phase 2. It has taken awhile to get to the third and final phase, but they are here to present it. He thanked staff for their input and help. Housing has been a difficult issue with skyrocketing pricing, materials and labor costs. Bringing housing opportunities to the market has been a need. This would fill a segment of the market place that they hope will be helpful to the community. They will all be manufactured homes on permanent foundations, keeping with the surrounding neighborhood.

Dakota Hyde, 2202 Larkspur Street, said last time he came to this meeting he had a drawn together map. The way it was drawn showed a park behind his address. He wanted to see if that was still the case.

Michele Rambo, Development Manager, explained that there were no park spaces planned. That was part of an earlier plan with a different use type.

Mr. Hyde asked if he could get a copy of the map to answer any other questions he had. (Yes)

Michele Rambo, Development Manager, went over the City of Elko Staff Report dated June 7, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Cathy Laughlin, City Planner, had no other concerns or conditions besides what was included in the Staff Report.

Jamie Winrod, Fire Marshal, had no comments and recommended approval.

Scott Wilkinson, Assistant City Manager, recommended approval with a modification of standards for the referenced lots in the Staff Report. Additionally, he thought some riprap protection would be required for the storm drain outlet. There is quite a bit of erosion already and some additional flow will be added to the discharge point.

Mr. Hyde asked if there was a start date for the project.

Mr. Hetzel said it would depend on State approval, but he imagined it would be in the fall sometime.

**\*\*\*Motion: Forward a recommendation to City Council to conditionally approve Tentative Map No. 3-21 subject to the conditions found in the City of Elko Staff Report dated June 7, 2021, listed as follows:**

**Development Department:**

1. The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.
2. Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.
3. The Tentative Map must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval by the City of Elko.
4. Construction plans must be approved by the Nevada Department of Environmental Protection prior to issuance of a grading permit.
5. Tentative Map approval does not constitute authorization to proceed with site improvements.
6. The applicant must submit an application for Final Map within a period of four (4) years in accordance with NRS.360(1)(a). Approval of the Tentative Map will automatically lapse at that time.
7. A soils report is required with Final Map submittal.
8. A hydrology report is required with Final Map submittal.
9. Final Map construction plans are to comply with Chapter 3-3 of City code.
10. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.
11. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.
12. A modification from standards from 3-3-13(A) be approved by City Council for Lots 4, 5, 13, 14, 21, 22, 23, and 25 to allow for shorter-than-required front lots widths.
13. Any slopes greater than 3:1 shall be rip-rapped.

**Public Works Department:**

14. All public improvements to be installed at time of development per Elko city code. See memo from Community Development.

**Utilities Department:**

15. An isolation valve will need to be installed midway through the development per NAC 445A.6137 which requires that “other areas must be located in such a manner that portions of water mains can be isolated in lengths of 800 or less by the closure of valves”. The length of pipe around the loop is well over 1,000 feet. Please show this valve on the plans prior to City Council consideration

Commissioner Miller’s findings to support the recommendation were that the proposed subdivision and development is in conformance with both the Land Use and Transportation Components of the Master Plan as previously discussed in this report. The proposed subdivision and development does not conflict with the Airport Master Plan, the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012; the Wellhead Protection Program; or applicable sections of the Elko City Code. The proposed subdivision complies with Section 3-3-5(E)(2)(a)-(k) as discussed in this report and as required by Section 278.349(3) of the Nevada Revised Statutes. The proposed subdivision complies with all other relevant sections of City Code with the exception of: a. Lots 4, 5, 13, 14, 21, 22, 23 and 25 are located on curved portions of the streets and have short front lot widths. A modification of standards is required to make these lots conform. The property is not located within the Redevelopment Area. Therefore, there is no conflict with the Redevelopment Plan.

Moved by Commissioner Gratton Miller, Seconded by Commissioner Stefan Beck.

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

2. Review, consideration, and possible action on Conditional Use Permit No. 2-21, filed by Catherine Wines on behalf of Elko County and Great Basin Child Advocacy Center, which would allow for a new principal permitted use within the PQP, Public, Quasi Public zoning district, and matters related thereto. **FOR POSSIBLE ACTION**

Any new use within the PQP, Public-Quasi, Public zoning district requires a Conditional Use Permit.

Ms. Laughlin went over the City of Elko Staff Report dated June 9, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Rambo had no other comments or conditions.

Ms. Winrod had no comments.

Mr. Wilkinson recommended approval as presented by staff.

**\*\*\*Motion: Conditionally approve Conditional Use Permit No. 2-21 subject to the conditions in the City of Elko Staff Report dated June 9, 2021, listed as follows:**

1. The permit is granted to the applicant Elko County/ Great Basin Child Advocacy

Center.

2. 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.
3. Approval of Vacation 1-21, vacating 7' of Golf Course Road right-of-way for the development of public improvements aligned with other improvements to the northwest.
4. CUP 2-21 to be recorded with the Elko County Recorder within 90 days after the commencement of the construction of the new building

Commissioner Beck's findings to support the recommendation were that the proposed development is in conformance with the Land Use Component of the Master Plan. The proposed conditional use permit meets Objectives 3 & 8 of the Land Use Component of the Master Plan. The proposed development is in conformance with the existing transportation infrastructure and the Transportation Component of the Master Plan. The site is suitable for the proposed use. The proposed development is in conformance with the Wellhead Protection Program. The proposed use is consistent with surrounding land uses. The proposed use is in conformance with City Code 3-2-8 PQP, Public-Quasi, Public with the approval of the Conditional Use Permit. 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 parcel is not located within a designated Special Flood Hazard Area. With the approval of Variance 2-21, the property is in conformance with Elko City Code 3-2-17. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-18, and 3-8 of the Elko City Code.

Moved by Commissioner Stefan Beck, Seconded by Commissioner Gratton Miller.

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

## **B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**

2. Review, consideration, and possible recommendation to City Council for Vacation No. 1-21, filed by The City of Elko on behalf of Elko County, for the vacation of the southwesterly portion of Golf Course Road, consisting of an area approximately 1,842 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

In discussion with the proposed Great Basin Child Advocacy Center, staff requested that the new curb, gutter and sidewalk line up with existing infrastructure at the



intersection of Cedar St. and Golf Course Rd. This vacation will align the Right-of-Way from College Ave. to Cedar Street where it currently is not aligned. City Council accepted the petition for the vacation on June 22, 2021.

Ms. Laughlin went over the City of Elko Staff Report dated June 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Rambo had no further comments or conditions.

Chairman Dalling asked if Mr. Thibault had anything on this item.

Ms. Laughlin stated that the only thing he had was the easement that was discussed in the Staff Report.

Ms. Winrod had no comments.

Mr. Wilkinson recommended approval as presented by staff.

**\*\*\*Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No. 1-21 subject to the conditions listed in the City of Elko Staff Report dated June 23, 2021, listed as follows:**

- 1. 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.**
- 2. Record a public utility and drainage easement over the area being vacated.**

**Commissioner Miller's findings to support the recommendation were that 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 property proposed for vacation is not located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation with the recommended conditions is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.**

**Moved by Commissioner Gratton Miller, Seconded by Commissioner Mercedes Mendive.**

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

- 1. Review, consideration and possible approval of Final Map No. 4-21, filed by Legion Construction and Development, LLC, for the development of a subdivision entitled Jarbidge Estates involving the proposed division of approximately 2.16 acres of property into 18 lots for townhouse 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 east side of N 5<sup>th</sup> Street approximately 450 feet north of Dakota Drive. (APN 001-610-093)

Mike Shanks, Shanks Enterprises, 982 Wolf Creek Drive, said that this was a nice project, and they thought it would be a good fit for the City. It is pretty straightforward. He looked through the recommendations and conditions for approval and he had no issues with those.

Ms. Rambo went over the City of Elko Staff Report dated June 10, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Laughlin had no other concerns or conditions. She also added that Engineering's comments and concerns were addressed in the Staff Report.

Ms. Winrod had no comments.

Mr. Wilkinson recommended approval as presented by staff.

Commissioner Mercedes Mendive asked what the motivation was behind having an association for the properties. She mentioned that she wasn't a fan of associations and thought they could be really complicated. She asked what the association would cover.

Mr. Shanks explained that the association was being created because there are some common areas. There is shared access, so the HOA will have to maintain and keep up with the streets, which are not being dedicated to the City. You need some avenue for everyone that owns common stuff to be able to take care of it.

**\*\*\*Motion: Forward a recommendation to the City Council to 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 4-21 with conditions listed in the Staff Report dated June 10, 2021, listed as follows:**

**Development Department:**

- 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 Jarbidge Estates is approved for 18 townhouse lots and 1 common lot.
5. The Utility Department will issue a Will Serve Letter for the subdivision upon approval of the Final Map by the City Council.
6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.
7. Site disturbance, including clearing and grubbing, shall not commence prior to the issuance of a grading permit by the City of Elko.
8. Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.
9. Conformance with the conditions of approval of the Tentative Map is required.
10. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. The Engineer of Record is to certify that the project was completed in conformance with the approved plans and specifications.
11. All slopes greater than 3:1 shall be permanently stabilized prior to acceptance of any public improvements by the City Council.

**Engineering Department:**

12. Remove the City of Elko from the utility company certificate prior to City Council consideration.
13. The area for Lot 19, the common lot, is different on the map from the closure calculations. Please revise prior to City Council consideration.
14. Label lot areas to the nearest whole square foot prior to City Council consideration.
15. A monument of some sort is required at all lot corners. Please label prior to City Council consideration.

**Planning Department:**

16. Add parcel number to the existing easement label on the far right of the map prior to City Council consideration.

**Public Works Department:**

17. All public improvements to be constructed per City of Elko code at time of development.

Commissioner Beck's findings to support the recommendation were that the Final Map for Jarbidge Estates 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), 3-2-17, and 3-8 of City Code.

Moved by Stefan Beck, Seconded by Tera Hooiman.

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

3. Review, consideration, and possible recommendation to City Council for Vacation No. 2-21, filed by The City of Elko on behalf of Nevada Health Centers, for the vacation of the southwesterly portion of Golf Course Road, consisting of an area approximately 210 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

In discussion with the proposed Great Basin Child Advocacy Center, staff requested that the new curb, gutter and sidewalk line up with existing infrastructure at the intersection of Cedar St. and Golf Course Rd. This vacation will align the Right-of-Way from College Ave. to Cedar Street where it currently is not aligned. City Council accepted the petition for the vacation on June 22, 2021.

Ms. Laughlin went over the City of Elko Staff Report dated June 23, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Rambo had no further comments or conditions.

Ms. Laughlin mentioned that Mr. Thibault had already prepared the exhibits for the easement that was required in the conditions.

Ms. Winrod had no further comments.

Mr. Wilkinson recommended approval as presented by staff.

**\*\*\*Motion: forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No. 2-21 subject to the conditions listed in the City of Elko Staff Report dated June 23, 2021, listed as follows:**

1. 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.
2. Record a public utility and drainage easement over the area being vacated.

Commissioner Miller'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 property proposed for vacation is not located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation with the recommended conditions is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Gratton Miller, Seconded by Stefan Beck.

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

4. Review, consideration, and possible recommendation to City Council for Vacation No. 3-21, filed by the City of Elko, for the vacation of a portion of 15<sup>th</sup> Street consisting of approximately 13,600 square feet, and matters related thereto. **FOR POSSIBLE ACTION**

Staff has determined that keeping the small amount of right-of-way on 15<sup>th</sup> Street is not in the best interest of the City due to the cost of constructing and maintaining a road that goes nowhere. Half of the street right-of-way (6,800 square feet) will be given back to each of the adjacent property owners (Flyers Energy Inc. and The Igloo, LLC). This agenda item is related to the portion being returned to The Igloo, LLC. City Council accepted the petition for the vacation on June 22, 2021.

Ms. Rambo went over the City of Elko Staff Report dated June 17, 2021. Staff recommended conditional approval with the findings and condition listed in the Staff Report.

Ms. Laughlin mentioned the only additional condition that she would add would be that once the Vacation is completed, that the property owners grant an easement over existing public utilities within the area.

Ms. Rambo explained that the easement was ready to go to City Council. It will be granted as part of the process.

Ms. Winrod had no comments.

Mr. Wilkinson had no comments.

**\*\*\*Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No. 3-21 subject to the conditions listed in the City of Elko Staff Report dated June 17, 2021, listed as follows:**

1. 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.

Commissioner Mendive's findings to support the recommendation were that 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 property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation with the recommended conditions is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Commissioner Mercedes Mendive, Seconded by Commissioner Tera Hooiman

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

5. Review, consideration, and possible recommendation to City Council for Vacation No. 4-21, filed by the City of Elko, for the vacation of a portion of 15<sup>th</sup> Street consisting of approximately 13,600 square feet, and matters related thereto. **FOR POSSIBLE ACTION**

Staff has determined that keeping the small amount of right-of-way on 15<sup>th</sup> Street is not in the best interest of the City due to the cost of constructing and maintaining a road that goes nowhere. Half of the street right-of-way (6,800 square feet) will be given back to each of the adjacent property owners (Flyers Energy Inc. and The Igloo, LLC). This agenda item is related to the portion being returned to Flyers Energy, Inc. City Council accepted the petition for the vacation on June 22, 2021.

Ms. Rambo went over the City of Elko Staff Report dated June 17, 2021. Staff Recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Laughlin had no further conditions or comments.

Ms. Winrod had no further comments.

Mr. Wilkinson had no comments.

**\*\*\*Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No. 4-21 subject to the conditions listed in the City of Elko Staff Report dated June 17, 2021, listed as follows:**

1. 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.

Commissioner Beck's findings to support the recommendation were that 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 property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation with the recommended conditions is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Commissioner Stefan Beck, Seconded by Commissioner Mercedes Mendive.

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

#### A. PUBLIC HEARING (Cont.)

4. Review, consideration and possible action of Variance No 4-21, filed by Modern Land Development, LLC, for a reduction of the required lot width from 60' to 33.33' for proposed Parcels 2 and 3 and from 60' to 33.30' for proposed Parcel 1; a reduction in the required lot depth for proposed Parcel 1 from 100 feet to 99.96 feet; and a reduction of the required lot area for proposed Parcel 1 from 6,000 square feet to 3,339 square feet, proposed Parcel 2 from 6,000 square feet to 3,362 square feet, and proposed Parcel 3 from 6,000 square feet to 3,382 square feet in an R (Single-Family and Multiple-Family Residential) Zoning District and matters related thereto.  
**FOR POSSIBLE ACTION**

The applicant is requesting a variance for a proposed division of one lot into three lots which will not be in conformance with lot width, depth and lot area.

Mike Shanks, Modern Land Development, 982 Wolf Creek Drive, explained that this was an interesting request. He mentioned he had read the Staff Report, that staff had recommend denial, and he understood why. Mr. Shanks wanted to give the Commission a history on the property and explain why this was in front of them. He said he had an associate that owned this property. It was a three-plex with a driveway on Lamoille Highway and two driveways on Southside Drive. It burnt down. After it burnt down it was owned in a Trust that had some interesting regulations that made it complicated for the owner to reconstruct the three-plex. The owner asked Mr. Shanks to help out, which is why Modern Land Development owns the property. They are trying to help him develop it, and then it will go back to Matt Anderson. Mr. Anderson was the owner when the building burnt down, and he will be the owner when they are done. That reflects back to what they consider the hardship. Mr. Shanks said he understood that financial was not supposed to be hardship, but he said it seemed that all hardships were related to financial somehow or another. The reason that they took a swing at doing this was because Mr. Anderson wanted to see if they could get individual APNs on the lots to make it easier to reconstruct. This was an old three-plex and when a property like this burns down it is hard to replace that. There was a revenue generating three-plex that burns down, and now there is a piece of property to

clean up and try to do something with to generate the lost revenue. It was a lot simpler to try to get three APNs. It's too small to do townhomes. The only thing that they could think to do was to see if they could get a variance for the lot widths and try to do three individual lots. They thought that this could be a win/win for the City, for the community, and for the owner, which was why they were bringing in front of the Planning Commission. Six distinct things need to be proven to get the variance. Mr. Shanks said that he had read them. One of them is that the project conforms to the Master Plan. In meeting with Ms. Laughlin, she stated that it met the Master Plan and that a part of the Master Plan is to introduce a diversity of housing in different costs and abilities. Right now that seemed like something that is much needed in the community, some low-income housing. These would be smaller lots, and much cheaper than the average house on the market. Mr. Shanks thought this would be something that would benefit the community, something that is in high demand, and easier to finance and construct with the three APNs. He explained that the project wouldn't change the resources. There were three water connections and it would be about the same. Where they run into a challenge, and a hardship, is the uniqueness of the property. He mentioned that staff didn't qualify this as a hardship, which he understood. What they would like the Planning Commission to look at was one, this was a hardship, there was a fire, and to reconstruct the property they wouldn't be able to put the driveway back onto Lamoille Highway. They will lose that driveway, and they thought that was a hardship in itself. He said that they were trying to give the Commission an excuse to approve this variance, because they thought it would benefit everybody. It would benefit the City because it would generate higher taxes. It would benefit the neighborhood, because the neighborhood is predominately single-family dwelling with a duplex here and there, and then there is a commercial property close to it. There is no multi-family right there, so they would be better served by individual ownership than they would by a four-plex, or three-plex. Mr. Shanks said that the Planning Commission could look at this as a hardship due to the loss of the Lamoille Highway access, as well as having the structure burn down. The uniqueness that the Planning Commission could use to justify this was that the lot has double frontage, which also poses some difficulties. He hoped the Commission would look at this and see it as a win/win. Mr. Shanks also added that he didn't think this would set a precedence for people to come in and ignore the Code.

Chairman Dalling read into the record an email from Jim Moore that read as follows:

*Good Morning! I'm writing concerning variance no. 4-21, the proposal by Modern Construction for a reduction of the required lot size on parcels 1, 2, and 3 in APN 001-502-008 at 1342 Southside Dr., Elko. I think that the reduction in required square feet for single-family and multiple family residential zoning on this parcel is a bad plan. I don't believe that the smaller lots will have enough parking on the street for the vehicles, and current residents of the street already use that section of the street for parking. I also believe that the addition of 2-3 residences on this lot will result in too much traffic on this street for children to play and ride bikes and skateboards in the street, as they do now. This is a quiet street with single-family homes on the currently permitted lot size. The addition of reduced-sized lots does not fit with the neighborhood. I have lived across the street from the property being considered for 3 years and feel I know the conditions there well. Part of what drew me to the house I now own is the quality of the neighborhood and residences there. I believe that the reduction of the lot sizes on the property will negatively affect the homes and neighborhood. Thank you for consideration of my interest in the neighborhood as you review the proposal from Modern Construction.*  
**Jim Moore, 1349 Southside Dr., Elko. (Included as Exhibit A)**



Ms. Laughlin went over the City of Elko Staff Report dated June 23, 2021. Staff recommended denial with the findings listed in the Staff Report. Ms. Laughlin read into the record the findings that were listed in the Staff Report.

Ms. Rambo explained that she wrote a detailed memo separate from Ms. Laughlin's Staff Report, and it was included in the packet. She wanted to reiterate that a variance was not the appropriate tool, in this case, for creating smaller lots. There are court cases that have set precedent that have said it is actually illegal to use a variance to create a non-conforming lot. We need to be careful, in this instance, that we don't cross a line that we can't take back.

Ms. Laughlin mentioned that the Engineering Department didn't have any other conditions or concerns and he recommended denial.

Ms. Winrod had no further comments.

Mr. Wilkinson recommended denial of the application. There is no demonstrated hardship and granting of the variance will impair the intent of the City Code. There has been some discussion, and the City Planner went over it, about utilizing a variance process to justify a variance, as meeting the objectives of the Master Plan does not appear to be appropriate. There was also some discussion on a hardship of losing access to Lamoille Highway. Mr. Wilkinson didn't feel that was an issue. You can see by the plan that there is plenty of access to Southside Drive, so that doesn't factor into the hardship consideration. These lots are around 33'. To put that into perspective, the City allows lots that are 5,000 square feet in the older portions of the community, which is less than 6,000, which is typical for new development. There is a reason the City does that; it is because the way the lots were platted. Even with that, the City doesn't allow lots to be created below 5,000 square feet, which would have 50-foot frontages. This seems to be a stretch to ask the Planning Commission to consider this variance. Mr. Wilkinson recommended denial of the variance.

Commissioner Stefan Beck asked why the developer decided to do three separate small structures, instead of recreating the tri-plex.

Mr. Shanks explained that it was mostly a cost issue. It is hard to finance. One structure is harder to sell with a much tougher market. It is a much easier way to finance three individual lots. Matt Anderson hasn't been able to develop the property for five years. It has been a challenge to try to make this work. They thought this was a way to go. They met with City Staff and thought there was a chance that the Planning Commission might consider this. They are trying to do something that is going to put a structure back on that lot that they can market, sell, and get some revenue. They also looked at doing a three plex like a condominium, but to do that they would have to go through the subdivision process. This type of setup exists; they just couldn't make it work under the Code.

Chairman Dalling said he agreed with Mr. Wilkinson on the hardship of losing access to Lamoille Highway. It's the only lot between Southside Drive and 9<sup>th</sup> Street that has access to Lamoille Highway.

Mr. Shanks said he saw that it was a stretch to call that a hardship. He explained that what he was throwing out to the Planning Commission was that it was a unique situation. He understood staff's concerns with setting a precedence. He didn't know anything about the illegality of it. He was throwing out something that was unique with the lot, so that you can say this is why they were able to do this. There are not too many lots in town with double frontages that get them taken away after a fire.

Commissioner Miller asked if Mr. Shanks had investigated in doing just two lots.

Mr. Shanks said he didn't, but Mr. Anderson might have.

Commissioner Miller said with what Mr. Wilkinson said, there are properties that are 5,000 square feet. That would more logical than 33'.

Mr. Wilkinson clarified that those lots were restricted to some of the earlier platted areas of the community. He wasn't sure if that would meet the standard to grant a variance.

Mr. Shanks said he appreciated the Planning Commission's time and he hope he hadn't wasted it. He could see that the Commissioner's wanted to try to help. He said whether the application was approved or not he appreciated all the efforts.

Mr. Thibault added that the Engineering Department recommended denial of this application. He said he felt for the applicant and understood the experience of loss from the fire. The insurance payout should have already compensated for the financial loss. The driveway on Lamoille Highway should have never been allowed in the first place, and was a safety hazard. There are many ways in which this parcel could be developed within the City Code, probably even including a tri-plex if more thought was put toward the design. The applicant mentioned that a tri-plex was hard to finance, which may be the case, but financial concerns can't be considered here. Where we're at today is there was an empty lot, a structure was built, a fire burned it down, hopefully an insurance payout made it whole, and we are right back to an empty lot. We should just consider this as an empty lot, and the owner wants to develop it. What we are being asked to approve is development of an empty lot. He recommended denial.

**\*\*\*Motion: Deny Variance No. 4-21.**

**Commissioner Hooiman's findings to support the motion were that the proposed variance is in conformance with the Land Use Component of the Master Plan. The proposed variance is consistent with the Transportation Component of the Master Plan. The property is not located within the redevelopment area and consideration of the plan is not required. The proposed variance is consistent with the City of Elko Wellhead Protection Plan. The property, as proposed with the parcel map division into three parcels, does not conform to Section 3-2-4 of City Code. The property, as proposed with the parcel map division for three principal permitted uses of a single family residence, in not in conformance with Elko City Code 3-2-5(G) without the approval of a variance from the reduction of lot width, depth and lot area. In accordance with Section 3-2-22, the applicant has not demonstrated any special circumstances or features regarding the parcel. In accordance with Section 3-2-22, the applicant has not demonstrated that there is a hardship. Granting of the variance may or may not result in material damage or prejudice**

to other properties in the vicinity. Granting of the variance will substantially impair the intent or purpose of the zoning ordinance. Single Family is listed as a principal use in the underlying zone, but the zoning ordinance lists minimum lot size and area. Granting of the variance will not impair natural resources. The parcel is not located within a designated Special Flood Hazard Area.

**Moved by Commissioner Tera Hooiman, Seconded by Commissioner Gratton Miller.**

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

3. Review, consideration and possible action of Variance No 3-21, filed by DAG LLC, on behalf of Sonora LLC, for an increase in the number of allowed freestanding signs per street frontage and increase maximum area of a freestanding sign, and matters related thereto. **FOR POSSIBLE ACTION**

The applicant is requesting a variance for more than one freestanding sign per street frontage and for an increase in the area of the allowed signage.

Gorge Robles, PO Box 505, Elko, Nevada and Adrian Gonzalez, at the same address, together presented a PowerPoint, included as **Exhibit B**.

Kathy Algerio, 2075 Griswold Drive #1-C, said she has been a resident of this town since 1976. She has seen growth and everything that has happened. She also owned a business across the street from this lot. The unique idea the applicants brought to her, she thought it was stupendous. There is no way to put a building on the lot, because it is very small. The existing wall is being replaced. The present owner of the lot, Jan Pescio, who is selling the lot to the applicants, has made a deal and there will no longer be an encroachment. The applicants will be constructing a new wall in a safe manner. Ms. Algerio further thought the applicants' ideas about putting up "America First" were wonderful. This is a very patriotic community. She thought a new advertising venue would be a great replacement for an unseemly lot that is existing today on one of the busiest intersections in town.

Lina Blohm, 495 Idaho Street, said she was very thankful to be here at the request of the applicants, whom she was so proud that they had the confidence to finally see the potential of downtown, and particularly this small lot. She has been looking at a chain link fence for years. She asked what the chain link fence told those who were new to the community, or just driving through. Certainly not that this is a loving, caring, open, and friendly community that is a good place to settle. She said she was coming from an emotional standpoint, even though she owns the business right across the street. She could see the potential of owning a business in the downtown. She was asking the Commission to consider having activity in the heart of downtown, and working out the details later. She thought it would be a positive, bright, colorful, and inviting environment for everyone, and not a chain link fence.

Catherine Wines, 421 Railroad Street, said she appreciated that something was going to happen on the lot. She stated that she was also on the Redevelopment Advisory Board and the Arts and Culture Advisory Board. There is a mural on the wall of Lipparelli's building that was just put up 2 years ago. Certainly, they knew when they put it there that something could be built on this lot, but it hasn't been there for long. She asked if there was any way to work around the mural. When

she first saw the idea, she didn't realize that they would be building a new wall. She thought they would be going on to the existing wall.

Ms. Laughlin went over the City of Elko Staff Report dated June 24, 2021. Staff recommended denial with the findings listed in the Staff Report.

Ms. Rambo explained that she wrote separate memo that went into a detailed analysis of the variance with the findings. Six findings have to be met. If even one of those cannot be met, the variance cannot be approved. Ms. Laughlin covered most of what Ms. Rambo had in her memo. She did want to point out a couple things. She looked at the surrounding lot sizes for that block, and this lot is larger on average than most of the other lots on that block. It is developable in some fashion, and it is possible to put a building there. Ms. Rambo pointed out that she found an article that says, "Driver inattention and distraction are the biggest risks to traffic safety worldwide. In addition there is an emerging trend in the literature suggesting that roadside advertising can increase crash risk, particularly for those signs that have a capacity to frequently change." Based on the findings there are no hardships. Ms. Rambo also recommended denial. Chairman Dalling asked Ms. Rambo if all six of the requirements have to be met for a variance, and if only one of six were being met with this application.

Ms. Rambo said based on her analysis only one was being met.

Chairman Dalling asked for the code all six had to be met. (Yes)

Mr. Thibault recommended denial.

Ms. Winrod had no comments.

Ms. Laughlin said she had a few more comments. Let's say that the applicants came to the City and just proposed the restaurant, one freestanding sign for Idaho Street and 5<sup>th</sup> Street advertising the restaurant, and one wall sign that was an off-premise sign. The only approval that they would have to get would be NDOT approval for the off-premise sign. The freestanding signs, as long as they are advertising the business that is on the property and they meet the area requirements, could be approved today with a Building Permit and would be not required a variance. As stated in the email from NDOT, because this intersection is a part of the highway systems, an off premise sign would need approval by NDOT.

Commissioner Tera Hooiman asked if they could do one sign on one wall and keep the mural, and have one additional sign for advertising of the business on the property.

Ms. Laughlin clarified that they could have one off premise sign, as long as NDOT approved it, and it be a wall sign. They would also be allowed one freestanding sign for advertising of the business that is on the property.

Mr. Wilkinson recommended denial as presented by staff. He wanted to emphasize that variances were not the tool to be utilized to try to achieve objective in the Master Plan. He thought there had been some discussion about businesses located on that lot over a period of 60 years. He thought that indicated there were no special circumstances associated with the lot that said that it couldn't support some type of development or business at that location.

Commissioner Hooiman stated that she had a question for the applicants. She asked if they had approached other businesses in the downtown area as to selling advertising space in their kiosks. She asked what their reactions were.

Mr. Robles said they had not, because they can't go to them without telling them the price. The price is dependent upon how many spaces they have. They don't have the numbers yet.

Commissioner Hooiman assumed they wanted to sell advertising to offset the costs of the eatery and the development of the lot. She saw that they had downtown support, because they had downtown business people present. She said it would be important to her to have support in the development from business that they would be approaching for the advertising dollars.

Mr. Robles said they were going to reach out to local businesses. They would reach out to everyone in town. He thought it would be a great benefit for everyone to be involved in this. It's going to put a lot of pressure because they don't pass code. Staff has mentioned that they have to meet all the criteria. He asked when the last time the code was written. The technology has changed. Putting a business there would be beneficial for the downtown corridor, but at the end of the day the town is growing on the east and west side, but nothing is going on in the downtown area. That was why he felt like they had a niche at this location.

Commissioner Gratton Miller asked if they had approached NDOT yet.

Mr. Robles said no, because they were under the impression that this was under complete City jurisdiction. They would be more than happy to reach out to NDOT. This was their first step.

Chairman Dalling asked how long it would take NDOT to review the project.

Commissioner Miller said NDOT permits things monthly.

Chairman Dalling thought the applicants had a great idea that was innovative. He said they wanted to advertise for the East End Mall and everyone else. Ms. Laughlin had mentioned that they wouldn't really be advertising for the downtown, but Chairman Dalling understood that they had to get their advertising dollars where they could get them.

Mr. Robles said that the downtown had so many businesses and that they want to focus on the downtown. They want to focus on the wine walks, the bar association, and everyone that is in the downtown corridor. That is why they are not making a brick and mortar building. They are making an open-air design so that as people wait for their food they can visit the surrounding businesses. As soon as people start talking about the lot, because everyone passes through there, word is going to get around and people are going to ask them about advertising space.

Chairman Dalling asked what they would be selling in the restaurant.

Mr. Gonzalez said they wanted to focus on the night crowd, so it would be street food.

Chairman Dalling said he liked that idea. He thought it would be well used, especially late at night.

Commissioner Mercedes Mendive thought it was a brilliant idea. One of the things they wanted to focus on was the night crowd, and she thought that was great. The only thing she would be concerned about, not for the development, but there are people that don't even respect the boots. One of her biggest concerns for their advertisements would be people causing some type of vandalism to the signs. Commissioner Mendive thought that would be something to think about going forward. She added that there never seemed to be enough places to sit and eat food. She suggested that they consider having a place for the patrons of the restaurant to sit down and be social. She said that was something there wasn't enough of in Elko.

Commissioner Miller said he would have to disagree. He didn't think the advertising would do well there, especially if they would be going for every business in town. He also thought they would be in direct competition with the Chamber Commerce by doing that.

Mr. Robles said that they could advertise with them.

Commissioner Miller said he understood that. He added that the Chamber of Commerce, by definition, is to advertise for the businesses in Elko. That would put the applicants in direct competition with the Chamber.

Mr. Robles said if they were advertising the Maverik or Stockmen's, and they are also with the Chamber of Commerce, they would just be providing the signage. The only direct competition they would have is the three billboard companies. They have exorbitant prices, because they have the markets cornered. Mr. Robles explained that they would be taking business from the big billboard companies and keeping the money in town. He said that the downtown businesses would be their priority, but there was no reason why they couldn't work with the Chamber and be a Co-op.

Commissioner Stefan Beck thought it was a great idea. He explained that they previously denied a single housing in favor of having a tri-plex because he appreciated the City having rules and regulations. He mentioned that Mr. Wilkinson said that a variance wasn't a tool to change the Master Plan. Commissioner Beck said that he agreed with rules and regulations, but this was a great idea. He said his question was if this wasn't the right path if there was a different approach that would work better. As far as distractions, Commissioner Beck said his biggest concern would be people driving down Idaho Street and not looking at the signs because they were too busy looking at their cell phones. There are so many distractions in the world; he didn't think that would be a good reason. He mentioned that there was all sorts of advertising in Downtown Reno and Las Vegas about what is going on in town. He thought there was a lack of focused advertising.

Commissioner John Anderson asked who owned the murals.

Chairman Dalling explained that Matt Lipparelli owned the mural that was on the side of his building.

Commissioner Anderson asked if the applicant bought that lot if they could destroy the mural.

Ms. Laughlin explained that they would have their property rights if they bought the lot. They can construct what they want on the lot. The mural belongs to Matt Lipparelli.

Commissioner Anderson said he was curious on how this would fit when they brought in more artists to do more murals, if they see that one had already been destroyed. He said it was a big step forward, having the artists here.

Chairman Dalling said if the applicants built a new wall in front of Mr. Lipparelli's wall and it would cover up the mural. He added that Ty Trouten, Police Chief, wrote the letter that was included in the packet about the distraction. It says this is the 2<sup>nd</sup> highest traffic intersection in Elko. On 12<sup>th</sup> Street, they built that little bank on a lot that is a similar size. Chairman Dalling said that the fact that it was a high traffic intersection and there were a lot of advertisements to look at was a concern, especially if the Police Chief wrote a letter. Mr. Wilkinson brought up a good point, in which Chairman Dalling agreed, that getting a variance wasn't the proper way to skirt the code on this. He thought that they had a great idea, but he felt like it wasn't developed enough. He felt there was more work they could have put in to meet more than one of the six requirements to be granted a variance.

Commissioner Beck asked the applicants if they were denied if they would come back and try another approach.

Mr. Robles said they would go through City Council, meet with staff again and tell them that the lot is an unusual size and that there would be a hardship for them if they try to develop anything. He thought if they built a brick and mortar building from property line to property line that they would fail. What they were proposing was a small walk up restaurant and digital billboards. No, they don't meet code, but maybe the Code should be updated in regards to what there is now. There are walk up digital signs in Las Vegas that the Code allows for. They have built codes to what is available. Every bus stop has a digital sign in it. They have built these Codes to allow for the changing of advertising over time. There is digital advertising throughout the country, and not just in airports. The one place that makes sense to do it is at the 2<sup>nd</sup> busiest intersection in town. The pedestrian signage is meant for the people that are walking around the downtown corridor.

Chairman Dalling mentioned that they also had the three billboards, which were directed at the vehicles.

Mr. Robles said yes, the three billboards would be geared toward the vehicles.

Chairman Dalling asked if the billboards had to be 600 feet apart by code. (Yes)

Ms. Rambo wanted to remind the Commission that financial viability, whether a business is going make it or not, was not a legal finding for a variance. If the Commission did want to lean toward approving this, they would need to make some very specific findings. She suggested that they work with the City Attorney to come up with some specific legal findings that would stand in court. She said if the Commission were leaning toward approving the application, she would suggest tabling it to work with the City Attorney, and staff would like to throw in some conditions of approval.

Mr. Robles said it had been an empty lot for over 3 years. There hasn't been a business there since the mid-2000s. There are smarter people out there, but nobody has bought the land and developed it. The price has been going down on the lot. They came up with this interesting idea, they don't meet code, and they are try to bring the Code up to par, but at the end of the day it's not going to fit there. The lot will work and the business plan will work.

Mr. Wilkinson explained that if there was a motion to consider an approval, he thought that the motion maker would need to have findings, and he thought that would need to be done tonight. He didn't know that it would be the City Attorney's role to try to make those findings and bring them back to the Planning Commission. Staff responds to an application, and if the Planning Commission disagrees with staff's recommendation then the Planning Commission should have its own findings as it moves forward. He recommended taking the time, if there was a motion, to go through each and every one of the variance requirements and have the motion maker state findings that justify the motion. Then they could consider that motion.

Ms. Wines wanted to address the mural. She explained that the contract with the artists was that the mural would stay intact for 3 years. In 2022, all of the artists can expect that maybe their murals would go away, but we hope they don't. However, you can't tie up a business owner by telling them that they couldn't do anything to the wall for 10 years. The other thing she wanted to address was that there were two comments by staff that a building could easily be built on this lot and that is absolutely not true. Ms. Wines stated that she was an architect and that she had looked at this lot twice with two different clients. It is really not possible. The difference between the Bank on 12<sup>th</sup> and Idaho and this lot was there was an alley. This lot doesn't have access to an alley. It doesn't have a back, where the back of the building would be. When it was built, a long time ago, they didn't concern themselves with the back of the building, because they didn't have huge traffic flows and deliveries were maybe once a month. There is no place to make deliveries; there is no place to have a grease trap, and no place to take the trash out. It is not desirable, at all, to build on this lot.

Commissioner Miller said the eatery couldn't sustain itself. He thought it was a moot point.

Ms. Wines said the eatery was like a food truck.

Commissioner Miller suggested they make a plan with food trucks instead, something that would be feasible. He thought the advertisement would be destroyed, through either cars or people. He pointed out that Ms. Wines stated that an eatery would not work here, unless they did all the things she mentioned, which was a part of this.

Ms. Wines clarified that she was stating that building a brick and mortar building to cover the lot, which would have to be covered for it to pencil out, and it would need to go up 7 or 8 stories.

Ms. Algerio said these young men came to her and she immediately called Ms. Laughlin, who she calls from time to time. Ms. Laughlin suggested a variance. That is why the applicants went this way. In doing so, they weren't aware of the questions, they were very ignorant about them. They came to Ms. Algerio after they got the letter of denial from staff. Ms. Algerio explained to them that Ms. Laughlin had said they couldn't add onto the application once it was submitted. Therefore, that is why the Planning Commission got what they got. The applicants asked Ms.



Algerio if they could do this within three to four months. The timing was just about right with the Planning Commission dates, but they didn't have time to submit another application.

Ms. Laughlin explained that the applicants set up a meeting with her. She met with them prior to speaking with Ms. Algerio. She told them in the meeting that she had to go by what is in Code, and Code states a 600-foot separation of off premise signs, one per street frontage, and the area requirements. Ms. Laughlin told them that they had the right to apply, but she would be recommending denial, and that it would be up to the applicant to provide the testimony, hardship, and exception circumstances in their application to support their application.

Ms. Blohm wanted clarify something, because she was the victim of most of those accidents that occur at 5<sup>th</sup> & Idaho Street. She asked if anyone knew why there were accidents there, because of speeding and drunkenness. Two of the cars went into her building. She was always aware. It is speeding. She has had conversations with the Police Chief. The cars are going too fast. There was an incident with a fire truck and another car. Those things are understandable. It is a busy intersection; we like it busy. She thought it was presumptuous to tell someone what kind of business they need to place. As long as it is safe, and it meets health and safety requirements.

Chairman Dalling said they were having safety questions.

Ms. Blohm said the safety question she was hearing was regarding the distraction of billboards to traffic driving by. The safety issue that she saw on a daily basis was speeding and drunkenness. What would Las Vegas have done if their business people had to go before a Board and they said they couldn't have neon lighting because it's a distraction?

Mr. Thibault thought that the applicant could work with staff and have something very similar to the current proposal that was Code compliant.

Commissioner Beck asked if the application was denied if it was a black mark. If they table it, would it give the applicants another change to take a different approach?

Ms. Laughlin explained that if the Commission tabled the application, it would come back as the exact same application. There would not be any changes or additions. If the Commission denied the application, the applicant would have the right to appeal it. There is an appeal process, in which the application would go to City Council.

Commissioner Beck asked if that would open up other avenues. (Yes)

Mr. Wilkinson added that during the appeal process they introduce additional evidence that was not considered at this hearing. In actuality, the appeal needed to be based on additional evidence that was not considered at this hearing.

Commissioner Beck asked if it was denied and they had 10 days, if all that doesn't work, then would they have another opportunity to try another approach and work with the City. (Yes)

Ms. Laughlin said if the applicant came to staff with the walk-up restaurant, the plaza area, one free-standing sign on each street frontage advertising the walkup business, and one off premise sign, the only thing they would have to get approval on would be the off premise sign.

**\*\*\*Motion: Deny Variance No. 3-21.**

**Commissioner Beck's findings to support the motion were the proposed use is in conformance with the Land Use Component of the Master Plan as well as the Transportation Component of the Master Plan. The property is located within the redevelopment area and is not in conformance with the Redevelopment Plan. The proposed use is in conformance with the development standards of Elko City Code 3-2-10. In accordance with Section 3-2-22, the applicant has not demonstrated any special circumstances or features regarding the parcel. In accordance with Section 3-2-22, the applicant has not demonstrated that there is practical difficulties or exceptional undue hardships, which constitutes an abridgement of property right and deprives the property owner of reasonable use of property. Granting of the variance will result in material damage or prejudice to other properties in the vicinity. Granting of the variance will substantially impair the intent or purpose of the zoning ordinance. Granting of the variance will not impair natural resources. The proposed signs are not in conformance with Elko City Code 3-9.**

**Moved by Commissioner Stefan Beck, Seconded by Commissioner Mercedes Mendive.**

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

Chairman Dalling informed the applicants of the appeal process.

## **B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS (Cont.)**

6. Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Section 3-2-17 (Traffic, Access, Parking, and Loading Regulations), and matters related thereto. **FOR POSSIBLE ACTION**

A long-standing policy of City staff was to require driveways for single-family residences be designed with a slope of 14 percent or less. However, this requirement was never added to the City Code. With more and more housing development moving up into the hills, it has become necessary to codify this 14 percent requirement. During the process of adding this, staff took the opportunity to update and/or modify other portions of this Section.

Ms. Rambo went through the proposed changes to Section 3-2-17 of the Elko City Code as presented in the Agenda Packet.

Sheldon Hetzel, 780 W Silver Street, said that he had not looked at this at all prior to tonight. He said he loved anything that had to do with cleaning up the Code and making more legible and more functional. It gets hard to maneuver through and find a lot of those sections. The only thing that he questioned was codifying the 14% slope. There is topography that they run into that makes that really difficult. He was concerned that the Commission might be setting themselves up for having to do a lot of modification of standards.

Chairman Dalling asked if there were a lot of hills left in Elko.

Mr. Hetzel stated that a lot of the buildable area left in town, because of the water rights, and they are running out of property to put more lots on, so they are pushing out into more hilly areas. They run into some issues, because there are a lot of little slopes and valleys. When they start trying to lay the lots out to get the highest and best use, they either end up with undevelopable ground, or they end up coming back later to try to pick up those parcels and turn them into something that works.

Chairman Dalling asked if Mr. Hetzel had a number in mind.

Mr. Hetzel said he would say 20% would be more in line what they might run into in one of those weird spots. He also added that the buyer of the property was going to decide if that was something that they wanted to deal with or not.

Ms. Rambo added that this was not a number that staff just picked off the top of their heads. They did some research and 14% is the maximum that Reno, Sparks, and Carson City have as well. Also, keep in mind; this is after the lots have been graded. It is not a pre-existing hill; it is a graded lot that has been flattened.

Chairman Dalling thought that was good context.

Mr. Wilkinson stated that he had a couple comments. He explained when the driveways are over steepened the grade break coming off the street onto the driveway presents problems for people that have cars that are closer to the ground. In addition, the grade break coming into the garage creates problems as well. The problem we run into is some of the homebuyers are looking at a plot plan that might specify a maximum slope, but they don't understand how it's going to work for them. They can't visualize it, because the plot plan isn't 3-D. We also have some submittals on plot plans that are reasonable grades, but they decide to change the finish floor elevation to save money on grading the lots. Mr. Wilkinson thought they needed to consider homebuyers and how they could utilize a property. He added that if Mr. Hetzel had additional information he could bring it to the Commission and they could consider it at the next hearing.

Mr. Hetzel added that in a short distance, he had seen a lot of problems with that grade. When it comes to them trying to provide something that works for a homeowner, whether they are trying to get in with trailers or small cars. He also thought it was a safety issue with children and ice. He thought over a short distance it was different. What he was thinking of were the hilly areas, where they would have to make a long approach up a strange embankment. There might be a compromise somewhere.

Mr. Wilkinson agreed with Mr. Hetzel's comment. He told Mr. Hetzel if he had any information to provide to staff on something steeper over a certain distance; it might be workable.

Ms. Laughlin said that all four staff members worked at great length on going through this section of Code. A Zoning Amendment was done to Section 3-2-17 in 2016, but things have changed. Staff had a list of things to address. A good example would be that staff was telling people to go to the Traffic Engineers Manual to calculate for a casino. They would have been required twice as many parking stalls as if they were using the Reno Code. It was time for an update and to address a lot of staff's concerns. They also brought the Code into conformance

with the Master Plan access requirements. This is just the initiation. Staff will listen to all the comments and concerns, and bring this back as a resolution.

Mr. Thibault recommended approval as presented.

Ms. Winrod had no comments.

Mr. Wilkinson recommended approval as presented.

Commissioner Miller asked if they wanted to add Mr. Hetzel's suggestion.

Chairman Dalling thought if Mr. Hetzel had some information he could put it together and submit it to staff. If staff agrees then they can include it in the changes.

Ms. Rambo said when this item comes back she would present the Commission with the changes.

Mr. Wilkinson added that if they received comment from public, it would certainly be presented to the Planning Commission.

**\*\*\*Motion: Initiate an amendment to the City Zoning Ordinance, specifically Section 3-2-17 (Traffic, Access, Parking, and Loading Regulations) and direct staff to bring the item back as a public hearing.**

**Moved by Commissioner Mercedes Mendive, Seconded by Commissioner Gratton Miller.**

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

## **II. REPORTS**

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

*Ms. Laughlin reported that the Redevelopment Advisory Council was going to start meeting again in July. There will also be an RDA meeting on the 27<sup>th</sup> of July.*

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.

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Jeff Dalling, Chairman

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Tera Hooiman, Secretary

**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Zoning Ordinance Amendment 3-21, Ordinance No. 864, an amendment to the City Zoning Ordinance, specifically Title 3, Chapter 2, Section 17 (Traffic, Access, Parking, and Loading Regulations), and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **August 3, 2021**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **At the July 6, 2021 meeting, Planning Commission took action to initiate an amendment to the City Zoning Ordinance Section 3-2-17.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Ordinance 864**
8. Recommended Motion: **Forward a recommendation to City Council to adopt an ordinance which approves Zoning Ordinance Amendment 3-21 of the Elko City Code, specifically Title 3, Chapter 2, Section 17 (Traffic, Access, Parking, and Loading Regulations).**
9. Findings:
10. Prepared By: **Michele Rambo, AICP, Development Manager**
11. Agenda Distribution:

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 8/3**

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

Title: Zoning Ordinance Amendment 3-21 - Ordinance No. 864

Applicant(s): City of Elko

Site Location: N/A

Current Zoning: N/A Date Received: N/A Date Public Notice: 7/23

COMMENT: This is to make amendments to Title 3, Chapter 2, Section 17 - Traffic, Access, Parking, and Loading Regulations

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 7/28/21

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 7/28/21

No comments/concerns.

CC

Initial

## ORDINANCE 864

### AN ORDINANCE AMENDING ELKO CITY CODE TITLE 3, CHAPTER 2, SECTION 17 (TRAFFIC, ACCESS, PARKING, AND LOADING REGULATIONS) TO CREATE FORMAL STANDARDS FOR RESIDENTIAL DRIVEWAYS, ADD USES TO THE PARKING TABLE, AND OTHER MINOR CLARIFICATIONS

**WHEREAS**, recent issues with driveways have necessitated the review of the Section of Elko City Code mentioned above; and

**WHEREAS**, several regulations were found to need clarification and updating in addition to the driveway regulations; and

**WHEREAS**, the Planning Commission initiated Ordinance 864 at its meeting of July 6, 2021.

**NOW THEREFORE, IT BE ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA.**

**Section 1: Title 3, Chapter 2, Section 17 of the Elko City Code is hereby amended to read as follows:**

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

It is the intent of this ~~€~~Chapter to secure optimum coordination and interaction between land use and transportation facilities. Preservation and improvement of the traffic function of abutting streets, and of the major street system as a whole, are essential considerations in the project planning stage of land development. It is the purpose of this section to establish the regulations necessary to assure that every land use will be so located and planned as to minimize traffic congestion, hazards, and vehicular pedestrian conflicts. ~~It is the further purpose to~~ This Chapter also places ~~upon the property owner~~ the primary responsibility for ~~relieving public streets of the burden of on~~ reducing street parking ~~on property owners~~ and ~~to provide~~ contains the regulations and minimum standards essential to the planning and development of adequate off street parking.

A. Property Owner Responsibility: It shall be the duty and responsibility of ~~the~~ each property owner to plan and develop his or her property in such a way that:

1. On-street space will ~~never~~ not be required to satisfy parking or loading space needs;
2. Points of access from ~~the~~ adjacent public streets s will be minimized; ~~and~~
3. Driveway openings will be ~~so~~ located and dimensioned ~~as~~ to minimize ~~the~~ disruption ~~of~~ to passing traffic and the creation of traffic hazards; and

#### 4 Driveways will be located to provide direct access from driveway openings to any required off-street parking.

B. Regulations Pertaining ~~To~~ Traffic: Every use of land shall conform to the following general standards, in addition to the special standards for certain specific uses of land as set forth in this ~~€~~Chapter:



1. Traffic Visibility: No obstructions to visibility at any street intersection that interfere with the ability of motorists to observe traffic signs, vehicles, and pedestrians, including, but not limited to, structures, signs, parked vehicles, or vegetation, shall be allowed or permitted to remain in any zoning district between the heights of two and one-half feet (2<sup>1</sup>/<sub>2</sub>') and eight feet (8') above the ground.
2. Driveways Openings: "Driveway openings" means the transition area from a public road or public street within a right-of-way or easement extending to a private property line for the purpose of allowing ingress and egress of vehicular traffic. With the exception of driveway openings that were in conformance with this Code at the time of their installation or modification and are permitted to continue as legal nonconforming uses, All driveways openings that are installed, altered, changed, replaced, or extended ~~after the effective date hereof shall be subject to the approval of~~ shall comply with the requirements set forth in this Chapter and be approved by the City prior to installation or modification. the city engineer or duly authorized representative, and shall comply with standards set forth in this chapter, including All driveway openings subject to this section shall satisfy the following requirements:

- a. Pedestrian or Vehicular Traffic Hazards.

Driveway openings which contribute to or result in the creation of pedestrian or vehicular traffic hazards ~~may shall~~ not be approved absent extenuating circumstances. Factors or circumstances which may represent a hazardous situation include the following: The following factors shall be considered in determining whether a condition creates a pedestrian or vehicular traffic hazard:

- ~~{1.}~~ Obstructions to visibility at the intersection of a public street and proposed driveway.
- ~~{2.}~~ Traffic congestion and the risk of vehicular pedestrian conflicts at the intersection of a public street and proposed driveway.
- ~~{3.}~~ Multiple proposed driveway openings or added driveway openings combined with existing driveway openings which increase vehicular traffic conflict points in the public street.

- b. Single-Family Residential Driveway Openings.

1. Driveway openings shall not exceed:

- a. Twenty (20) feet in width at single-family residences for off-street parking pertaining to accessory uses in conformance with Section 3-2-5.
    - b. The width of the garage or carport for covered parking (such as detached garage or carport).
    - c. Thirty (30) feet (30') in width or the width of the garage or carport, whichever is greater, for attached parking, as measured at the street line, exclusive of curb returns or tapers, except as otherwise provided herein provided, no driveway opening shall conflict with the requirements set forth in Section B(3)(c), below.

2. Driveways shall be designed with a minimum slope of 0.5% and a maximum slope of 14%. Slopes between 10% and 14%, inclusive, may be allowed under unique circumstances only if the developer/contractor can demonstrate a hardship which would make a slope less than 10% impractical.

- c. For commercial and industrial uses, driveway openings shall not exceed forty-four feet (44') in width measured at the street line, exclusive of curb returns or tapers. However, ~~in special circumstances where, based upon facts presented to the city engineer's office, the city engineer determines there is a need in the interest of~~ in the event the City determines that public safety would best be served for by a multiple lane driveway opening configuration, the ~~City engineer or duly authorized representative~~ City may approve a driveway openings greater than the maximum width prescribed in this section.
- d. Driveway openings for ~~V~~vehicular entrances and exits to drive-in theaters, stadiums, racetracks, funeral homes and similar uses generating very heavy, periodic traffic conflicts, shall be located not closer than two hundred feet (200') to any intersection or any pedestrian entrance or exit to or from a school, college, university, church, hospital, public emergency shelter or other place of public assembly.

3. Access:

- a. Roadway Classifications: All roadway classifications shall be determined in accordance with the ~~t~~Transportation component of the ~~c~~City of Elko ~~m~~Master ~~p~~Plan.
- b. Private Access: No direct private access shall be permitted to ~~the~~ an existing or proposed right of way of any freeway, interstate highway, expressway, or controlled access arterial street without the ~~express~~ written permission of the ~~c~~City or other governmental entity having jurisdiction over the location where the access is proposed.
- c. Public ~~O~~or Private Access: Direct public or private access shall meet the minimum standards set forth in this section based on the applicable roadway classifications; provided: (1) the Nevada ~~d~~Department of ~~t~~Transportation (NDOT) shall be granted access through existing NDOT rights of way; and (2) NDOT may be granted access through property owned by the ~~c~~City; further provided, the ~~c~~City may, in its discretion, modify the minimum standards set forth in this section ~~under circumstances in which~~ if the property owner demonstrates that physical site conditions and/or the location of existing rights-of-way render strict compliance impractical or impossible. Except as otherwise provided in this subsection, the following access standards shall apply based on the applicable roadway classification:
- (1) The City may grant a ~~P~~private property owners ~~may be granted~~ access from a principal/or major arterial streets if there is no other reasonable access to the parcel, in which event access shall be restricted to right turns only and shall be located no less than three hundred fifty feet (350') from all other intersections and points of access. Access from principal/or major arterial streets shall be shared with adjacent properties where feasible.

- (2) Access from minor arterial streets shall be permitted, ~~provided so long as~~ it is located no less than two hundred fifty feet (250') from intersections and other points of access. Access from minor arterial streets shall be shared with adjacent properties where feasible.
  - (3) Access to collector streets from residential parcels shall be permitted, ~~provided so long as~~ the design does not force or encourage vehicles to back into streets, further provided the access is located no less than seventy five feet (75') from intersections and twenty five feet (25') from other points of access.
  - (4) Access to collector streets from nonresidential parcels shall be permitted, ~~provided so long as~~ the access is located no less than one hundred fifty feet (~~100'150'~~) from intersections and other points of access.
  - (5) Access to local streets from residential parcels shall be permitted, ~~provided so long as~~ the access is located no less than thirty feet (30') from all other intersections and no less than ten feet (10') from other points of access.
  - (6) Access to local streets from nonresidential parcels shall be permitted, ~~provided so long as~~ the access is located no less than fifty feet (50') from intersections and thirty feet (30') from all other points of access.
- d. Points of Access, Driveways, A and Parking Spaces: Except for single-family dwellings and two-family dwellings, point of access, driveway, and parking space location and design shall include a paved turning area ~~allowing that allows~~ vehicles to turn around and head travel into a public street. Except as provided above, under no circumstance shall any off street parking lot be so arranged or designed as to necessitate backing a vehicle into a public street.
  - e. Civil Improvements Required: All civil improvements required pursuant to ~~this code~~ the City Code (to include, without limitation, ~~§Title 8, cChapter 18, "Public Improvement Standards", of this code~~) shall be completed on the full frontage of the lot, parcel, or tract of real property prior to the granting of access to any ~~cCity~~ right-of-way or easement from the lot, parcel, or tract. Civil improvements shall ~~be consistent with~~ satisfy the public improvements standards and requirements identified set forth in ~~cChapters 3 or and 5~~ of this ~~§Title~~ which ever is as applicable, and shall satisfy all other applicable requirements of ~~this code~~ the City Code. All civil improvements ~~are to~~ must be approved by the ~~cCity, of Elko~~ and constructed by a properly licensed contractor, and certified by a properly licensed engineer.
  - f. Revocation ~~Of~~ Access: Permission to A access to ~~cCity of Elko~~ rights-of-way or easements may be revoked if conditions identified in the approval of the civil improvement plans are not satisfied or if a person attempts to access to ~~cCity of Elko~~ rights-of-way or easements ~~is taken that has not been approved through~~ without prior approval by the City following the submittal of civil improvement plans.
4. Traffic Counts: All developers shall provide calculations in accordance with the Institute ~~Of~~ Traffic Engineers (ITE) "Traffic Generation Manual" for the anticipated traffic load created by the

development. In the event the eCity determines that a proposed development is likely to create a traffic load exceeding one thousand (1,000) vehicles per day (vpd), or if the eCity determines that the resulting increase in traffic from a proposed development will likely decrease the level of service (LOS) of a roadway based on the current traffic counts on that roadway to an LOS of D or worse as determined in accordance with the "Highway Capacity Manual" and the AASHTO publication entitled "Geometric Design Of Highways And Streets", the developer shall complete and submit to the eCity a traffic study prior to submitting plans for civil improvements. The eCity may take the traffic study into consideration in approving or rejecting any civil improvement plans related to the proposed development.

- C. General Off-Street Parking Regulations: In all zoning districts, off-street parking ~~facilities~~ areas must be provided in accordance with the provisions of this section for: 1) new buildings, establishments, or uses of land ~~established after the effective date of this amendment, i.e., June 12, 2002~~; and 2) existing buildings, establishments, or uses of land which are extended, enlarged or altered ~~after the effective date of this amendment~~.
1. Buildings, establishments, or uses of land established and in operation prior to ~~the effective date of this amendment June 12, 2002 that were in compliance with this Chapter on that date~~ shall be exempt from the requirements of this section; provided, however, that whenever such buildings, establishments, or uses of land are extended, enlarged, modified, increased, or altered, off-street parking facilities shall be provided for the extended, enlarged, modified, increased or altered area ~~or increased floor area in accordance with the provisions of this section in accordance with the provisions of this section; further provided, any extension, enlargement, modification, increase, or alteration of a building, establishment, or use of land shall be subject to any additional parking requirements contained in this Title or required by the City in accordance with the City Code, to include, without limitation, additional parking requirements contained in a conditional use permit.~~
  2. ~~The owner or occupant of any building, establishment or use of land subject to~~ No person required to provide off-street parking ~~requirements~~ under this section ~~shall not may~~ discontinue ~~nor~~ reduce any existing required parking without first ~~having established other~~ providing replacement parking in accordance with provisions of this section.
  3. Except as otherwise provided in Subsection 4, below, required ~~Off-street parking spaces of~~ used in connection with any establishment or business which are located within any public street or right of way and thus, nonconforming with the requirements of this section, ~~must~~ shall be deemed ~~be abandoned or relocated in accordance with provisions of this section~~ within ninety (90) days upon the automatic termination of the legal nonconforming use of parking caused by any one of the following events:
    - a. A change in use of any building or land owned, leased, or used by ~~an~~ the establishment or business;
    - b. Any enlargement, expansion, or addition to any building owned, leased, or used by ~~an~~ the establishment or business that is in excess of four hundred (400) square feet of gross floor area; or

- c. The occupancy by ~~any~~ the establishment or business of a building that has not been occupied or used for a period of at least ~~nine (9) out of~~ twelve (12) consecutive months.
4. ~~The only way an establishment or business can prevent the automatic abandonment of the use of the~~ Parking spaces used in connection with an establishment or business that are located within any public street or right of way shall be automatically deemed abandoned unless as set forth above is for the establishment or business to obtain a revocable permit for use of the parking spaces from the City Council. In order to obtain any such revocable permit, the applicant must first appear before present an application for a revocable permit to the Planning Commission for consideration. The recommendation of the Planning Commission must then be submitted to the City Council. If the City Council grants any such revocable permit, it may be granted subject to any terms or conditions required by the City Council which the City Council deems to be in the best interest of the City.

D. Location ~~A~~ and Placement ~~O~~ of Required Off-Street Parking:

1. General: Every part of every off-street parking facility shall be set back from every lot line a sufficient distance to assure that no part of any parked vehicle ~~will~~ can project over the lot line.
2. Residential Uses:
  - a. In any residential zoning district other than the RMH-1 district, no required off-street parking space shall be located in a required front yard or ~~interior~~ side yard.
  - b. Required off-street parking shall be located on the same lot or parcel as the use it is intended to serve; provided, however, that:
    - (1) Parking for cooperative or condominium type multi-family dwellings, fraternities, sororities and rooming houses, may be provided in a parking lot not farther than two hundred feet (200') from the entrance to the dwelling unit it is intended to serve.
    - (2) Required parking for ~~any~~ multi-family dwellings, in excess of one space per dwelling unit, may be located on a separate, abutting lot or parcel in a parking lot not more than three hundred feet (300') from the dwelling units it is intended to serve.
3. Nonresidential Uses:
  - a. Required off-street parking shall be located within three hundred feet (300') of the ~~building or use~~ real property it is intended to serve, ~~the distance being as~~ measured along the sidewalk from the nearest point of the building or use structure to the nearest point of the parking lot; provided, however, that parking facilities for a stadium, auditorium, outdoor sports arena, or similar use, may be located not farther than one thousand three hundred feet (1,300') from the nearest point of such building or use structure.
  - b. Every nonresidential parking lot abutting a residential district ~~on the same side of the street in the same block~~ shall be set back a distance not less than the minimum required setback for abutting principal residential buildings in ~~the same block~~ that residential district; for

example, the parking lot setback must be equal to or greater than the interior side yard setback if abutting an interior side yard.

4. Documentation Required: Whenever the use of a separate lot or parcel is proposed for fulfillment of minimum parking requirements, the owner shall submit as a part of an occupancy certificate satisfactory assurance that the separate lot or parcel is permanently committed to parking use by deed restriction or other enforceable legal measure.
- E. Methods ~~Of~~ Providing Required Off-Street Parking: Required off-street parking may be provided by any one or combination of the following methods:
1. By providing the required parking space on the same lot as the building or use being served.
  2. By the collective provision of required parking for two (2) or more buildings or uses, whereupon the total of such parking shall be not less than the sum of the requirements for the several buildings or uses computed separately; provided, however, that if two (2) or more such buildings or uses have operating hours which do not overlap, the ~~p~~Planning ~~e~~Commission, upon appeal, may grant a reduction of the collective requirement based upon the special circumstances involved. A written agreement for joint use of such facilities shall be executed between the parties concerned and a copy shall be filed with the ~~building inspector~~ Planning Department and recorded with the County Recorder's Office.
  3. By securing the consent to use off-street parking facilities under another's ownership which are not otherwise used during the principal operating hours of the building or use in question; provided, however, that such consent shall be in written form and a copy shall be filed with the ~~building inspector~~ Planning Department and recorded with the County Recorder's Office.
  4. In any zoning district and for cause shown, the ~~p~~Planning ~~e~~Commission may waive all or any portion of an off-street parking requirement, provided such waiver does not conflict with the purpose and intent of this chapter. In conjunction with the review and consideration of a parking waiver, the ~~e~~City shall notify all adjacent property owners as listed on the ~~e~~County ~~a~~Assessor's records not less than ten (10) days prior to the date of the ~~p~~Planning ~~e~~Commission meeting. Any decision of the ~~p~~Planning ~~e~~Commission associated with a request to waive an off-street parking requirement may be appealed to the ~~e~~City ~~e~~Council. Application for parking waiver shall be filed with the ~~p~~Planning ~~d~~Department on a form provided for such purpose and shall include payment of a filing fee in an amount established by resolution of the ~~e~~City ~~e~~Council.
- F. Schedule ~~Of~~ Required Off-Street Parking: The minimum number of off-street parking spaces required for specific uses shall be determined according to the following schedule. Requirements for a specific use not listed shall be the same as those for the most similar use listed, or as required by the ~~p~~Planning ~~e~~Commission or the ~~e~~City ~~e~~Council.

Use	Minimum Spaces Required	
Commercial recreation:		
	Billiard parlors	1 per 2 billiard tables, plus 1 per each 2 employees on the <del>largest</del> shift <u>with the most employees</u>

	Bowling alleys	4 per bowling lane, plus 1 per each 2 employees on the <del>largest</del> shift <u>with the most employees</u>
	Gymnasiums, health studios, <u>private golf clubs, swimming pools, tennis clubs, and similar uses</u>	1 per 400 square feet of usable floor area, plus 1 per each employee on the <del>largest</del> shift <u>with the most employees</u>
	<del>Private golf clubs, swimming clubs, tennis clubs and similar uses</del>	<del>1 per 2 member families or individuals</del>
	Skating rinks, dance halls, dance studios	1 per 3 persons of maximum capacity permitted by <del>fire regulations</del> <u>Building Code</u>
Commercial sales and services:		
	<u>Automobile/truck, mobile home, RV, boat, or trailer sales and service</u>	<u>1 per each 800 square feet of sales area for first 4,000 square feet, plus 1 per additional 2,000 square feet</u>
	<u>Banks, credit unions</u>	<u>1 per 300 square feet of usable floor area</u>
	Barbershops, beauty shops	2 per service chair
	Bus depot	1 per 150 square feet of waiting room space, plus requirements for auxiliary commercial uses as elsewhere listed
	Car wash/wash line	1 per each employee on the largest shift, plus reservoir spaces equal to 5 times the capacity
	<u>Casino, gaming</u>	<u>1 per every 200 square feet of usable floor area, plus 1 space per employee</u>
	Childcare center	1 per every 10 students based on licensed occupancy, plus 1 per each employee on the <del>largest</del> shift <u>with the most employees</u> , plus 1 per each facility vehicle
	Drive-through facility (bank, fast food, retail)	Requirements for uses elsewhere specified herein, plus stacking capacity for 5 vehicles. Drive-through lanes must be independent of access lanes required for parking space backup area and for general and emergency vehicle circulation
	Furniture and appliance stores, <del>household equipment and apparel repair services</del> <u>(sales and repairs)</u>	1 per 800 square feet of usable floor area
	<u>Gas stations</u>	<u>1 per employee on the shift with the most employees</u>
	Gas <del>convenience</del> stations <u>with convenience stores</u>	1 per 2 gasoline pumps
	<u>General Retail</u>	<u>1 per 300 square feet of usable floor area</u>
	<u>Greenhouse, garden center</u>	<u>1 per 500 square feet of sales area for first 2,000 square feet, plus 1 per additional 2,000 square feet</u>



	<b>Leasable spaces</b>	<b>1 per 175 square feet of usable floor area</b>
	<u>Large machinery/equipment sales or rental</u>	<u>1 per 800 square feet of gross area</u>
	Mortuaries, funeral homes	1 per 3 fixed chapel seats, or 1 per 50 square feet of assembly area, whichever is greater, plus 1 per employee, plus 1 per commercial funeral vehicle
	<del>Motor vehicle and machinery sales, auto repair shops</del>	<del>1 per 800 square feet of gross area</del>
	<del>Open air business</del>	<del>1 per 500 square feet of sales area for first 2,000 square feet, plus 1 per additional 2,000 square feet</del>
	<del>Planned shopping centers under unified control</del>	<del>Requirements for all uses elsewhere specified herein, plus 1 per 150 square feet of remaining usable floor area</del>
	Restaurants, bars, cocktail lounges	1 per 100 square feet of usable floor area, plus 1 per each employee on the <b>largest</b> shift <u>with the most employees</u>
	Self-service laundries <del>and dry cleaners</del>	1 per 4 machines
	Supermarkets, drugstores	1 per 300 square feet of usable floor area
	<del>Used car lots</del>	<del>1 per each 1,000 square feet of sales area for first 4,000 square feet, plus 1 per additional 2,000 square feet</del>
Hotels, motels:		
	<del>For a</del> Auxiliary uses, i.e., restaurants	1 per 100 square feet of usable floor area of dining room, bar, plus 1 per each 2 employees on the <b>largest</b> shift <u>with the most employees</u>
	<del>For c</del> Commercial accessory use	1 per 400 square feet of usable floor area
	<del>For o</del> Overnight guests	1 per guestroom, or suite, plus 1 per each 2 employees on the <b>largest</b> shift <u>with the most employees</u>
	<del>For places of public assembly</del> <u>Convention/meeting rooms</u>	1 per 6 fixed seats or 1 per 24 square feet of unfixed seating space
Institutional uses:		
	Hospitals	1 per 2 beds, plus 1 per each employee on the <b>largest</b> shift <u>with the most employees</u> , plus 1 per 225 square feet of auxiliary medical office floor area
	Sanatoriums, children's homes	1 per 5 beds, plus 1 per each employee on the <b>largest</b> shift <u>with the most employees</u>
Manufacturing and industrial uses		1 per 500 square feet of gross floor area, or 1 per each employee on the <b>largest</b> shift <u>with the most employees</u> , whichever is greater
Offices:		
	Medical and dental offices and clinics	1 per 225 square feet of usable floor area



	Offices; professional, governmental, <del>banks, savings and loan agencies</del>	1 per 300 square feet of usable floor area
Places of public assembly:		
	Auditoriums, exhibition halls, theaters, convention facilities, meeting rooms	1 per 5 fixed seats, or 1 per 40 square feet of unfixed seating space, plus 1 per each 2 employees on the largest shift
	Churches, for primary seating only	1 per 5 fixed seats, or 1 per 40 square feet of unfixed seating space, plus 1 per each 2 employees on the <del>largest</del> shift <u>with the most employees</u>
	<u>Library, art gallery, or museum</u>	<u>1 per 1,000 square feet of usable floor area</u>
	<u>Movie theater</u>	<u>1 per 5 seats, plus 1 per employee on the largest shift</u>
	Social clubs such as Elks, Moose, VFW, etc.	1 per 200 square feet of usable floor area
	Stadium, outdoor sports arenas	1 per 5 seats, plus 1 per each 2 employees on the <del>largest</del> shift <u>with the most employees</u>
Public and quasi-public uses:		
	Elementary schools	1 per 6 students
	Golf course, open to public	4 per hole, plus 1 per each employee on the <del>largest</del> shift <u>with the most employees</u>
	High schools	1 per 4 students, plus 1 per employee
	Junior colleges, colleges and universities	1 per 3 enrolled full time day students, plus 1 per employee
	Middle school/junior high school	1 per 10 students, plus 1 per employee
	Trade schools, business colleges	1 per 150 square feet of gross floor area
Residential uses:		
	Mobile home parks and lodges	See mobile home parks, mobile home, manufactured home subdivisions and recreational vehicle (RV) parks (chapter 5 of this title)
	<u>Multiple-family dwellings (studio unit)</u>	<u>1 per dwelling unit</u>
	Multiple-family dwellings (1 and 2 bedroom unit)	1 1/2 per dwelling unit, <u>plus 1 per 3 units for guest parking</u>
	Multiple-family dwellings (3 or more bedrooms)	2 per dwelling unit, <u>plus 1 per 3 units for guest parking</u>
	Rooming houses, fraternities, sororities, resident clubs, lodges	1 per sleeping room or 1 per bed, whichever is greater
	<u>Senior citizen housing development</u>	<u>1 per unit, plus 1 per 5 units for guest parking</u>

	Single-family residence, <del>townhome, condominium,</del> duplex, triplex, fourplex	2 per dwelling unit
	<u>Townhouses, condominiums</u>	<u>2 per dwelling unit, plus 1 per 3 units for guest parking</u>
	Wholesaling and warehousing uses	1 per 1,700 square feet of usable floor area, or 1 per each employee on the largest shift, whichever is greater, plus 1 per company owned motor vehicle
	All other uses not specifically listed	In accordance with the most recent applicable parking generation rates established by the Institute Of Transportation Engineers (ITE)

- G. Parking Lot Design Standards: Design standards associated with secondary access, landscaping, lighting, and provision of snow storage and trash receptacle enclosure areas, are intended to apply to the development and construction of new parking lots and facilities, ~~except for parking lots and facilities located within the GI (general industrial) zoning district.~~

1. Minimum Design Dimensions: The layout of every off-street parking lot shall conform to the following minimum standards:

Angle Of Parking	One-Way Access Lane Width	Two-Way Access Lane Width	Parking Space Width	Parking Space Length
90°	24 feet	24 feet	9 feet	20 feet
75° - 89°	22 feet	24 feet	9 feet	20 feet
54° - 74°	18 feet	22 feet	9 feet	20 feet
30° - 53°	15 feet	20 feet	9 feet	20 feet
Parallel	12 feet	20 feet	8 feet	23 feet

Parking which is adjacent to a building face, or which is adjacent to improvements such as landscaping and sidewalks located directly adjacent to a building face shall provide access for fire equipment and personnel in conformance with the fire code adopted in title 6 of this code.

2. Measurement ~~of~~ Existing Unmarked Lots: In measuring unmarked parking lots in use or operation on the effective date hereof, each parking space shall be considered to require a minimum of three hundred (300) square feet, inclusive of access lanes. For single-family, duplex, triplex and fourplex residential land uses, the square footage of each required parking space shall be not less than one hundred eighty (180) square feet (9 feet x 20 feet).
3. Secondary Access ~~or~~ Interior Turnarounds: Secondary access or interior turnarounds shall be provided for parking lots of ten (10) or more parking spaces, interior turnarounds shall also be designed in accordance with the currently adopted fire code set forth in title 6 of this code.
4. Driveways and parking areas shall be designed to include paved turnaround areas to prevent the use of striped parking stalls as turning areas and drive aisles for backing movements.

**5.** Landscaping: Five percent (5%) of any off-street parking lot of twenty (20) or more parking spaces shall be reserved for landscaping improvements, except for parking lots and facilities not directly associated with or serving adjacent commercial or industrial development. Where landscaping is required under other provisions of the City Code, landscaped areas in parking lots shall be considered in calculating landscaping requirements. Landscape areas should be distributed throughout the project site and should contribute to the screening and softening of the off-street parking lot. Landscape materials may include, but are not limited to, screen planting, lawn areas, trees, shrubs, fences and walls. Drought tolerant, low maintenance species in conjunction with decorative "hard surface" materials, such as, but not limited to, volcanic rock, gravel or stone are encouraged and may be utilized to fulfill landscape surface requirements.

- a. For off-street parking lots of twenty (20) or more parking spaces, provision of the required five percent (5%) of landscaping may be accompanied by a five percent (5%) reduction in the amount of required parking spaces.
- b. Parking spaces which abut and overhang a sidewalk exceeding seven feet (7') in width or a landscape planter area at least six feet (6') in width may reduce space lengths from the required twenty feet (20') to eighteen feet (18').
- c. Selection and installation of plant materials shall be done with the intent to screen and soften rather than conceal in order to maintain visibility for facility security. Preference shall be given to the use of low lying ground cover and shrubs and the use of trees with elevated canopies over the selection and use of densely compacted trees and shrubs.
- d. Planter areas should be distributed throughout the off street parking lot and are encouraged to be used as a traffic control device to promote safe orderly vehicular and pedestrian circulation within the off street parking lot.
- e. It shall be the responsibility of the owner or developer to carry out this program and to provide maintenance and care as required to obtain the effect intended by the original plan.
- f. Landscaping requirements contained in this chapter are not intended to supplement or compound landscaping provisions contained in other sections of this title.
- g. The City shall not be responsible for maintenance, repair or replacement of any landscaping or related materials placed or constructed within the public right-of-way pursuant to this Section. No landscaping shall be constructed within the public right-of-way without a revocable permit issued by the City following any required approval by the City Council with the exception of public rights-of-ways in which the City Council has granted administrative approval authority. Revocable permits may be granted with or without conditions.
- h. No obstructions to visibility at any street intersection shall be located within a sight triangle determined in accordance with American Association of State Highway And Transportation Officials (AASHTO) publication of "A Policy On Geometric Design Of Highways And Streets", including any amendments thereto.

**56.** Snow Storage Areas: Snow storage areas shall be provided for parking lots of twenty (20) or more parking spaces. Landscape areas may be utilized to fulfill this requirement.

**67.** Lighting: Off-street parking areas shall satisfy the following lighting requirements: Eighty percent (80%) of the parking lot shall have a minimum illumination level of twenty five hundredths (0.25) of a foot-candle. Levels of illumination should be distributed throughout the parking lot.

**78.** Trash Receptacle/Dumpster Areas: Trash receptacle/dumpster areas, enclosed by a screen wall, shall be provided for parking lots directly associated with industrial, commercial or multiple-family residential development and which contain twenty (20) or more parking spaces.

**89.** Parking Lot Access:

- a. Access ~~F~~from Alley: An alley may be used for principal access to any parking lot, and for direct access to parking spaces; provided, however, that every such alley shall be dedicated full width to the public, fully improved with an all-weather, dust free surface, and properly drained to prevent impoundment of surface water.
- b. Access ~~F~~from Street: No entrance or exit to a parking lot shall be located closer than fifteen feet (15') to any abutting residential district without prior approval from the City.

**910.** Surfacing, Curb ~~A~~and Drainage: Every parking lot and parking access shall be:

- a. Properly graded to prevent impoundment of surface water;
- b. Surfaced with asphaltic concrete or cement concrete at least two inches (2") thick;
- c. Parking spaces shall be clearly striped;
- d. Continuous six inch (6") concrete curbs or a comparable alternative shall be installed around the perimeter of the paved parking area and as protection for planted areas, islands, and walls within the parking lot area. Noncontinuous curbing may be allowed in circumstances where perimeter planted areas are part of the approved storm runoff and drainage plan.

**1011.** Required Screen Walls: Where the interior side lot line or rear lot line of a nonresidential parking lot abuts a residential district and is not separated therefrom by an alley, a solid, continuous screen wall not less than five feet (5'), nor more than six feet (6') in height above grade, shall be installed and maintained abutting the residential district line; provided, however, that such wall shall extend no closer to the street line than the minimum required setback for residential properties in the same block.

**1112.** Plans Required ~~F~~For Off-Street Parking ~~A~~and Loading Spaces: Site plans are required for off-street parking and loading and shall show how the required parking and loading spaces are to be located and arranged on the site. In addition, such plans shall demonstrate safe and efficient internal circulation and traffic flow and show how drives and parking lots are to be graded and

drained, as well as the location and design of all screen walls, landscaping and lighting. Such plans must be reviewed and approved by the **p**Planning and **e**Engineering **d**Departments.

- H. **Park and Ride Facilities:** Park and ride facilities shall satisfy the design standards set forth in subsection G of this section, unless specifically discussed in this subsection H, as follows:
1. **Location:** Park and ride facilities shall be located in either **L**ight **I**ndustrial (LI) or **G**eneral **I**ndustrial (GI) zoning districts and shall be located adjacent to roadways classified as commercial/industrial collector, arterial, or principal arterial in the **e**City of Elko **m**Master **p**Plan.
  2. **Stand Alone Use:** A park and ride facility shall be a stand-alone use located on a single parcel that does not contain any other use.
  3. **Area Requirements:** Park and ride facilities shall be located on lots with a minimum lot size of three (3) acres and not more than fifteen (15) acres.
  4. **Lighting:** Park and ride facilities shall satisfy the following lighting requirements: Fifty percent (50%) of the parking lot shall have a minimum illumination level of twenty-five hundredths (0.25) of a foot-candle. Levels of illumination must be distributed throughout the parking lot.
  5. **Trash Receptacle/Dumpster Areas:** Every park and ride facility must contain at least one area, enclosed by a screen wall, for the placement of trash receptacles and/or dumpsters. There must be no less than one trash receptacle for every acre of a park and ride facility. The trash receptacle areas shall be evenly placed through the park and ride facility. In addition to the foregoing, trash receptacles shall be located at each bus loading zone and at least one enclosed dumpster must be placed in a location that can be accessed from a paved surface.
  6. **Traffic Study:** All developers of new park and ride facilities shall provide calculations in accordance with the Institute **O**f Traffic Engineers (ITE) "Traffic Generation Manual" for the anticipated traffic load created by the park and ride facility. In the event the city determines that a proposed park and ride facility is likely to create a traffic load exceeding two thousand (2,000) vehicles per day (vpd), or if the **e**City determines that the resulting increase in traffic from a proposed park and ride facility will likely decrease the level of service (LOS) of a roadway based on the current traffic counts on that roadway to an LOS of D or worse as determined in accordance with the "Highway Capacity Manual" and the AASHTO publication entitled "Geometric Design Of Highways And Streets", the developer of the proposed park and ride facility shall complete and submit to the city a traffic study prior to submitting plans for civil improvements. The **e**City may take the traffic study into consideration in approving or rejecting any civil improvement plans related to the proposed development.
  7. **Surfacing and Drainage:** Every new park and ride facility shall:
    - a. Be properly graded to prevent impoundment of surface water;
    - b. Be surfaced with compacted type II road base with a minimum thickness of six inches (6");
    - c. Contain parking spaces which are clearly delineated either with striping on paved surfaces or with the use of parking bumpers on unmarked areas;

- d. Contain asphaltic surfacing with a minimum thickness of two inches (2") over the route leading from each entrance into the parking lot for a minimum of forty feet (40'); and
- e. Contain asphaltic surfacing with a minimum thickness of two inches (2") over the route intended for the loading and unloading of commuters on and off buses (if applicable).

I. Exceptions for Certain Multi-Family Residential Developments:

- 1. In the case of a multi-family residential development which contains five (5) or more units proposed to be occupied by elderly persons or individuals with disabilities, the ~~p~~Planning ~~c~~Commission may grant a twenty-five percent (25%) reduction in the required off-street parking.

J. Central Business District Regulations:

- ~~21.~~ All principal permitted uses ~~occupying basement floor area, ground level or first story floor area or second story floor area, or any combination thereof, and~~ which are situated on property located within four hundred feet (400') of the Central Business District (CBD) public parking corridor, are exempted from providing required off street parking. Residential uses shall provide required off street parking in accordance with the provisions of this chapter.

- a. Residential uses in a mixed-use building with no more than four (4) residential units located within 200 feet of the Downtown Parking Corridor are exempt from the requirement to provide off-street parking. All other residential uses shall provide the required off-street parking in accordance with the provisions of this Chapter.

- ~~32.~~ Overnight parking in conjunction with occupancy of recreational vehicles within the Central Business District (CBD) public parking corridor shall be prohibited.

- ~~43.~~ Parking of all unlicensed or unregistered vehicles within the Central Business District (CBD) public parking corridor shall be prohibited.

- ~~54.~~ Parking of any type of trailer that is disconnected from the pulling vehicle within the Central Business District (CBD) public parking corridor shall be prohibited unless otherwise authorized by special event or other permit.

- ~~65.~~ Within the Central Business District (CBD) public parking corridor, parking or storage of any properly licensed vehicle shall be temporary and limited to seventy-two (72) hours, unless an exemption is authorized pursuant to a special event permit or other permit issued in advance by the City.

- ~~76.~~ It shall be unlawful for any person, including a business, to utilize the Central Business District (CBD) public parking corridor for the purposes of storing or parking a vehicle while shuttling employees or car-pooling to or from places of employment.

- ~~87.~~ It shall be unlawful to store, park, or idle any semis with trailers within the Central Business District (CBD) public parking corridor.

**98.** Police officers are authorized to remove vehicles parked in violation of this Code from the Central Business District (CBD) subject to the provisions of this section.

**109.** Whenever any police officer determines that a vehicle is parked in violation of this Code, such officer may cause to be moved or remove such vehicle in any manner provided by law, or require the driver or person in charge of the vehicle to move the vehicle to a location or in such a manner as to render it no longer in violation.

**110.** Any police officer may cause to be removed any vehicle or part of a vehicle parked in violation of this Code, or may cause such vehicle to be removed, to the nearest garage or other location for storage if:

- a. The vehicle has been involved in an accident and is so disabled that its normal operation is impossible or impractical and/or the person or persons in charge of the vehicle are incapacitated by reason of physical injury or other reason to such an extent as to be unable to provide for its removal or custody, or are not in the immediate vicinity of the disabled vehicle; or
- b. The person driving or in actual physical control of the vehicle is arrested for any alleged offense providing that the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

**111.** In any prosecution charging a violation of any provision of this subsection I, proof that the particular vehicle described in the complaint was found in violation thereof, together with proof that the defendant named in the complaint or citation was at the time of such complaint or citation the registered owner, owner or party in the care or custody of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner, owner or party in the care or custody of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

**112.** To the extent there should exist any actual conflict with other traffic laws of the City, the provisions of this subsection **I** shall be controlling concerning the parking of vehicles within the Central Business District (CBD) public parking corridor. (~~Ord. 801, 2-24-2016~~)

**Section 2:** All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict

**Section 3:** If any section, paragraph, clause, or provision of this ordinance shall for any reason be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, the invalidity, unenforceability, or provision shall not affect any remaining provisions of this ordinance.

**Section 4:** Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

**Section 5:** This Ordinance shall be effective upon the publication mentioned in Section 4.

**PASSED AND ADOPTED** this \_\_\_ day of \_\_\_\_, 2021 by the following vote of the Elko City Council.

AYES:

NAYS:

ABSENT:

ABSTAIN:

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

CITY OF ELKO

BY: \_\_\_\_\_  
REECE KEENER, Mayor

ATTEST:

\_\_\_\_\_  
KELLY WOOLDRIDGE, City Clerk



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review and consideration of Division of Large Parcels 1-21, a Tentative Map filed by Section Five Associates, LLC for the division of approximately 590.258 acres of property into eight lots for future development. Approximately 314.652 acres fall within an A (General Agriculture) Zoning District in the City of Elko and approximately 275.60 acres of property fall within Elko County. FOR POSSIBLE ACTION**
2. Meeting Date: **August 3, 2021**
3. Agenda Category: ***MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS***
4. Time Required: **15 Minutes**
5. Background Information: **Subject property is located at the northern terminus of North 5<sup>th</sup> Street. (APNs 001-01D-001 and 006-09L-002)**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application and Staff Report**
8. Recommended Motion: **Recommend that the City Council conditionally approve Division of Large Parcels 1-21 based on facts, findings, and conditions as presented in the Staff Report dated July 16, 2021.**
9. Findings: **See Staff Report dated July 16, 2021**
10. Prepared By: **Michele Rambo, AICP, Development Manager**
11. Agenda Distribution: **Section Five Associates, LLC  
Attn: Mark Paris  
215 Bluffs Avenue, Suite 300  
Elko, NV 89801  
  
High Desert Engineering, LLC  
Attn: Robert Morley  
640 Idaho Street  
Elko, NV 89801**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 8/3**

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

Title: Division of Large Parcels 1-21  
Applicant(s): Section Five Associates, LLC  
Site Location: Northern Terminus of N 5<sup>th</sup> Street  
Current Zoning: Misc. Date Received: 6/16/21 Date Public Notice: N/A  
COMMENT: This is to divide  $\approx$  590.258 acres into 8 lots  
for future development.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 7/28/21  
Recommend approval as presented by  
staff

SAW

Initial

City Manager: Date: 7/28/21  
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**

<b>REPORT DATE:</b>	<b>July 16, 2021</b>
<b>PLANNING COMMISSION DATE:</b>	<b>August 3, 2021</b>
<b>AGENDA ITEM NUMBER:</b>	
<b>APPLICATION NUMBER:</b>	<b>Division of Large Parcels 1-21</b>
<b>APPLICANT:</b>	<b>Section Five Associates, LLC</b>
<b>PROJECT DESCRIPTION:</b>	<b>N. 5<sup>th</sup> Street Large Parcels Tentative Map</b>

A Tentative Map for the proposed division of approximately 590.258 acres of property into eight lots for future development. Approximately 314.652 acres fall within an A (General Agriculture) Zoning District in the City of Elko and approximately 275.60 acres of property fall within Elko County.



### **STAFF RECOMMENDATION:**

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

## **PROJECT INFORMATION**

<b>PARCEL NUMBER:</b>	001-01D-001 (City of Elko) 006-09L-002 (Elko County)
<b>PARCEL SIZE:</b>	314.65 Acres (City of Elko) 275.60 Acres (Elko County)
<b>EXISTING ZONING:</b>	(A) General Agriculture (City of Elko) (OS) Open Space (Elko County)
<b>MASTER PLAN DESIGNATION:</b>	(RES-MD) Residential Medium Density (City of Elko) (RES-LD) Residential Low Density (Elko County)
<b>EXISTING LAND USE:</b>	Vacant

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:

- North: Un-zoned BLM land / Vacant
- South: Un-zoned BLM land / Vacant  
Scattered Residential Agriculture (AR) / Developed (Elko County)
- East: General Agriculture (A) / Vacant (City of Elko)  
Un-zoned BLM land / Vacant
- West: Un-zoned BLM land / Vacant

### **PROPERTY CHARACTERISTICS:**

- The property is an undeveloped parcel.
- The site abuts vacant properties to the north, east, and west. Scattered residential development exists to the south.
- The parcel includes many different slopes and grade changes, but the area generally slopes to the southeast. No development is proposed with this map, so the slopes will remain until the lots are developed in the future.
- The property will be accessed by North 5<sup>th</sup> Street.

### **APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:**

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-3 General Provisions

- City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning – Section 3-2-13 General Agriculture District
- City of Elko Zoning – Section 3-3-14 Easement Planning
- City of Elko Zoning – Section 3-8 Flood Plain Management

#### **BACKGROUND:**

1. The property owner and applicant is Section Five Associates, LLC.
2. The division is located on APNs 001-01D-001 and 006-09L-002.
3. The property is undeveloped.
4. The proposed division consists of eight lots, all at least 40 acres in size. Two of these lots are located within current city boundaries.
5. The total divided area is approximately 590.258 acres, of which 314.652 acres are located within the City of Elko.
6. No phasing is proposed as part of this division.
7. Right-of-way for North 5<sup>th</sup> Street already exists through the property.
8. An easement for the extension of Jennings Way is being provided as part of the proposed division.
9. The property is located at the northern end of North 5<sup>th</sup> Street.
10. Current City of Elko Code does not include provisions for Division into Large Parcels maps, so many of the items normally required on Parcel Maps or subdivision maps cannot be required.
11. Analysis of the proposed division in the following sections is done only for the portion of the map located within the City of Elko boundary. Elko County will be reviewing the portion of the map within their jurisdiction for compliance with their regulations.

#### **MASTER PLAN**

##### **Land Use:**

1. The land use for the parcel is shown as Residential Medium Density. Residential Medium Density is intended for residential development at a density between four and eight units per acre. Future development would be required to comply with this density requirement.
2. The zoning for the parcel is shown as General Agriculture, which is not listed in the Master Plan as a corresponding district within the Residential Medium Density land use designation. Prior to any development occurring on these new lots (other than those uses allowed in the General Agriculture zoning district), a Change of Zone will be required.
3. The listed Goal of the Land Use Component states: “Promote orderly, sustainable growth and efficient land use to improve quality of life and ensure new development meets the needs of all residents and visitors.”
4. Objective 1 under the Land Use component of the Master Plan states: “Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.”
  - a. Best Practice 1.1 – The proposed division meets several of the methods described to achieve a diverse mix of housing types in the community.
  - b. Best Practice 1.3 – The location of the proposed division appears to support the City striving for a blended community by providing a mix of housing types in the neighborhood and is supported by existing infrastructure.
5. Objective 8 of the Land Use component of the Master Plan states: “Ensure that new development does not negatively impact County-wide natural systems or public/federal lands such as waterways, wetlands, drainages, floodplains, etc. or pose a danger to human

health and safety.” As development occurs, any potential impacts will be evaluated and mitigated as needed.

The proposed division is in conformance with the Land Use component of the Master Plan upon approval of a Change of Zone as described above. A condition of approval has been added requiring this amendment to be in effect prior to any future construction activity.

Transportation:

1. This area of land is accessed by North 5<sup>th</sup> Street.
2. When developed, this portion of North 5<sup>th</sup> Street is identified as a Minor Arterial in the Master Plan.
3. The Master Plan requires Minor Arterial streets to have 80 feet of right-of-way.
4. The current right-of-way for North 5<sup>th</sup> Street in this area is 80 feet. No further dedications are required along the parcel frontages when the parcels develop.
5. A small piece of needed right-of-way is missing to the southeast of this area. It is believed that there is a prescriptive right through the Bureau of Land Management. City staff will work with the BLM to confirm at an appropriate time.
6. The map includes the creation of an easement for the future extension of Jennings Way as shown on Atlas Map 12 (Future Roadway Network) within the Master Plan. As future development occurs, that easement area will be required to be dedicated to the City.
7. Until development occurs, there is no way to estimate the amount of traffic generated by this division. Upon development, the traffic impact will be analyzed to determine if a traffic study is needed.

The proposed division is in conformance with the Transportation component of the Master Plan.

**ELKO AIRPORT MASTER PLAN:**

The proposed subdivision and development does not conflict with the Airport Master Plan.

**CITY OF ELKO DEVELOPMENT FEASIBILITY, LAND USE, WATER INFRASTRUCTURE, SANITARY SEWER INFRASTRUCTURE, TRANSPORTATION INFRASTRUCTURE, AND ANNEXATION POTENTIAL REPORT – NOVEMBER 2012:**

The proposed subdivision does not conflict with the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012.

**ELKO REDEVELOPMENT PLAN:**

The property is not located within the Redevelopment Area.

**ELKO WELLHEAD PROTECTION PLAN:**

The property is not located within 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.

**SECTION 3-3-14 EASEMENT PLANNING:**

- A. Utility Easements: The applicant is proposing the typical utility and drainage easements along property lines on individual parcels.
- B. Underground Utilities: N/A
- C. Lots Facing Curvilinear Streets: N/A
- D. Public Drainage Easement: The applicant is proposing the typical utility and drainage easements along property lines on individual parcels.
- E. Easement Land Not Considered and Considered in Minimum Lot Area Calculation: N/A
- F. Lots Backing Onto Arterial Streets: N/A
- G. Water and Sewer Lines: The applicant is proposing the typical utility easements along the frontage of each parcel.

The proposed subdivision is in conformance with Section 3-3-14 of City code.

**SECTION 3-2-3 GENERAL PROVISIONS:**

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

Principal Uses: Only those uses and groups of uses specifically designated as “principal uses permitted” in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses.

Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

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

Section 3-2-3(D) states that: “No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety, and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify, or withdraw the determination of unsuitability.”

The proposed division is in conformance with Section 3-2-3 of City code.

**SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS:**

1. Section 3-2-4(B) Required Conformity to District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.

2. Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

The proposed division is in conformance with Section 3-2-4 of City code.

### **SECTION 3-2-13 (A) GENERAL AGRICULTURE DISTRICT:**

Section 3-2-13 Principal Uses Permitted:

1. General agriculture on parcels not less than five (5) contiguous acres in area
2. Commercial breeding, raising, training, and feeding principally by grazing of horses, cattle, sheep, goats, and hogs; provided that pens, buildings, corrals, and yards other than open pastures are not closer than five hundred feet (500') to any residence, except the residence of the property owner.
3. Dairies, poultry and egg farms, fur farms, public stable; provided that pens, buildings, and enclosures other than open pastures are not closer than five hundred feet (500') to any residence, except the residence of the property owner.
4. Oil wells
5. Soil crops
6. Guest ranches on parcels having an area not less than ten (10) acres; provided that pens, buildings, and yards other than open pastures used for keeping of livestock are not closer than one hundred feet (100') to any street, highway, or residential district
7. Veterinary clinic or animal hospital

The proposed division is in conformance with Section 3-2-5(E). It is anticipated that Change of Zone applications will be submitted for the proposed parcels. Conformance with those ultimate zoning districts will be required as development occurs.

### **SECTION 3-8 FLOOD PLAIN MANAGEMENT:**

The proposed subdivision and development is not located in a designated special flood hazard area and is in conformance with Section 3-8 of City Code.

### **FINDINGS**

1. The proposed division is in conformance with both the Land Use and Transportation components of the Master Plan as previously discussed in this report.
2. The proposed division does not conflict with the Airport Master Plan; the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012; the Wellhead Protection Program; or applicable sections of the Elko City Code.
3. The property is not located within the Redevelopment Area. Therefore, there is no conflict with the Redevelopment Plan.



**STAFF RECOMMENDATION:**

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

**Development Department:**

1. Approval from Elko County shall be obtained.
2. The divider is to comply with all provisions of the NAC and NRS pertaining to the proposed division.
3. Tentative Map approval constitutes authorization for the divider to proceed with preparation of the Final Map.
4. Tentative Map approval does not constitute authorization to proceed with development of areas within city limits.
5. The applicant must submit an application for Final Map within a period of one (1) year in accordance with NRS.278.472(2)(b). Approval of the Tentative Map will automatically lapse at that time.
6. All applicable permits and fees shall be received from and paid to the City and Elko County.

**Engineering Department:**

7. Prior to consideration by the City Council, add dimensions to the start of the slope easement line and to the centerline of the roadway easement along the easterly line of Lot 5.

# AFFIDAVIT

THE UNDERSIGNED HEREBY AGREES TO MAKE PROVISION FOR THE PAYMENT OF THE TAX IMPOSED BY CHAPTER 375 OF NEVADA REVISED STATUTE AND AGREES TO COMPLY WITH THE DISCLOSURE AND RECORDING REQUIREMENTS OF SUBSECTION 5 OF NEVADA REVISED STATUTE 598.0923, IF APPLICABLE, AS REQUIRED BY NEVADA REVISED STATUTE 278.4713 SUBSECTION 1(B) IN CONJUNCTION WITH THE FILING OF THE TENTATIVE MAP OF DIVISION INTO LARGE PARCELS FOR SECTION FIVE ASSOCIATES, LLC LOCATED IN SECTION 5, T.34 N., R.55 E., M.D.B. & M., PORTIONS OF WHICH LIE WITHIN THE CITY OF ELKO, NEVADA AND THE COUNTY OF ELKO, NEVADA.

SECTION FIVE ASSOCIATES, LLC

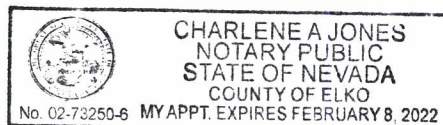


By: MARK PARIS, MANAGER

STATE OF NEVADA  
COUNTY OF ELKO

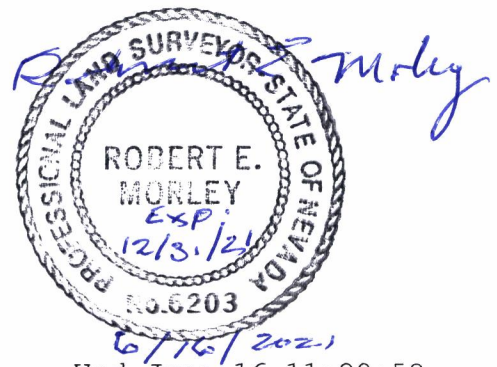
THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE 16<sup>th</sup> DAY OF June, 2021, BY MARK PARIS, MANAGER OF SECTION FIVE ASSOCIATES, LLC.

  
NOTARY PUBLIC



output.prn

page 1



Project: Carter Section 5 Associates North 5th  
2021

Wed June 16 11:28:52

Parcel Map Check

-----  
Parcel name: LOT 1

North:	15589.8038	East :	4542.4732
Line Course:	S 89-29-07 E	Length:	1986.93
	North: 15571.9543	East :	6529.3230
Line Course:	S 34-14-01 W	Length:	1677.09
	North: 14185.4189	East :	5585.8451
Line Course:	N 55-45-59 W	Length:	1242.14
	North: 14884.2077	East :	4558.9049
Line Course:	N 01-20-03 W	Length:	705.79
	North: 15589.8064	East :	4542.4717

Perimeter: 5611.95 Area: 1,742,400 sq.ft. 40.000 acres

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

Error Closure: 0.0030 Course: N 30-07-32 W

Error North: 0.00259 East : -0.00150

Precision 1: 1,870,650.00

-----  
Parcel name: LOT 2

North:	15571.9575	East :	6529.3244
Line Course:	S 89-29-07 E	Length:	670.66
	North: 15565.9327	East :	7199.9573
Line Course:	S 89-29-24 E	Length:	391.66
	North: 15562.4465	East :	7591.6018
Line Course:	S 34-14-01 W	Length:	2266.84
	North: 13688.3349	East :	6316.3491
Line Course:	N 55-45-59 W	Length:	883.59
	North: 14185.4148	East :	5585.8404
Line Course:	N 34-14-01 E	Length:	1677.09
	North: 15571.9501	East :	6529.3184

Perimeter: 5889.84 Area: 1,742,400 sq.ft. 40.000 acres

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

Error Closure: 0.0095 Course: S 38-56-50 W

Error North: -0.00740 East : -0.00598

Precision 1: 619,983.16

-----  
Parcel name: LOT 3

North: 15562.4480 East : 7591.6055  
Line Course: S 89-29-24 E Length: 903.20  
North: 15554.4085 East : 8494.7697  
Line Course: S 36-27-42 W Length: 2774.19  
North: 13323.2533 East : 6846.1106  
Curve Length: 195.99 Radius: 5040.00  
Delta: 2-13-41 Tangent: 98.00  
Chord: 195.97 Course: N 54-39-09 W

±

page 2

Project: Carter Section 5 Associates North 5th  
2021

Wed June 16 11:28:52

Parcel Map Check

Course In: S 36-27-42 W Course Out: N 34-14-01 E  
RP North: 9269.8099 East : 3850.9151  
End North: 13436.6335 East : 6686.2601  
Line Course: N 55-45-59 W Length: 447.43  
North: 13688.3435 East : 6316.3471  
Line Course: N 34-14-01 E Length: 2266.84  
North: 15562.4550 East : 7591.5998

Perimeter: 6587.64 Area: 1,742,400 sq.ft. 40.000 acres

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

Error Closure: 0.0091 Course: N 38-57-11 W  
Error North: 0.00707 East : -0.00572  
Precision 1: 723,917.58

-----  
Parcel name: LOT 4

North: 15554.4094 East : 8494.7684  
Line Course: S 89-29-24 E Length: 779.30  
North: 15547.4728 East : 9274.0375  
Line Course: S 38-09-50 W Length: 3246.81  
North: 12994.6798 East : 7267.7915  
Line Course: N 51-50-10 W Length: 384.86  
North: 13232.4898 East : 6965.1966  
Curve Length: 149.74 Radius: 5040.00  
Delta: 1-42-08 Tangent: 74.87  
Chord: 149.73 Course: N 52-41-14 W  
Course In: S 38-09-50 W Course Out: N 36-27-42 E

Page 2

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RP North: 9269.8075 East : 3850.9152  
End North: 13323.2509 East : 6846.1108  
Line Course: N 36-27-42 E Length: 2774.19  
North: 15554.4061 East : 8494.7699

Perimeter: 7334.89 Area: 1,742,400 sq.ft. 40.000 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0036 Course: S 24-02-27 E  
Error North: -0.00333 East : 0.00149  
Precision 1: 2,037,472.22

-----  
Parcel name: LOT 5

North: 15547.4736 East : 9274.0355  
Line Course: S 89-29-24 E Length: 593.30  
North: 15542.1926 East : 9867.3119  
Line Course: S 01-20-13 E Length: 993.12  
North: 14549.3429 East : 9890.4834  
Line Course: S 53-47-27 W Length: 2952.06  
North: 12805.4585 East : 7508.5671  
Line Course: N 51-50-10 W Length: 306.23  
North: 12994.6820 East : 7267.7948  
Line Course: N 38-09-50 E Length: 3246.81  
North: 15547.4749 East : 9274.0409

♀

page 3

Project: Carter Section 5 Associates North 5th  
2021

Wed June 16 11:28:52

Parcel Map Check

Perimeter: 8091.52 Area: 2,517,826 sq.ft. 57.801 acres

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0056 Course: N 75-58-24 E  
Error North: 0.00136 East : 0.00543  
Precision 1: 1,444,914.29

-----  
Parcel name: LOT 6

North: 14549.3439 East : 9890.4846  
Line Course: S 53-47-27 W Length: 2952.06  
North: 12805.4595 East : 7508.5683  
Line Course: S 51-50-10 E Length: 173.96

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North: 12697.9673 East : 7645.3437  
Curve Length: 132.31 Radius: 3040.00  
Delta: 2-29-37 Tangent: 66.16  
Chord: 132.29 Course: S 50-35-22 E  
Course In: S 38-09-50 W Course Out: N 40-39-27 E  
RP North: 10307.7780 East : 5766.8883  
End North: 12613.9762 East : 7747.5573  
Line Course: N 89-08-59 E Length: 2187.58  
North: 12646.4390 East : 9934.8964  
Line Course: N 01-20-13 W Length: 1903.42  
North: 14549.3408 East : 9890.4859

Perimeter: 7349.33 Area: 2,517,986 sq.ft. 57.805 acres

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

Error Closure: 0.0034 Course: S 23-05-55 E

Error North: -0.00309 East : 0.00132

Precision 1: 2,161,567.65

-----  
Parcel name: LOT 7

North: 12613.9755 East : 7747.5566  
Line Course: N 89-08-59 E Length: 2187.58  
North: 12646.4383 East : 9934.8957  
Line Course: S 01-24-03 E Length: 2288.69  
North: 10358.4323 East : 9990.8466  
Curve Length: 117.28 Radius: 2540.00  
Delta: 2-38-44 Tangent: 58.65  
Chord: 117.27 Course: N 43-23-29 W  
Course In: S 47-55-53 W Course Out: N 45-17-09 E  
RP North: 8656.5814 East : 8105.2954  
End North: 10443.6503 East : 9910.2842  
Line Course: N 44-42-51 W Length: 2818.60  
North: 12446.6194 East : 7927.2006  
Curve Length: 245.57 Radius: 3040.00  
Delta: 4-37-42 Tangent: 122.86  
Chord: 245.51 Course: N 47-01-42 W  
Course In: S 45-17-09 W Course Out: N 40-39-27 E  
RP North: 10307.7653 East : 5766.8990

‡

page 4

Project: Carter Section 5 Associates North 5th  
2021

Wed June 16 11:28:52

Parcel Map Check

End North: 12613.9635 East : 7747.5680

Perimeter: 7657.73 Area: 2,484,067 sq.ft. 57.026 acres

Page 4

output.prn

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

Error Closure: 0.0166 Course: S 43-51-49 E

Error North: -0.01194 East : 0.01147

Precision 1: 461,308.43

-----  
Parcel name: LOT 8

North: 12511.3726 East : 4614.1692

Line Course: N 88-39-57 E Length: 3047.74

North: 12582.3346 East : 7661.0829

Curve Length: 284.10 Radius: 2960.00

Delta: 5-29-57 Tangent: 142.16

Chord: 283.99 Course: S 47-27-49 E

Course In: S 39-47-12 W Course Out: N 45-17-09 E

RP North: 10307.7745 East : 5766.8875

End North: 12390.3430 East : 7870.3391

Line Course: S 44-42-51 E Length: 2818.60

North: 10387.3739 East : 9853.4227

Curve Length: 170.87 Radius: 2460.00

Delta: 3-58-47 Tangent: 85.47

Chord: 170.83 Course: S 42-43-28 E

Course In: S 45-17-09 W Course Out: N 49-15-56 E

RP North: 8656.5906 East : 8105.2839

End North: 10261.8736 East : 9969.3296

Line Course: S 40-44-04 E Length: 37.65

North: 10233.3446 East : 9993.8983

Line Course: S 01-24-03 E Length: 263.88

North: 9969.5434 East : 10000.3493

Line Course: S 89-47-00 W Length: 2663.28

North: 9959.4722 East : 7337.0883

Line Course: S 89-47-00 W Length: 2663.28

North: 9949.4009 East : 4673.8274

Line Course: N 01-20-03 W Length: 2562.67

North: 12511.3761 East : 4614.1595

Perimeter: 14512.06 Area: 11,222,200 sq.ft. 257.626 acres

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

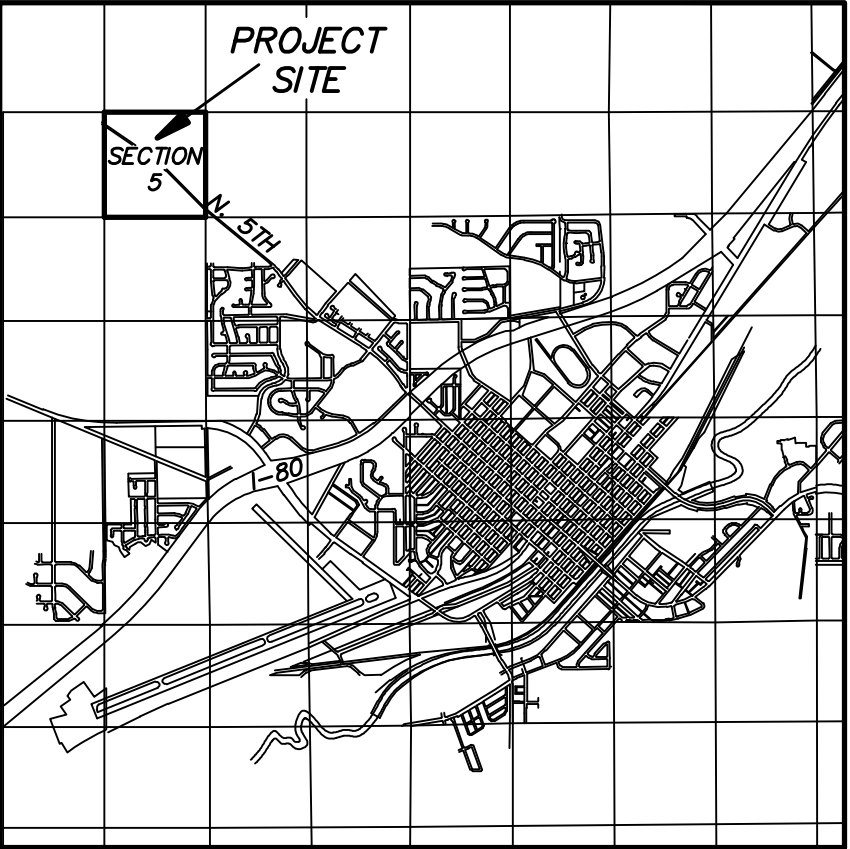
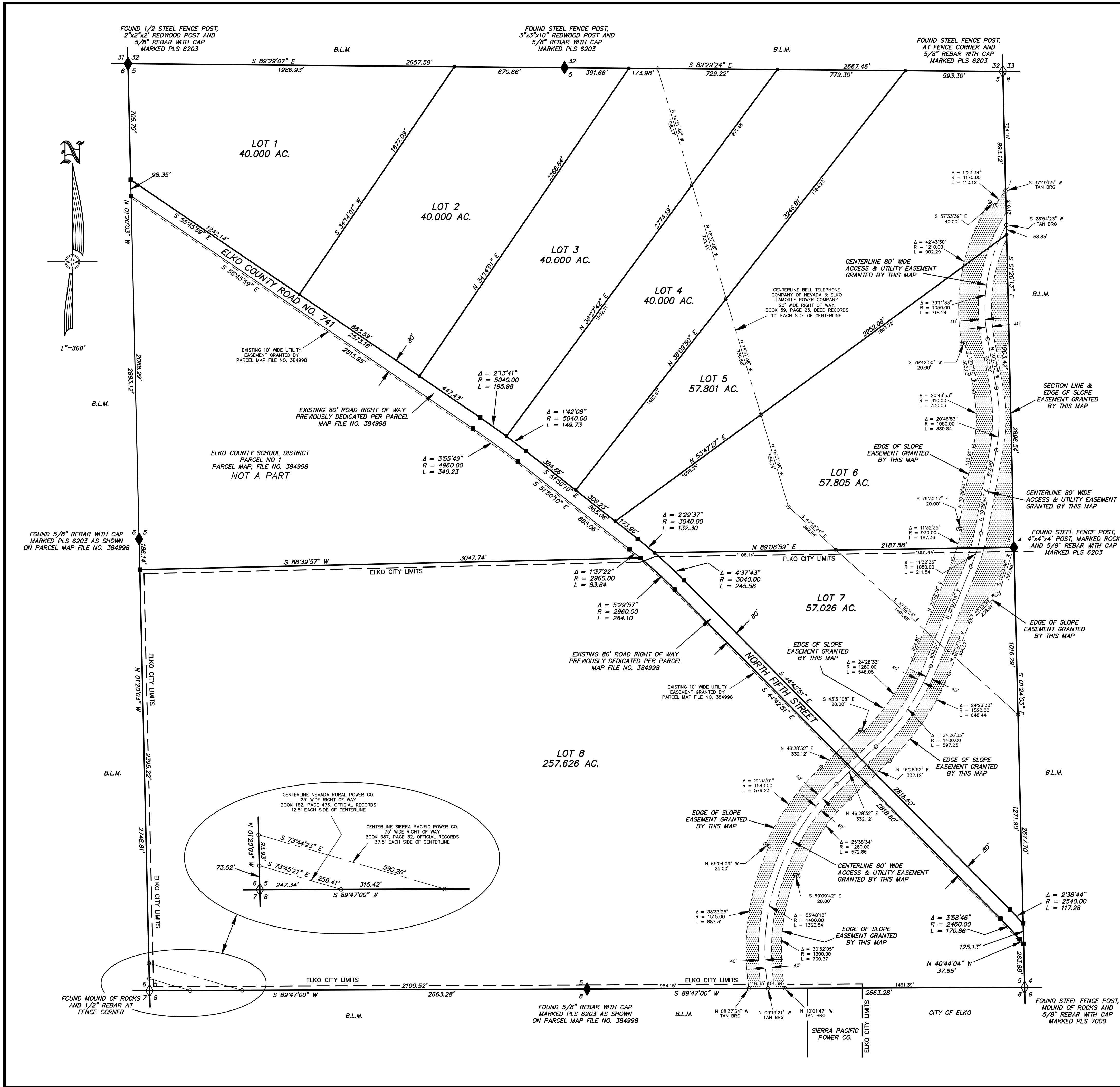
Error Closure: 0.0103 Course: N 69-53-00 W

Error North: 0.00356 East : -0.00972

Precision 1: 1,408,938.83

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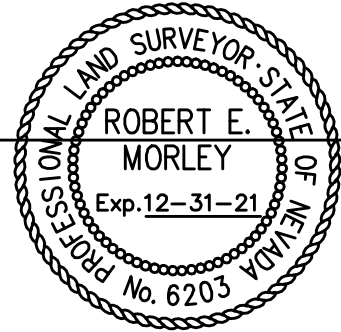


VICINITY MAP

SURVEYOR'S CERTIFICATE

I, ROBERT E. MORLEY, A LICENSED SURVEYOR IN THE STATE OF NEVADA, DO HEREBY CERTIFY THAT THIS TENTATIVE PLAT HAS BEEN PREPARED UNDER MY DIRECT SUPERVISION AND IS TECHNICALLY CORRECT.

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



NOTES:

- SUBDIVIDER: SECTION FIVE ASSOCIATES, LLC  
C/O MARK PARIS  
215 BLUFFS AVENUE, SUITE 300  
ELKO, NEVADA 89801
- SURVEYOR: ROBERT E. MORLEY, P.L.S.  
HIGH DESERT ENGINEERING, LLC  
640 IDAHO STREET  
ELKO, NEVADA 89801
- LEGAL DESCRIPTION: PARCEL 2 AS SHOWN ON THE PARCEL MAP FOR NEVADA LAND & RESOURCE COMPANY, LLC, FILE NO. 384998, LOCATED IN SECTION 5, T.34 N., R.55 E., M.D.B. & M., CITY AND COUNTY OF ELKO, NEVADA
- NUMBER OF LOTS: 8 LOTS TOTAL
- THE PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA.
- THE TOTAL SUBDIVIDED AREA OF THIS MAP EQUALS 590.258 ACRES.
- IN ADDITION TO ANY EASEMENTS SHOWN, A 10.00 FOOT WIDE PUBLIC UTILITY AND DRAINAGE EASEMENT WILL BE GRANTED ALONG ALL STREET FRONTAGES AND EXTERIOR BOUNDARY LINES AND A 5.00 WIDE UTILITY AND DRAINAGE EASEMENT WILL BE GRANTED ALONG ALL INTERIOR BOUNDARY LINES.
- BASIS OF BEARINGS: THE PARCEL MAP FOR NEVADA LAND & RESOURCE COMPANY, LLC ON FILE IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA AS FILE NO. 384998.
- THIS MAP SUBDIVIDES PARCEL 2 AS SHOWN ON THE PARCEL MAP FOR NEVADA LAND & RESOURCE COMPANY, LLC ON FILE IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA AS FILE NO. 384998.

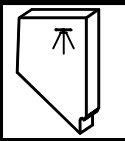
LEGEND

- ◇ = FOUND SECTION CORNER AS NOTED.
- ◆ = FOUND 1/4 SECTION CORNER AS NOTED.
- = 5/8" REBAR WITH CAP MARKED PLS 6203 TO BE SET
- = FOUND 5/8" REBAR WITH CAP MARKED PLS 6203
- = CALCULATED POINT, NOTHING FOUND, NOTHING SET.
- ▨ = SLOPE EASEMENT

300 0 300 600 900 1200

SCALE: 1"=300'

TENTATIVE MAP  
OF  
DIVISION INTO LARGE PARCELS  
BY  
SECTION FIVE ASSOCIATES, LLC  
IN  
SECTION 5, T.34 N., R.55 E., M.D.B. & M.  
CITY AND COUNTY OF ELKO, NEVADA



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

221033



# Zoning Bulletin

## in this issue:

Special Use Permit	1
Variances	3
Conditional Site Plan Approval	5
Zoning News From Around the Nation	6

## Special Use Permit

Court reviews ZBA's decision to deny boat clubs request to construct boat shed and revise landscaping plans

Citation: *Winchester Boat Club, Inc. v. Zoning Board of Appeals of Winchester*, 2021 WL 1700846 (Mass. Land Ct. 2021)

The Winchester Boat Club Inc. (WBC), a private boat club along Mystic Lake in Winchester, Massachusetts, sat on two adjoining parcels—one on Cambridge Street and the other on Everett Avenue. The open space parcel between Everett Avenue and the lake had been a source of contention between WBC and the neighbors and the Town of Winchester for years.

WBC wanted to build a pavilion, or a boat shed on the parcel, but the neighbors objected over fears that they would lose their view of the lake. They also cited increased noise and traffic would result with WBC members parking then walking through the open area.

The Winchester Zoning Board of Appeals (ZBA) denied WBC applications to construct a pavilion, a boat shed, and landscaping on the open parcel. WBC challenged the denial to construct a boat shed and landscaping.

### DECISION: Affirmed.

There wasn't any evidence the ZBA's decision was "unreasonable, whimsical, capricious or arbitrary."

The WBC didn't dispute that it was bound by a special permit that allowed outdoor recreational use on the Open Space Parcel. "Once granted, if WBC would like to use the parcel in a manner substantially different from that permitted, it must request a modification of the special permit," the court explained.

The question, therefore, became, whether the landscape plan allowed the WBC to plant deciduous trees along the southern property line on the open space parcel (which was roughly parallel to Mystic Lake). "If the proposed planting of the trees is within 'substantial conformity' with the special permit, then a modification of the special permit will not be required," the court added.

"It is the burden of the WBC, not the [ZBA], to show that their proposed tree plantings are allowed by the special permit," the court noted. But, here, there wasn't any "evidence that the trees WBC intended to plant in that location [we]re permitted under the special permit granted to use the [o]pen [s]pace [p]arcel for outdoor recreation."

For the boat shed, the court reached a similar conclusion. The first step, it explained, was to figure out if the ZBA's interpretation of a bylaw was "legally untenable," with respect to the WBC's application. The court ruled the ZBA reasonably concluded that the WBC needed a new special permit to build the boat shed on the open space parcel.



Then, the court moved on to whether the bylaw permitted construction of the boat shed on the open space parcel. “The Bylaw’s definition of ‘accessory use or structure’ [wa]s ‘[a] use or structure *on the same lot with*, and of a nature customarily incidental and subordinate to, the principal use or structure.’ ”

When denying the special permit, the ZBA found the boat shed constituted an “accessory use or structure” under the bylaw. This was because it was “the ‘kind of structure that [wa]s customarily incidental and subordinate to the [b]oat [c]lub’s clubhouse.’ ”

In the RDB district where the WBC was located, “the only accessory structures that [we]re allowed as of right [we]re a ‘[n]oncommercial greenhouse, tool shed or other similar accessory structure not in excess of 150 square feet of gross floor area,’ or accessory uses ‘in connection with scientific research or scientific development.’ ” This

proposed boat shed exceeded 150 square feet by nearly 550 square feet, and WBC “never argued that its proposed use was ‘in connection with scientific research’ or development.”

---

*When denying the special permit, the ZBA found the boat shed constituted an “accessory use or structure” under the bylaw. This was because it was “the ‘kind of structure that [wa]s customarily incidental and subordinate to the [b]oat [c]lub’s clubhouse.’ ”*

---

On this basis, the court found the ZBA’s interpretation wasn’t unreasonable. “WBC’s clubhouse [wa]s the primary structure on the [c]lubhouse [p]arcel, to which the storage shed would be incidental—the lockers in the shed would be accessed by members in the sailing program to retrieve the accessories to their boats. It was not unreasonable for the [ZBA] to interpret this use as an accessory use where the boat shed [wa]s to be used for the sole purpose of storing accessories for the sailing program, whose activities occur[ed] on the [c]lubhouse [p]arcel and the Upper Mystic Lake.”

## A CLOSER LOOK

WBC claimed its request to build the boat shed still should have been granted because the use was “a principal use rather than an accessory use, which [wa]s essential to the parcel’s predominantly outdoor recreational use.” But, the ZBA had concluded that “the proposed building ‘if considered to be a principal structure, [wa]s prohibited in the RDB district’ ” because “[n]othing in the Table of Uses permit[ed] a storage facility.”

Finally, in reviewing the special permit application the ZBA had considered:

- 1) **community needs the proposal would serve**—there wasn’t any evidence the boat shed would benefit any local school sailing teams or other members of the community who weren’t already WBC members and it wasn’t enough to show that private members and their guests would benefit;
- 2) **traffic flow and safety, including parking and loading**—if members’ lockers were moved to the proposed boat shed they would be better accessible from Everett Avenue gate, and it was reasonable for the ZBA to predict that traffic would increase if the special permit was issued;
- 3) **the impact on neighborhood character**—including how compatible the building forms and materials were with the prevailing scale and character of buildings in the neighborhood, whether architectural features added visual character to the neigh-

---

### Contributors

Laura Scott, Esq.

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borhood, and whether the “patterns and proportions of windows” were consistent—the “proposed boat shed would exceed the scale of typical residential sheds,” could disturb the tranquility of the neighborhood and wildlife, and would be used by more than 100 students using lockers “even once a day,” which would disturb the tranquility that currently benefits the area;

- 4) **the adequacy of proposed screening and buffering**—the proposed boat shed “would result in the removal of a maple tree that currently screen[ed] the boat racks from the Everett Avenue gate” and because the neighbors already could “already see the existing boat racks, and the proposed shed would be taller, it st[ood] to reason that the proposed boat shed would not be screened from their properties under the WBC’s proposed plan”; and
- 5) **the impact on natural environment, including the removal of mature trees**—the proposed boat shed would be wider than existing boat racks and protrude out by about four feet, and the “larger footprint and location of the boat shed would therefore reduce some existing open space” and “[w]hile the loss of four feet of open space may seem minimal, that [wa]s not for” the court to decide (at this stage of review, “even an impact that appear[ed] ‘minimal’ c[ould] be a sufficient basis for the [ZBA] to deny a special permit.”

---

*Practically Speaking:*

*The types and locations of the deciduous trees the WBC sought to use would result in a “ ‘substantial change’ from the existing special permit,” and since the neighbors wanted to see the lake from their homes, “the location and types of landscaping materials [were] ‘of particular and prime importance to neighboring property owners.’ It was reasonable for the [ZBA] to conclude that WBC would need a modification or a new special permit (and the requisite public notice and hearing process involved) . . . to plant trees in that location.”*

---

## Variances

After ZBA grants application for use and dimensional variances, concerned neighbors file suit

Citation: *Shikomba v. Philadelphia Zoning Board of Adjustment*, 2021 WL 1625019 (Pa. Commw. Ct. 2021)

A member of the North of Washington Avenue (Philadelphia) Coalition and other plaintiffs appealed a court order affirming the City of Philadelphia’s Zoning Board of Adjustment (ZBA) granting an application for use and dimensional variances.

**DECISION: Reversed.**

The ZBA erred in finding the use variance was proper because it would only subject the person applying for the permit and not the property to a hardship.

### A CLOSER LOOK

The subject property at 2147 Catherine Street was zoned RSA-5 Residential and was situated on an under-sized lot of approximately 900 square feet, less than the 1,440 square feet currently required in that zoning district.

The plan was to demolish the existing structure and construct an attached, mixed-use, three-story commercial/residential structure. The idea was that the structure would be used for a sit-down restaurant on the first floor with two dwelling units on the upper floors.

The applicant also sought to develop an adjacent corner property at 2149 Catherine Street, which currently had a coffee shop on the first floor (Ultimo Coffee), offices on the second floor, and a residence on the third floor. Aaron Ultimo owned and operated Ultimo Coffee, a public-private economic development corporation (PIDC) with a small footprint in its existing space at 2149 Catherine Street with fewer than 20 seats. The PIDC was charged with creating eight jobs but managed to create 10.

When the applicant bought the adjacent property at 2149 Catherine Street, he described it as dilapidated, a shell, and a drug corner. He knocked it down and built a new building, which is “beautiful and done really well.” Regarding the subject property, the applicant said it took him four years to buy it from the Philadelphia Housing Authority and that his “intention always was to double-wide each of these spaces.” Therefore, the applicant proposed to expand Ultimo Coffee into the new structure by breaking through the party wall and accessing additional space on the new ground floor thereby creating a sit-down restaurant spanning both properties.

The applicant applied to the city’s Department of Licenses and Inspections (DLI) for permission to execute his proposal. The DLI denied the application because restaurants and two-family residential uses were prohibited in the RSA-5 Residential District, and no more than one principal use was permitted per lot whereas two uses were proposed. Also, a minimum open area of 25% was required (but an open area of only 14% was proposed) and a minimum rear-yard depth of nine feet was needed (but a rear-yard depth of four feet, 11 inches was proposed).

The ZBA voted to grant the variances so long as outdoor dining did not occur in an existing loading zone. The lower court denied the objectors’ appeal and found there was evidence to support the ZBA’s decision to grant the variances.

### THE APPEALS COURT’S REASONING

Did the record lack substantial evidence to support the ZBA’s decision that the applicant “would suffer unnecessary hardship absent the variances” it granted? That’s a key question the court addressed.

The zoning code stated that a variance would be granted “if [the ZBA] f[ound] each of the following criteria [we]re satisfied”:

- the variance denial would result in an unnecessary hardship to the applicant;
- the variance, “whether use or dimensional, if authorized w[ould] represent the minimum variance that w[ould] afford relief and . . . represent the least modification possible of the use or dimensional regulation in issue”;
- granting the variance would “be in harmony with the purpose and spirit of th[e] [z]oning [c]ode” and would “not substantially increase congestion in the public streets, increase the danger of fire, or otherwise endanger the public health, safety, or general welfare”;
- the variance wouldn’t “substantially or permanently injure the appropriate use of adjacent conforming property or impair an adequate supply of light and air to adjacent conforming property”;
- the granting of the variance wouldn’t “adversely affect transportation or unduly burden water, sewer, school, park, or other public facilities,” “adversely and substantially affect the implementation of any adopted plan for the area where the property [wa]s located,” or “create any significant environmental damage, pollution, erosion, or siltation, and [would] not significantly increase the danger of flooding either during or after construction, and the applicant w[ould] take measures to minimize environmental damage during any construction.”

### UNNECESSARY HARDSHIP DEFINED

To find an unnecessary hardship existed, the ZBA had to find:

- “there are unique physical circumstances or conditions (such as irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions) peculiar to the property, and that the unnecessary hardship [wa]s due to such conditions and not to circumstances or conditions generally created by the provisions of th[e] [z]oning [c]ode in the area or zoning district where the property [wa]s located”;
- “because of those physical circumstances or conditions, there [wa]s no possibility that the property c[ould] be used in strict conformity with the provisions of th[e] [z]oning [c]ode and that the authorization of a variance [wa]s therefore necessary to enable the viable economic use of the property”;
- “the use variance, if authorized, w[ould] not alter the essential character of the neighborhood or district in which the property [wa]s located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare”; and

- “the hardship cannot be cured by the grant of a dimensional variance.”

Here, the ZBA found the applicant has satisfied the necessary criteria for the requested variances because the property was an undersized lot adjacent to an existing commercial use, its proposed structure would be consistent with the existing structures on adjacent properties on either side of it, and the proposed ground floor use would merely expand an established commercial use existing on the adjacent, corner property with the upper levels used for housing. The ZBA also found this hardship wasn’t “self-imposed” and that “the variances requested [we]re the minimum necessary to afford relief, and that the development w[ould] not detrimentally impact the public health, safety or welfare.”

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*Here, the ZBA found the applicant has satisfied the necessary criteria for the requested variances because the property was an undersized lot adjacent to an existing commercial use, etc.*

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The court disagreed. While the existing property may have been in poor condition that didn’t “equate to an inability to use the property as zoned.”

### THE BOTTOM LINE

The ZBA erred. There was “no indication in the present case that the subject property [wa]s valueless as zoned and c[ould] only be converted to a single-family home at prohibitive expense.” Also, while the applicant had “rescued the once dilapidated adjacent property and transformed it into a viable property” that didn’t mean he was entitled to “zoning relief” he requested for the subject property. “Where, as here, the objectors challenge[d] an application for variances necessary for a project outside of the permitted zoning, an applicant’s positive contributions to the neighborhood, including the presence of a PIDC next door, c[ould not] alone serve as substantial evidence for zoning relief.” And, the fact that the applicant wanted to “**use the subject property to expand the next-door coffee shop and transform it into a larger sit-down restaurant d[id] not constitute an unnecessary hardship** on the property itself but rather an alleged hardship on him personally.”

“A variance, especially a use variance, [wa]s appropriate only where the property, not the person, [wa]s subject to the hardship,” the court ruled.

#### Case Note:

*Regarding a dimensional variance, the local zoning code stated “[t]o find an unnecessary hardship . . . the . . . [ZBA] may consider the economic detriment to the applicant if the variance is denied, the financial burden created by any work necessary to*

*bring [any existing] building into strict compliance with the zoning requirements[,] and the characteristics of the surrounding neighborhood."*

## Variance applicant challenges ZBA's denial of request

Citation: *Zapson v. Zoning Board of Appeals of City of Long Beach*, 193 A.D.3d 948, 142 N.Y.S.3d 844 (2d Dep't 2021)

In August 2016, Jacqueline Zapson applied to the Long Beach (California) Zoning Board of Appeals (ZBA) requesting area variances to build a multi-family dwelling on a substandard lot. Following a public hearing, the ZBA denied Zapson's application.

In July 2017, Zapson filed an "article 78" lawsuit disagreeing with the ZBA's decision. The ZBA then issued findings of fact outlining the reasons it denied her application.

In November 2017, the court denied Zapson's request for review. She appealed.

### **DECISION: Request for review denied.**

The record showed the ZBA had "engaged in the required balancing test and considered the relevant statutory factors" in reaching its decision to deny the variance.

The ZBA had "broad discretion in considering applications for variances, and judicial review [wa]s limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion," the court explained.

This meant the court would "consider substantial evidence only to determine whether the record contains sufficient evidence to support the rationality of the [ZBA's] determination." "[A] zoning board's determination should be sustained if it is not illegal, has a rational basis, and is not arbitrary and capricious," the court added. Also, if the zoning board's decision had "some objective factual basis, as opposed to resting entirely on subjective considerations such as general community opposition" it would be deemed rational.

The zoning board had to "engage in a balancing test weighing 'the benefit to the applicant if the variance [wa]s granted . . . against the detriment to the health, safety and welfare of the neighborhood or community by such grant.'" It also had to consider whether:

- an undesirable change would result "in the character of the neighborhood or a detriment to nearby properties w[ould] be created by the granting of the area variance";
- the benefit Zapson sought could "be achieved by some method feasible for [her] to pursue, other than an area variance";
- "the requested area variance [wa]s substantial";
- "the proposed variance w[ould] have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district"; and

### • "the alleged difficulty was self-created."

In this case, the record showed the ZBA had "engaged in the required balancing test and considered the relevant statutory factors" and it had a rational basis for denying the application.

## THE BOTTOM LINE

"The proposed variances were substantial, and the evidence before the ZBA supported its findings that the proposed construction would produce an undesirable change in the character of the neighborhood, have an adverse impact on the physical or environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community," the court ruled. Also, while Zapson claimed the ZBA's decision was arbitrary and capricious because the ZBA had previously granted similar applications, this argument didn't have merit. "To the extent that the allegedly similar applications [Zapson identified] . . . involv[ing] similar facts, the ZBA provided a rational explanation for reaching a different result here."

### *Practically Speaking:*

*"The proposed variances were substantial, and the evidence before the ZBA supported its findings that the proposed construction would produce an undesirable change in the character of the neighborhood, have an adverse impact on the physical or environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community," the court ruled.*

## Conditional Site Plan Approval

Court reviews whether local planning board's decision to grant waivers for private road construction proper

Citation: *McDonald v. Town of Raymond Planning Board*, 2021 WL 1511506 (N.H. 2021)

Sterling Homes LLC (Sterling) proposed a road network that didn't comply with the Town of Raymond, New Hampshire's regulations. It stated the roads would give its townhome development, which constituted of 172 dwellings in 43 buildings connected by a cul-de-sac-style network of roads, a better "slow-moving neighborhood type feel."

Mardan Investment Group (Mardan) submitted a site-plan review application for the proposed project. Then, it asked for a waiver to all requirements that the project meet the town's road standards.

The local planning board denied the waiver request and suggested that Mardan could resubmit a revised project design.

Four new proposed plans emerged, each showing public roads designed to town standards and, therefore, requiring no waiver.

Upon review, the board reverted to reviewing the originally submitted plan and asked that Mardan be revised slightly to show a potential 50-foot-wide right of way and identify the waivers that would be required at each point in the development's road network.

The board then granted the waivers, but a local neighbor, Robert McDonald, objected. McDonald and his wife filed a lawsuit seeking to review the board's conditional approval of the project.

The lower court affirmed the board's decision, and the McDonalds appealed.

#### **DECISION: Affirmed.**

The conditional site plan approval stood.

Review of the planning board's decision was limited. Its decision could only be set aside if it was unreasonable or erroneous under the law. It was the McDonald's burden to show that the decision was unreasonable, which they failed to meet.

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*"In light of this evidence, it was reasonable for the [p]lanning [b]oard to conclude that Mardan would suffer unnecessary hardship—in the form of, among other things, lower sales prices—if [it] did not grant the waivers at issue."*

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When the planning board considered the project, it was noted that the lowest speed limit in the town standards was 30 miles per hour. "In constructing this project, however, Mardan sought to utilize a speed limit of 15 miles per hour, and to incorporate passive speed control measures to force drivers to abide by that limit. This was particularly important because, as a private roadway network, unit owners could not rely on police officers to enforce the speed limit within the project. While the site plan application was pending, Mardan presented evidence to the [p]lanning [b]oard that although it could design a project that contained the same density without obtaining the waivers at issue, the resulting roads would encourage higher speeds," the court explained. In addition, "Mardan also presented evidence that current market demand[s] favor the more walkable communities, and thus sales prices would be higher under Mardan's proposed design. In light of this evidence, it was reasonable for the [p]lanning [b]oard to conclude that Mardan would suffer unnecessary hardship—in the form of, among other things, lower sales prices—if [it] did not grant the waivers at issue."

#### **PRACTICALLY SPEAKING**

In a case like this, the court wasn't determining whether

it agreed or disagreed with the planning board's findings. Rather, its role was "to determine whether there [wa]s evidence upon which [it] could have been reasonably based."

## **Zoning News From Around the Nation**

### **Arizona**

Sedona is looking for someone to fill a planning and zoning commission seat

There's a vacant seat on the Sedona, Arizona Planning and Zoning Commission, and the city recently announced it is seeking to fill that role.

"This voluntary body, established by city council, consists of seven citizens appointed to play a critical role in the city's planning process," Sedona's website explained. "The commission serves as council advisor on land use, growth and development issues. Commission duties include making recommendations to the city council on Community Plan updates, Land Development Code amendments, property zone changes and subdivision applications. In addition, the commission makes the final decision on conditional use permits and development review applications," it added.

The term of service for this member will expire October 31, 2022, and applicants for the role must live within the city limits and "should have interest, experience or knowledge in land use or related fields including, but not limited to architecture, construction, landscaping and planning."

Source: [sedonaaz.gov](http://sedonaaz.gov)

### **Georgia**

City council rejects single-family residential rezoning request for nine-acre tract of land

The Hampton, Georgia City Council has rejected a request to rezone a nine-acre tract of land currently designated as R2 to R4, single-family residential, *The Atlantic Journal-Constitution*. According to the news outlet, officials said the site wasn't compliant with a low-density residential section of the city's comprehensive plan. The council did, however, agree to rezone the area to planned development subject to more than 12 conditions, it reported.

Source: [ajc.com](http://ajc.com)

### **Illinois**

Chicago City Council passes air-pollution ordinance to protect residents from environmental hazards

The Chicago City Council has passed an ordinance to boost fines for air pollution to better protect residents from environmental hazards. The ordinance will hold industrial facilities and demolition contractors accountable for creating dust and for risking the health and quality-of-life of residents, a city press release stated.

With this ordinance in effect, the Chicago Department of Public Health (CDPH) will be able "to assess higher fines."



“Protecting the health of our residents remains our highest priority, especially as we continue to grapple with the challenges of COVID-19,” said Mayor Lori Lightfoot, who introduced the proposal in December 2020. “This ordinance will allow us to do just that by holding companies accountable for jeopardizing the health of our residents and deterring future environmental violations in our city,” she added.

The current penalties ranging from \$1,000 to \$5,000 for air pollution violations committed by large industrial facilities will increase for large facilities to \$5,000 to \$10,000 for a first offense, \$10,000 to \$15,000 for a second offense, and \$15,000 to \$20,000 for any subsequent offense. “The fine can go up to \$50,000 if the violation is egregious and involves visible emissions, prohibited air pollution or improper handling of material that can become windborne,” the press release stated.

“CDPH is committed to advancing and enforcing environmental policies and rules to protect air quality,” said CDPH Commissioner Allison Arwady, M.D. “This ordinance provides our inspectors with additional enforcement tools to hold industrial facilities and demolition contractors accountable and ensure they follow the rules.”

Other penalties may apply to contractors that demolish large commercial buildings without keeping the dust under control.

For more information, visit [chicago.gov/city/en/depts/cdph/provdrs/healthy\\_communities/news/2021/january/city-council-passes-ordinance-to-increase-fines-on-air-pollution.html](https://chicago.gov/city/en/depts/cdph/provdrs/healthy_communities/news/2021/january/city-council-passes-ordinance-to-increase-fines-on-air-pollution.html).

Source: [chicago.gov](https://chicago.gov)

### Indiana

Carmel ZBA decision effectively shuts down local restaurant and bar

The Greatest of All Taverns (GOAT) restaurant in Carmel, Indiana, operated in a mainly residential area, and following several months of controversy, the city’s zoning appeals board (ZAB) has effectively voted to shut it down, the *Indianapolis Business Journal* reported recently.

Neighbors complained about unruly GOAT patrons, and upon investigation, city officials discovered that at night the restaurant and bar was operating in a capacity not covered under the applicable special zoning provision previously used to permit a breakfast place to operate.

The news outlet reported that with a 4-1 vote, the ZAB rejected the restaurant owner’s application for an updated use ordinance that would have allowed him to continue operating his bar.

Source: [ibj.com](https://ibj.com)

### Massachusetts

City of Cambridge’s new development log for Q1 2021 now available

Each quarter, the City of Cambridge, Massachusetts publishes a Development Log to track large-scale residential and commercial development projects currently in

the permitting or construction phases in the city. “The Log contains the name and location of each project, the developer, type of use, and the amount of square footage,” the city’s website states.

To be included in the development log, a project must be:

- **commercial in nature and total more than 30,000 square feet or a commercial project falling under the city’s incentive zoning ordinance**, which applies to large non-residential developments ([cambridgema.gov/CDD/housing/fordevelopersandpropanagers/incentivezoning](https://cambridgema.gov/CDD/housing/fordevelopersandpropanagers/incentivezoning));
- **another kind of commercial project falling under the Parking and Transportation Demand Management Ordinance**, which the city touts as being “a national model for improving mobility and access, reducing congestion and air pollution, and increasing safety by promoting walking, bicycling, public transit, and other sustainable modes” ([cambridgema.gov/CDD/Transportation/fordevelopers/ptdm](https://cambridgema.gov/CDD/Transportation/fordevelopers/ptdm));
- **a residential project of eight or more new-construction units or a rehab/renovation project altering the existing use by adding to the existing number of units or square footage;**
- **any other residential project falling under the jurisdiction of the city’s Inclusionary Zoning Ordinance** ([cambridgema.gov/CDD/Projects/Housing/inclusionaryhousingstudy](https://cambridgema.gov/CDD/Projects/Housing/inclusionaryhousingstudy)) or **100% Affordable Housing Overlay Zoning Ordinance** ([cambridgema.gov/CDD/housing/housingdevelopment/aho](https://cambridgema.gov/CDD/housing/housingdevelopment/aho));
- **a municipal project where one or more city departments has a significant interest; or**
- **any other project having a significant impact on the neighborhood in which it is located.**

Through Cambridge’s Community Development Department’s Development Log Dashboard, users can “interactively learn about development activity in Cambridge. The Dashboard displays data from 69 current projects, totaling a combined 11.6 million square feet and including over 5,200 units of housing.” It also allows users to zoom in on development locations on the city map, research development projects by neighborhood, search projects by address, primary use, and status, find out how many affordable and market-rate housing units in each development are available, and determine how many permitted parking spaces are available for each project.

More on Cambridge’s current Development Log can be found at [data.cambridgema.gov/Planning/Development-Log-Current-Edition-Map/7tkb-6nee](https://data.cambridgema.gov/Planning/Development-Log-Current-Edition-Map/7tkb-6nee).

Source: [cambridgema.gov](https://cambridgema.gov)

### New Jersey

State AG files civil rights lawsuit alleging township used zoning to exclude and discriminate against Orthodox Jews

The state’s attorney general (AG), Gurbir Grewal, has

filed a lawsuit against Jackson Township alleging it violated the New Jersey Law Against Discrimination by using “zoning powers to make it harder for Orthodox Jews to practice their religion and to deter them from moving there,” an AG’s office press release stated.

The complaint alleges that Jackson’s officials adopted discriminatory zoning ordinances and enforcement practices motivated “in part by officials’ desire to appease [t]ownship residents who reacted to [its] growing Orthodox Jewish population by expressing hate and fear on social media, in complaints to Township officials, and in public meetings.”

“We’ve filed this lawsuit because bias and hate have no home in New Jersey, and we will not allow some vocal residents’ intolerance to drive local government decisions,” said AG Grewal. “Like all public servants, municipal officials have a duty to uphold the law, not weaponize it against specific groups because of what they believe or how they worship. Today’s lawsuit should send that message to anyone in New Jersey who needs to hear it.”

The named defendants in the lawsuit include Jackson township, its council, its Zoning Board of Adjustment, its Planning Board, and its mayor in his official capacity.

According to the press release, in 2015, some Jackson residents complained to local officials about an influx of Orthodox Jews into the township. Some of the residents began posting derogatory remarks on social media, and some officials allegedly sympathized with the residents saying the township was being a subdivision of Lakewood, a municipality that borders Jackson and has more than 50,000 Orthodox Jewish residents. Lakewood is also home to the second largest yeshiva—Orthodox Jewish religious school—in the world, the press release noted.

As a result of the residents’ comments, Jackson Township officials drafted “plans to create and enforce rules that would stymie the religious observances of Orthodox Jews in Jackson and, as one former Zoning Board member said in a Facebook post, quell ‘the tsunami of orthodoxy that is mounting at the border.’ ”

The township then, using ordinances and enforcement actions, “exploited its power to regulate land use and housing to disrupt vital aspects of Orthodox Jewish life in Jackson and to interfere with the ability of observant Orthodox Jews to live there.”

“This lawsuit shows that the Attorney General and the Division on Civil Rights stand ready to address discrimination in all its forms, whenever and wherever it occurs throughout the state,” said Aaron Scherzer, Chief of Strategic Initiatives and Enforcement at New Jersey’s Division on Civil Rights. “We will not allow municipalities to discriminate against residents because of their religious beliefs or to take actions based on residents’ intolerance.

Instead, as we confront a rising tide of bias across the state and around the country, we need our local leaders to set an example for how to address intolerance and persistent othering.”

The complaint also alleges the township developed four strategies for targeting aspects of Orthodox Jewish religious practice:

- 1) **engaging “in targeted and discriminatory surveillance of the homes of Orthodox Jews suspected of hosting communal prayer gatherings”**—the local zoning code requires “permits for places of worship but there are constitutional limits on municipalities’ ability to use their zoning authority to restrict the free exercise of religion, and government officials cannot discriminate on the basis of religion”;
- 2) **dedicating “significant resources to monitoring the homes of Orthodox Jews, at the direction of [the mayor] and others, even after officials warned that taxpayer funds and government resources were being wasted and that officials were not finding significant code violations” and applying the land-use laws in a way “to inhibit the erection of sukkahs [temporary, open-air structures to make a weeklong Jewish holiday celebrating the fall harvest] by the [t]ownship’s Jewish residents, particularly in their front yards”;**
- 3) **discriminating against this protected group by enacting zoning ordinances in 2017 that “essentially banned the establishment of yeshivas and dormitories, where yeshiva students typically reside so as to avoid the distractions of secular life”;** and
- 4) **discriminating against them by enacting another ordinance in 2017 “that targeted and effectively banned the creation of eruvim—symbolic, boundary-defined areas in which observant Orthodox Jews are permitted to engage in certain activities otherwise prohibited on the Sabbath (Friday evening to Saturday evening) and during the holiday of Yom Kippur.”**

The complaint contends that the township’s policies and enforcement actions reflected the “officials’ acquiescence to—and often solidarity with—anti-Orthodox-Jewish bias voiced by certain residents about Orthodox Jews including that they ‘refuse to assimilate’ and that they will ‘destroy our neighborhoods.’ ”

To read the complaint that was filed with the court, visit <https://www.nj.gov/oag/newsreleases21/Jackson-Complaint-Final-4.27.21.pdf>.

Source: [njoag.gov](https://www.nj.gov/oag/newsreleases21/Jackson-Complaint-Final-4.27.21.pdf)



# Zoning Bulletin

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## Use Variances

Local zoning board of adjustment's decision to deny use variance for a drive-thru Dunkin' Donuts challenged in court

Citation: *DePetris Family Associates 2, LLC v. Medford Township Zoning Board of Adjustment*, 2021 WL 1961120 (N.J. Super. Ct. App. Div. 2021)

The DePetris Family Associates 2 LLC (DePetris) wanted to build a drive-thru Dunkin' Donuts in Medford Township, New Jersey, along with three adjacent retail buildings. Coffee shops were allowed in the pertinent Community Commercial (CC) zone. Also, the zoning ordinance treated such businesses with a drive-thru component as only conditional uses, so a use variance was required to enable the drive-thru feature.

DePetris applied to the Zoning Board of Adjustment (ZBA) for a use variance for the proposed project, along with several bulk variances. By a 5-2 vote, the ZBA rejected the application, in large part because of concerns about traffic impacts, in particular, customers who would be making left-hand turns into and out of the Dunkin' Donuts.

DePetris challenged the ZBA's denial by filing a complaint with the Law Division, which upheld the ZBA's decision. DePetris further appealed.

### **DECISION: Vacated; case sent back for further proceedings.**

Further examination of evidence was needed, and either party would be "free to adduce further relevant evidence on the traffic issues . . . , including, for example, any data that may exist or be compiled about the compliance of motorists with rush-hour turn limitations and signage, as well as expert analysis of how the rush-hour limitation would be expected to impact the volume and flow of vehicles."

An assumption had been made that "there would be 'full movement access' to the Dunkin' Donuts by motorists at all hours, overlooking that DePetris agreed in its revised plan to a daily prohibition on left-hand turns out of the premises onto Taunton Road between the anticipated peak usage hours of 7:00 a.m. to 9:00 a.m.," the court explained. "Because this revision appears to affect a key aspect of the use variance analysis, the matter must be reconsidered by the [ZBA] to take the revision into account and evaluate it explicitly," the court added.

### **A CLOSER LOOK**

A traffic expert had testified that—from a parking and traffic analysis perspective—the proposed Dunkin' Donuts "would be 'complementary' to the three proposed retail stores, given the drive-thru's peak usage times before the retail stores would open," the court explained. That expert said, "that 95% of Dunkin' Donuts business traffic on weekdays is during the a.m. peak hours, i.e., between 7:15 and 8:30 a.m. Additionally, the Dunkin' Donuts would account for 70% of the site's traffic on Saturdays. He testified that 17% less traffic exists at the intersection



during the morning commute than at other hours, and that the proposed Dunkin' Donuts would increase overall traffic at the intersection by only 1-3%."

*A traffic expert had testified that—from a parking and traffic analysis perspective—the proposed Dunkin' Donuts "would be 'complementary' to the three proposed retail stores, given the drive-thru's peak usage times before the retail stores would open," the court explained.*

In addition, the expert "estimated that 88% of all traffic patronizing the Dunkin' Donuts would use the drive-thru.

He asserted the proposed drive-thru lane had been designed to permit queuing for up to nine motor vehicles. According to the expert, the average queuing, on the whole, would be four-to-five motor vehicles at a time, with an average of six during the peak hour."

Ultimately, the ZBA had concluded that DePetrus' "proposed plan for a full movement access at [the road] create[d] an unsafe ingress/egress and inefficient traffic circulation for motor vehicles attempting a left-turn movement from the Dunkin' Donuts onto [that road]." In support of this finding, it noted that board members had "personal knowledge of existing conditions at this highly-trafficked intersection and their understanding that the zoning prohibition of drive-thru's in the CC Zone is based, in part, on traffic considerations."

But, their analysis didn't address a proposed revision to the proposal, which would have restricted left-hand turns onto the road each day during peak hours of 7:00 a.m. to 9:00 a.m.

### THE BOTTOM LINE

The ZBA had "emphasize[d] that the drive-thru traffic at a Dunkin' Donuts during the [a.m.] peak hour [wa]s significantly higher and more intense than drive-thru traffic at a bank and pharmacy throughout a full business day." However, "this finding ignore[d] [DePetrus'] concession that it would disallow left-hand turns onto [the road] during peak morning hours," the court noted.

## Improvement Location Permit

Landowners claim they had a right to create a man-made pond without local zoning board approval

Citation: *Minser v. DeKalb County Plan Commission*, 2021 WL 1657574 (Ind. Ct. App. 2021)

Rebecca Minser and Tina Zion (the landowners) owned land in DeKalb County, Indiana, consisting of approximately 10 acres in the "AC6 zone" under the local Unified Development Ordinance (UDO). The AC6 zone was part of the Airport Compatibility Overlay District (ACO), which, according to the UDO, was "intended to establish a standard of safety and compatibility for the occupants of land in the immediate vicinity of the DeKalb County Airport by regulating incompatible land uses and setting development standards that supplement or super[s]ede the underlying zoning district."

In July 2018, a contractor the landowners hired dug a hole on their property. They intended to use the displaced dirt to raise the level of their driveway.

The landowners did not obtain an improvement location permit before digging. The resulting hole filled with water and became a man-made body of water.

The director of the Department of Development Service and the zoning administrator received information that the

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landowners were shifting the dirt and clay and sent a notice that read: "On July 26, 2018[,] our building commissioner visually inspected your property because our office received a notice that dirt was being moved or dug from the property. Without knowing what you may be doing, if you are building a new structure, pond, etc. a permit is required. If you are moving dirt, filling in low spots or grading the property, we have no issues. Please contact me as soon as possible and let me know."

After the pond had already been constructed, the landowners applied for, and were denied, a development standards variance to retain the pond.

The Board of Zoning Appeals (BZA) framed the issue at a hearing like this: The landowners were requesting a development standards variance "to allow for a pond located within the Airport Compatibility Overlay District in the air traffic pattern zone of AC6."

At the hearing, members of the airport board appeared to oppose the variance.

The landowners asked a court to review the matter, but their request was denied. Then, they were told to fill the pond back in, but they didn't comply.

In June 2019, the commission filed a complaint in court seeking injunctive relief—that is, for an order so the landowners would have to comply with the UDO and have to pay fines, attorneys' fees, and court costs.

Following discovery, the commission asked the court for judgment without a trial. It also alleged the landowners should pay more than \$5,000 in attorneys' fees. The landowners opposed the request, asserting that they did not admit a pond had been erected on their property. They claimed the depression was made as a result of mining clay from the backyard to then use to preserve their driveway.

The court awarded the commission judgment without a trial, imposing a \$1,000 fine on the landowners and ordering them to pay outstanding attorneys' fees, which now totaled nearly \$8,000.

The landowners appealed.

#### **DECISION: Affirmed in part; reversed in part.**

The lower court did not err in granting the commission judgment without a trial, but it did in awarding it attorneys' fees.

#### **THE DIRT ON WHY PART OF THE COURT'S RULING STOOD**

The plain text of the UDO provided "that the purpose of the ACO [wa]s 'to establish a standard of safety and compatibility for the occupants of land in the immediate vicinity of the DeKalb County Airport by regulating incompatible land uses and setting development standards that supplement or super[s]ede the underlying zoning district,'" the court explained.

The ordinance addressed "recreational ponds," which included man-made bodies of water. "We are . . . unpersuaded that the word designed; in the . . . definition [section] of 'recreational pond' was calculated to create an intent requirement, that, if unmet, would permit what would otherwise clearly be recreational ponds to be built in the ACO unfettered."

The landowners contended the ordinance's plain language was in conflict with a section of the state code, which stated it didn't "authorize an ordinance or action of a plan commission that would prevent, outside of urban areas, the complete use and alienation of any mineral resources or forests by the owner or alienee of them." The court was not persuaded by the landowners' attempt to focus in on the term "mineral."

"On its face, moving dirt from one part of a property to another would not seem to fit the definition of the alienation/movement of mineral resources. The designated evidence does not suggest that the alleged 'dirt and clay,' . . . that [the landowners] relocated consisted of a composition that meets the definition of 'mineral.' Nor have [they] demonstrated that they were attempting to extract or alienate minerals from that 'dirt and clay.' Rather, by their own admission, they were simply trying to move it," the court explained.

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*"The designated evidence does not suggest that the alleged 'dirt and clay,' . . . that [the landowners] relocated consisted of a composition that meets the definition of 'mineral.' Nor have [they] demonstrated that they were attempting to extract or alienate minerals from that 'dirt and clay.' Rather, by their own admission, they were simply trying to move it," the court explained.*

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#### **THE BOTTOM LINE**

"[W]e conclude that [the landowners] have not met their burden to establish the existence of a genuine issue of material fact with respect to whether" the state code section "applie[d] and supersede[d] a plain reading of the applicable sections of the UDO."

#### **ATTORNEYS' FEES**

The lower court's decision to grant attorneys' fees was reviewed under an abuse of discretion standard. "An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law," the Court of Appeals of Indiana explained. "To make this determination, we review any findings of fact for clear error and any legal conclusions," it added.

In Indiana where this case took place, courts "ha[d] consistently followed the American Rule in which both parties generally pay their own fees. In the absence of statutory authority or an agreement between the parties to the contrary—or an equitable exception—a prevailing party has no right to recover attorney fees from the opposition," the court explained.

There were some exceptions to the American Rule, it added, for instance, recovery of attorneys' fees may be reasonable if:

- the lawsuit or defense of a claim or the continued litigation of either was “frivolous, unreasonable, or groundless”; or
- the lawsuit was litigated in “bad faith.”

The party seeking payment of attorneys’ fees by the other party carried “a ‘hefty’ burden to demonstrate that an exception to the American Rule [wa]s warranted,” the court noted. Therefore, the question turned to whether the commission had “demonstrated that any statutory authority, inherent authority, or exception to the American Rule justified the trial court’s award of attorneys’ fees.”

The only basis to which the commission pointed was the UDO itself, which stated that a “violation found liable for a violation shall be subject to a court-imposed fine. The fine for a violation shall be reasonably in proportion to the severity of the violation, repetitiveness of similar violations by the same violator, and the costs associated with enforcing, mitigating, administering, researching, inspecting, court fees, legal fees, and the like. Fines imposed by the court of jurisdiction shall be no higher than \$2,500 for the first violation, and no higher than \$7,500 for the second or subsequent violations.”

Since the only authority the commission pointed to regarding the award of attorneys’ fees was found in that section of the UDO, the court moved on to consider whether that section “confer[red] such authority upon the trial court.”

“We find that it does not,” the court ruled. That section of the UDO only “confer[red] upon the trial court the authority to impose a *fine* on the offending party. That fine may be proportional to, among other things, legal fees that may be associated with the action. That does not mean, however, that a trial court may *separately* assess attorneys’ fees as they are ordinarily understood. We therefore find that the trial court misinterpreted the ordinance as conferring authority to award attorneys’ fees.”

As a result, the court sent the case back for further proceedings with instructions to vacate the award of attorneys’ fees.

## Dimensional Variance

Rhode Island’s highest court rules on whether substantial evidence existed to support denial of variance

Citation: *New Castle Realty Company v. Dreczko*, 248 A.3d 638 (R.I. 2021)

New Castle Realty (NCR) had applied to the zoning board for a special use permit and dimensional variance to build a house and install a septic system on a preexisting, nonconforming lot on Timber Ridge Road in Charlestown, Rhode Island.

The local zoning board denied the special use permit and dimensional variance. On review, a lower court affirmed that decision. Then, the case went before the Supreme Court of Rhode Island for review.

### DECISION: Affirmed in part.

There was substantial evidence on which the zoning board based its decision to deny the dimensional variance, but there wasn’t such evidence to support the board’s decision with respect to the special use permit.

The “zoning ordinance required minimum lot sizes of three acres to build a house and install a septic system on a preexisting nonconforming one-acre lot that contained wetlands,” the court explained.

“[H]ere, a landowner . . . secured a permit to alter freshwater wetlands—which [wa]s often a long and arduous process,” the court explained, adding that “a zoning board may not deny zoning relief based upon a board member’s conception of what might have a negative impact on wetlands, absent expert testimony in the record.”

What appeared to have happened here is that the zoning board supplanted its own opinion about lingering concerns over the potential impact on the wetlands near the property’s location. Such concerns were within the Department of Environmental Management’s purview, and unless the board had “competent scientific evidence” to support its position, the DEM’s conclusion would stand.

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*What appeared to have happened here is that the zoning board supplanted its own opinion about lingering concerns over the potential impact on the wetlands near the property’s location.*

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Because there wasn’t substantial evidence to support the board’s denial of the special use permit, that portion of the lower court’s decision was overturned.

However, the board did not err in denying the dimensional variance. It was NCR’s burden to show that “there [wa]s no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property,” the court explained. “Here, we are satisfied that the trial [court’s] ruling that [NCR’s] requested relief d[id] not reflect the least relief necessary [wa]s supported by substantial evidence,” it added.

### THE BOTTOM LINE

The lower court had found some particular testimony “was in essence fatal to [NCR’s] request for a dimensional variance because ‘[t]he marketability and value to a potential buyer of this dwelling [we]re simply not grounds for relief in the granting of a dimensional variance.’” The applicable statute “require[d] evidence that ‘the hardship [wa]s not the result of any prior action of the applicant and d[id] not result primarily from the desire of the applicant to realize greater financial gain.’”

In deciding whether to approve or deny a dimensional variance, the zoning boards of review would require evidence that:

- “the hardship from which the applicant s[ought] relief

[wa]s due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and [wa]s not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in [the statute]”;

- “the hardship [wa]s not the result of any prior action of the applicant and d[id] not result primarily from the desire of the applicant to realize greater financial gain”;
- “the granting of the requested variance w[ould] not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance [wa]s based”; and
- the relief requested was “the least relief necessary.”

These requirements were also noted in Charlestown’s zoning ordinance. And, the Supreme Court of Rhode Island had previously ruled that “an applicant seeking a dimensional variance ha[d] the burden before the zoning board of showing that a factual basis appear[ed] in the record to support the proposition that there [wa]s ‘no other reasonable alternative’ that would allow the applicant to enjoy a legally permitted beneficial use of the property.” Also, the hardship could not be “the result of any prior action of the applicant and [must] not result primarily from the desire of the applicant to realize greater financial gain[.]”

Ultimately, the court noted there was testimony indicating that NCR hadn’t considered building a smaller, two-bedroom house on the lot. This was because such houses weren’t popular in this day and age, the testimony explained. The “fact that a use may be more profitable or that a structure may be more valuable after the relief [wa]s granted are not grounds for relief.”

## Comprehensive Plans

### Did CP amendments comply with state law?

Citation: *Escambia County v. Westmark, State of Florida Division of Administrative Hearings, 2021 WL 1930458 (2021)*

Where Escambia County, Florida’s comprehensive plan amendments, which were adopted through three ordinances in 2020, “in compliance” with state law? That’s the question the State of Florida’s Division of Administrative Hearings addressed in a recently decided case.

#### THE FACTS

On June 4, 2020, Escambia County adopted Ordinance Nos., 2020-15, 2020-16, which amended its Comprehensive Plan (CP) by allowing four parcels to withdraw from the county’s Mid-West Optional Sector Plan (OSP). The county also assigned each parcel with a new Mixed-Use Suburban (MU-S) future land use (FLU) designation.

In July, Jacqueline Rogers, Theresa Blackwell, and William Beech (the petitioners) filed their challenge to the ordinances, and a hearing was set.

At the hearing, the petitioners presented testimony of 10

witnesses. One of them was an expert on waterbird populations and the management of coastal wildlife habitats, another was a watershed science and urban planning expert, and a third expert testified as to marine biology, aquatic ecology, environmental diagnostics, and bioremediation. And, then there were the other individuals, too, who were planning, zoning, growth management, and urban and regional planning experts.

**DECISION: Recommended that Department of Economic Opportunity enter a final order finding the ordinances to be “in compliance” with state law.**

The petitioners did not prove beyond “fair debate” that ordinances weren’t in compliance with state law.

The applicable section of state law provided “that a comprehensive plan ‘shall establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations.’ ”

Here, the petitioners contended opt-out plan amendments weren’t consistent with the law because they didn’t establish “meaningful and predictable standards for removal of property from [a detailed specific area plan] and render[ed] [the original sector plans in this case] meaningless.”

However, they didn’t “beyond fair debate that the three opt-out plan amendments rendered the OSP meaningless and the [CP] lacking meaningful and predictable standards for the use and development of land.”

#### A CLOSER LOOK

A sector plan was “the process in which the local government engage[d] in long-term planning for an area of at least 5,000 acres.” There were two levels of planning involved: 1) a long-term master plan, and 2) a DSAP, which implemented the master plan.

The DSAP was created for an area that was at least 1,000 acres and identified the distribution, extent, and location of future uses and public facilities. “While the DSAP [wa]s created by a local development order that [wa]s not subject to state compliance review, an amendment to an adopted sector plan [wa]s a plan amendment reviewed under the state coordinated review process.”

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The county’s OSP was one of five OSPs adopted through statewide pilot program. Its OSP was unique from other OSPs because of its large number of property owners.

The CP included language establishing future land use (FLU) patterns. Then, in 2015, the county repealed and

replaced its whole land development code and instituted a county-wide rezoning to accomplish a consolidation of zoning districts. Through another ordinance, it established criteria.

Once a parcel was removed from the PSP, the underlying county zoning became effective, but a new FLU category had to be assigned to the property by a plan amendment.

The 2020 ordinances were considered favorably by the county planning board before being considered and approved by the county commission. "Notice of all public hearings was published in a newspaper of general circulation [and] [t]he [CP] amendments at issue were made available to the public [and] [m]embers of the public could speak at the public hearings."

## Disability Discrimination

Harbor, New York residents claim application for zoning variance denied in violation of Fair Housing Act

Citation: *Perricone-Bernovich v. Tohill*, 843 Fed. Appx. 419 (2d Cir. 2021)

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

Barbara Perricone-Bernovich, her husband, and her brother filed suit against the Village of Head of the Harbor, New York and individual village officials and employees under the Fair Housing Act (FHA). Perricone-Bernovich claimed the decision to deny her request for a zoning variance was arbitrary and capricious and reflected discrimination based on her and her brother's disabilities.

The lower court dismissed their complaint, and they appealed.

### DECISION: Affirmed.

The complaint failed to state a claim for relief, so dismissal of the lawsuit against the village and its officials was proper.

Under the FHA, it was "unlawful '[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter' because of a disability."

These provisions were also applicable to municipal zoning decisions, the court wrote.

And, there were three ways to demonstrate disability discrimination under the FHA:

- disparate treatment;
- failure to make a reasonable accommodation; or
- disparate impact.

Here, the court addressed all three theories against the alleged facts presented.

### DISPARATE TREATMENT

The plaintiffs proceeded under a disparate treatment theory. This meant they had to "allege enough facts to state a plausible claim that 'animus against the protected group

was a significant factor in the position taken by the municipal decision-makers.' "

Their complaint didn't satisfy this standard, the appeals court found. "The mere fact that the [d]efendants were aware of Perricone-Bernovich's disabilities when they denied her request for a zoning variance—which itself was unrelated to the disabilities—[wa]s insufficient to state a disparate treatment claim."

Also, the complaint didn't "suggest that the alleged impediments that Perricone-Bernovich faced in seeking variances were different from those faced by similarly-situated applicants without disabilities."

### THE BOTTOM LINE

The only time the defendants referenced the disabilities was when the village's attorney observed "that Perricone-Bernovich's husband had previously characterized her as an 'invalid,' " which "came in the context of a question about the need for a three-car garage, relevant to the issue of whether a house could feasibly be built with a variance on a lesser scale. The term 'invalid,' in this context, does not in itself indicate animus against people with disabilities," the court found.

### FAILURE TO ACCOMMODATE

The plaintiffs had to show that they "denied 'accommodation was likely necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling.' " "But Perricone-Bernovich did not argue that her requests were related to her disabilities. Instead, she wanted permission to build closer to the road than the [v]illage usually allowed to accommodate features like a three-car garage used to store an antique car, and she preferred the selected lot because it was conveniently located and relatively inexpensive."

### DISPARATE IMPACT

This theory also failed against the facts. This was because the plaintiffs didn't "include any allegations about the effect of the [d]efendants' policies on people with disabilities as a group, or compare that effect to the effect on the broader population."

#### *Practically Speaking:*

*The court also found the plaintiffs couldn't state a plausible claim for a constitutional violation. None of the alleged facts suggested their attempt to raise a substantive due process claim. "Perricone-Bernovich would have had to allege acts that were 'arbitrary, conscience-shocking, or oppressive in the constitutional sense, not merely incorrect or ill-advised,' " which she failed to do.*

# Zoning News From Around the Nation

## California

Placer County to set aside more than a half-million dollars to address affordable housing

In 2019, the Board of Supervisors (the Board) in Placer County, California received a presentation on the Affordable Housing Program, Housing Strategy and Development Plan, and the Housing Funding and Investment Strategy. “The Board also authorized staff to work with stakeholders to establish a private housing trust. The proposed private housing trust would be formed to address unincorporated Placer County’s affordable housing challenges and, when possible, used to assist in the implementation of the County General Plan housing policies.”

In addition, “[t]he trust would provide a mechanism to secure gap funding for affordable housing projects, to accommodate the donation of a variety of public, private, and nonprofit sources of funding, including acquisition of land, and administer loans to affordable homebuilders or renovators to provide additional affordable housing in the unincorporated area of the County.”

Now, the Board has voted to update the general plan housing element, adding \$575,000 to address affordable housing, [ABC10.com](https://www.abc10.com) reported recently.

For background information about this project, visit [plac.ca.gov/DocumentCenter/View/51772/10A](https://plac.ca.gov/DocumentCenter/View/51772/10A).

Source: [placer.ca.gov](https://plac.ca.gov)

## Massachusetts

Biomass project may never get off the ground in Springfield

Springfield’s zoning board of appeals recently determined that a building permit issued to Palmer Renewable Energy (PRE) for a proposed biomass energy plant to be located in East Springfield has expired, [masslive.com](https://www.masslive.com) reported recently.

This development came after the Massachusetts Department of Environmental Protection revoked the project’s air permit in April 2021, the news outlet reported, adding that PRE’s attorney said it’s likely an appeal of the decision to revoke the building permit will be filed in Massachusetts Superior or Land Court.

Source: [masslive.com](https://www.masslive.com)

## Michigan

Detroit Future City releases *The State of Economic Equity in Detroit* report

“The future of Detroit must benefit all Detroiters and unleash the economic promise and well-being of its residents. However, the current reality is that, in spite of a decade of growth, substantial economic inequities persist in Detroit,” the executive summary states in a report released in May 2021 about the state of economic equity in Detroit. “Prior to the COVID-19 pandemic, the median income in Detroit was half that of the region and the average home value of a white Detroit resident is approximately \$46,000 higher than a home owned by an African American. The

current state of inequity does not have to be, nor should it be, Detroit’s future,” it added.

“As Detroit begins recovering from the COVID-19 pandemic, there must be an acknowledgement of the economic inequities that exist, a commitment to close these disparities, and intentional work toward a more economically equitable future. Building a more economically equitable city will build a stronger region. We must ensure that the recovery is one that includes all residents, and that we are building an economically equitable city where all residents, both old and new, can thrive.”

In conducting the study, Detroit Future City, a think tank, identified more than 20 indicators across six areas that “provide clear, measurable, and accurate data points that not only illustrate the current state of economic equity in Detroit, but can also be used to track economic equity over time.” The six focus areas are:

- income and wealth building;
- access to quality employment;
- business and entrepreneurship;
- education;
- health; and
- neighborhoods and housing.

“In 2010, there were 22 neighborhoods in the city that met the definition of ‘middle class,’ by 2019 there were only 11 neighborhoods. The report shows that African American Detroiters’ median income has only increased by eight percent in the last 10 years, while white Detroiters’ income has increased by 60 percent. As of 2019, the medium income for Detroiters was \$33,970. Additionally, more than half the city’s residents are housing cost-burdened, meaning over 30 percent of their income goes toward housing cost,” a Detroit Future City press release stated.

“When you consider that the median wage for a person with a four-year degree is more than \$15 higher than for a person without a four-year degree and 83% of Detroiters don’t have a 4-year degree, along with the data showing that the primary job growth in Detroit has come in the form of low-wage jobs, the systemic inequities are pervasive and bar African Americans and other people of color in Detroit from reaching the middle-class,” said Ashley Williams Clark, director of the Center for Equity, Engagement and Research.

To access the 107-page report, visit [centerformich.files.wordpress.com/2021/05/may\\_14\\_annual-report-detroit-future-city.pdf](https://centerformich.files.wordpress.com/2021/05/may_14_annual-report-detroit-future-city.pdf).

Source: [detroitfuturecity.com](https://detroitfuturecity.com)

## Ohio

Judge rules in favor of biodigester facility, reverses local BZA’s finding it had violated zoning regulations

A judge with the Greene County Court of Common Pleas has reversed the decision of the Bath Township Board of Zoning Appeals (BZA) finding Renergy and Dovetail Energy LLC (Renergy) were unlawfully operating a biodigester facility, in violation of the local zoning code.

The judge concluded Renergy was a public utility exempt from the zoning regulations, the *Xenia Daily Gazette* reported recently.



The facility has been the subject of much controversy locally given concerns over its environmental impact, the odors it emits, and health-related issues, the news outlet reported.

Source: [xeniagazette.com](http://xeniagazette.com)

### Pennsylvania

**Waterford sues borough council president over storage container on his property**

Waterford, Pennsylvania Council President Tim LaFlamme has been served. The borough filed suit against him for keeping a storage container at his house for more than a year when local zoning rules prohibit such practice, [Goerie.com](http://Goerie.com) reported recently.

LaFlamme refused to pay the \$25-per-day fine the borough assessed for the zoning ordinance violation, the news outlet reported. As of print time, he allegedly owed the borough more than \$5,000 in fines since its zoning hearing board had affirmed the initial determination that he was in violation of the local code.

Source: [goerie.com](http://goerie.com)

### Wyoming

**NCLA happy with state court ruling on land use law**

The New Civil Liberties Alliance (NCLA), a nonpartisan, nonprofit civil rights group that seeks to protect constitutional freedoms, recently issued a statement in response to the Wyoming Supreme Court's ruling in its favor in a land use case. The ruling "has led to a legislative win for landowners," NCLA stated. "By challenging the Laramie County Planning Commission's unlawful decision to restrict conduct based on nonbinding guidance, NCLA paved the way for Wyoming Governor Mark Gordon to sign HB 0158 into law," it added.

HB 0158 ([wyoleg.gov/Legislation/2021/HB0158](http://wyoleg.gov/Legislation/2021/HB0158)) "aims to clarify the limits of local land use plans, thereby making it harder for regulators to violate private property rights," it explained.

The full summary of *Asphalt Specialties Co., Inc. v. Laramie County Planning Commission* appeared in the April 10, 2021 edition of the *Zoning Bulletin*. In way of a refresher, the NCLA represented the prevailing party, ASCI, and the court reversed a decision to reject its site plan to develop a property west of Cheyenne in an unzoned area of Laramie County.

The court rejected the Laramie County Planning Commission's position that the site plan didn't meet its "vision" for how the lands should be used, NCLA explained. This was a regulatory overreach, the court found, adding "that zoning [wa]s the proper mechanism by which a county can establish land use requirements and restrictions," NCLA stated.

The practical impact of the court's ruling is that "land use plans, 'vision' documents, and similar sub-regulatory guidance do not carry the force and effect of law," NCLA added.

And, with HB 0158 becoming law, the governor and the state legislature "have ensured that local landowners are protected from the intrusion of government agencies using unenforceable guidance documents to constrain private property rights." "Counties in Wyoming are now on notice that they can no longer control land use projects based on arbitrary site plan review processes and informal guidance," NCLA stated.

More information from NCLA about this case can be found at [nclalegal.org/asphalt-specialties-co-inc-v-laramie-county-planning-commission/](http://nclalegal.org/asphalt-specialties-co-inc-v-laramie-county-planning-commission/).

Source: [globenewswire.com](http://globenewswire.com)

### Washington, D.C.

**D.C. Chairman issues statement about racial equity priority for zoning and planning commissions under Comprehensive Plan Amendments**

District of Columbia Chairman Phil Mendelson recently released a statement about the "Comprehensive Plan Amendments Act of 2020." The statement read in part, "I have circulated a revised Comprehensive Plan Amendment Act for consideration by the Council. . . . My proposal puts special focus on increasing housing and racial equity. Indeed, the revised plan will substantially increase opportunities for new housing in all eight wards of the city. It requires the Zoning Commission and other agencies to develop a racial equity lens for evaluating all actions including zoning cases," Mendelson stated.

He added, "The Committee Print also strikes a careful balance between ensuring clarity in the Plan's language while enabling development projects to proceed. Unfortunately, some view this from the perspective of litigation—and, therefore, whether to facilitate or hinder lawsuits over development. I see it instead as about clarity in the Plan's language and intent."

Additionally, he stated the plan would require zoning and planning commission actions to be pursued through the lens of racial equity, the press release, which [thedcline.org](http://thedcline.org) published, explained.

For more on D.C.'s comprehensive plan, which is a 20-year framework to steer future growth and development, visit [planning.dc.gov/page/comprehensive-plan](http://planning.dc.gov/page/comprehensive-plan). And, to access D.C. Act 23-217, which was signed in February 2020, visit [lms.dccouncil.us/downloads/LIMS/41515/Signed\\_Act/B23-0001-SignedAct.pdf](http://lms.dccouncil.us/downloads/LIMS/41515/Signed_Act/B23-0001-SignedAct.pdf).

Source: [thedcline.org](http://thedcline.org)