



CITY OF ELKO

Planning Department

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

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

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, September 1, 2020 beginning at 5:30 P.M., P.D.S.T. utilizing GoToMeeting.com: <https://global.gotomeeting.com/join/472220037>

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

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

Date/Time Posted: August 26, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician
Name Title

Shelby Archuleta
Signature

The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at sarchuleta@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV, or on the City website at <http://www.elkocity.com>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/472220037> You can also dial in using your phone at **+1 (224) 501-3412**. The **Access Code** for this meeting is **472-220-037**. Members of the public that do not wish to use GoToMeeting may call in at **(775)777-0590**. Comments can also be emailed to cityclerk@elkocitynv.gov

Dated this 26th day of August, 2020.

NOTICE TO PERSONS WITH DISABILITIES

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

Cathy Laughlin
Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, SEPTEMBER 1, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
GOTOMEETING.COM
<https://global.gotomeeting.com/join/472220037>

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

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

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Tentative Map 6-20, 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 residential development and 1 common lot within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located on the west side of N 5th Street at the intersection of Rolling Hills Drive. (APN 001-610-093)

2. Review, consideration and possible recommendation to City Council for Rezone No. 5-20, filed by Legion Construction and Development LLC., for a change in zoning from AG (General Agriculture) to R (Single Family and Multiple Family Residential) Zoning District, approximately 2.415 acres of property, to allow for a

proposed townhome development, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located on the west side of N 5th Street at the intersection of Rolling Hills Drive. (APN 001-610-093)

3. Review, consideration, and possible action on Conditional Use Permit No. 4-20, filed by Legion Construction and Development LLC., which would allow for a townhome development within a R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located on the west side of N 5th Street at the intersection of Rolling Hills Drive. (APN 001-610-093)

4. Review, consideration and possible recommendation to City Council for Rezone No. 1-20, filed by the City of Elko, for a change in zoning from C (General Commercial) to PQP (Public, Quasi-Public) Zoning District, approximately 26,061 square feet of property, to bring the zoning district into conformance with the use of the property, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is generally located on the west corner of the intersection of S. 5th Street and S. 9th Street. (875 S. 5th Street - APN 001-472-014)

5. Review, consideration, and possible action on Variance No. 4-20, filed by City of Elko for a reduction of the required setback from any street line from 27' to 8.56', on the South 9th Street Line, within a PQP (Public, Quasi-public) Zoning District, and matters related thereto, **FOR POSSIBLE ACTION**

The subject property is generally located on the west corner of the intersection of S. 5th Street and S. 9th Street. (875 S. 5th Street - APN 001-472-014)

6. Review, consideration and possible recommendation to City Council for Rezone No. 4-20, filed by the City of Elko, for a change in zoning from PQP (Public, Quasi-Public) to LI (Light Industrial) Zoning District, approximately 2,800 square feet of property, to bring the zoning district into conformance with the proposed use of the property, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally at the terminus of Front Street south of 5th Street. (Portion of APN 001-01R-001)

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,

A handwritten signature in black ink, appearing to read "Cathy Laughlin", with a stylized flourish at the end.

Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.D.S.T., TUESDAY, AUGUST 4, 2020
ELKO CONVENTION CENTER, TURQUOISE ROOM,
700 MOREN WAY, ELKO, NEVADA

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

Excused: **Giovanni Puccinelli.**

City Staff Present: **Scott Wilkinson, Assistant City Manager**
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Jamie Winrod, Fire Department
 Kelly Wooldridge, City Clerk
 Paul Willis, IS Department
 Diann Byington, Minutes Clerk
 Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

July 7, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the July 7, 2020 Minutes.**

Moved by Gratton Miller, Seconded by John Anderson.

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Tentative Map No. 5-20, filed by BDSA, LLC, for the development of a subdivision entitled Tower Hill, Unit 4, involving the proposed division of approximately 8.601 acres of property into 5 lots for residential development and 1 remainder lot within the R1 (Single-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southwest side of Deerfield Way. (APNs 001-929-125)

Scott MacRitchie clarified that he was also with JTM, which developed the first three phases of this subdivision. They own this property under another entity.

Michele Rambo, Development Manager, went over the City of Elko Staff Report dated July 20, 2020. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Cathy Laughlin, City Planner, explained that the Planning Department recommendations and conditions were included in the Staff Report, and she recommended approval.

Ms. Rambo stated that the Engineering Department had no comments.

Jamie Winrod, Fire Department, had no comments.

Scott Wilkinson, Assistant City Manager, recommended approval as presented by staff, provided that the grading supports the required water pressure as stipulated in NRS.

Mr. MacRitchie asked if any of the conditions had changed since the Staff Report was written.

Ms. Rambo stated that the Planning Commission would need to eliminate Condition No. 13 in regards to the Shared Use Path, because it was taken care of with Phase 3 of the subdivision.

Mr. MacRitchie explained that they didn't have Phase 4 in their original Tentative Map. How much of the Shared Use Path they needed to put in was determined on the lineal footage of their property on Lamoille Highway, and it was all put in Phases 1 through 3. He also asked if Ms. Rambo had received the Soils and Hydrology reports.

Ms. Rambo stated that she had received those the previous day.

Commissioner Evi Buell asked if the hydrology and soils reports took care of the City Manager's Office concerns. (Yes)

*****Motion: Forward a recommendation to City Council to conditionally approve Tentative Map No. 5-20 subject to the conditions found in the City of Elko Staff Report dated July 20, 2020, with modifications from the Planning Commission, 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 be approved by City Council for Lot 402, 403, 404, and 405 to allow for shorter-than-required front lots widths.**

Public Works Department:

- 13. All public improvements at time of development per Elko City code.**

Commissioner Buell's findings to support the motion were 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. 4. The property is not located within the Redevelopment Area. Therefore, there is no conflict with the Redevelopment Plan.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

- 5. Review, consideration, and possible action of Conditional Use Permit No. 3-20, filed by Ruby Mountain Acton Academy on behalf of Gladys Burns, which would**

allow for a teaching of the creative arts/childcare center within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Birch Street, approximately 125' west of the intersection of Birch Street and Dotta Drive. (675 W. Birch Street - APN 001-073-001)

Angela Heguy, Heguy Ranch, thanked the Commission for listening and hearing the item. She explained that they are applying for a Conditional Use Permit at 675 W. Birch Street. They are hoping to move their home school group to that location in order to maximize the benefits of the large square footage upstairs, as well as the wonderful fenced backyard. They hope to be a great member of the neighborhood and become an asset for the community.

Chairman Jeff Dalling called for public comment.

Liza Baumann, 975 Dotta Drive, explained that she lives two doors down from the subject property. She wanted to make sure that everyone knew that they all have children and a lot of the people that are here are teachers themselves. This is mainly about the neighborhood and the effect that it will have on the people in the area. Ms. Baumann then read **Exhibit 1** into the record.

Louri Lesbo, 1010 Dotta Drive, stated that she had several letters to read into the record from some of her neighbors that couldn't make it to the meeting. The first letter she read was from Ms. Carpenter on what her concerns were, which stated:

1. *If this is a K-12 school, there will be older kids driving. Where are they going to park? We all know kids speed. They are going to be flying down Dotta Drive and Sewell Drive. There is a high potential for someone to get hurt. Will law enforcement be on these drives before and after school?*
2. *If there are older kids attending this academy there is the potential for drug use. This will increase the drug selling at Angel Park and along Dotta Drive. You not only have elderly people living on Dotta and Birch, but also young kids. This becomes a safety issue.*
3. *There are no sidewalks in front of the Burn's home. Where will people walk?*
4. *If the Burn's home is listed as Commercial property, does this mean that all the homes along Dotta and Birch will be listed as commercial property as well. This will decrease the value of all of our homes.*
5. *If the person running this academy is not a teacher, where are the kids getting their assignments? Even if the person is a helper, shouldn't he or she have some teaching credentials?*
6. *Why were the homeowners on Dotta, Sewell, and Birch not notified of this transaction? There are financial and safety concerns for everyone that is effected by this change in a residential home.*

She then read the letter into the record from Steven and Jennifer Hayes at 1024 Dotta Drive, attached as **Exhibit 2**.

Ms. Lesbo read into the record **Exhibit 3**, from Earl and Mary Craig at 1030 Dotta Drive. She also read into the record a letter from Melissa and Jordan Duke at 1011 Dotta Drive, attached as **Exhibit 4**. Ms. Lesbo then read her own comments into the record, attached as **Exhibit 5**.

Chairman Dalling then read into the record an email submitted by Nann C. Hanley attached as **Exhibit 6**.

An additional letter was submitted from Rick and Begonia Hull, which previously resided at 1011 Dotta Drive, attached as **Exhibit 7**.

Robert Loranger, 1000 Dotta Drive, stated that he has lived there for 12 years with his wife. It has been a great place to live. Overtime, they have seen an increase in generalized non-residential traffic, so he has many concerns with a new venture that is going to be changing a residential single family home into some type of conditional use. He said he guessed it was a school, it is called an academy, but as far as he was concerned, it is more of a business. It contains people that are sending their children to a non-home location for training/education. He didn't understand a lot about the home school definition. It seemed like it was a very wide, catchall, for how people may want to try to educate their children in a growing changing environment. Angie Heguy came to him in March, before the COVID Lockdown, and it was a cordial meeting. He found it a bit disturbing that Ms. Heguy stated they "will" be using the Burn's home as an academy. He thought the term "will" was a little strong, with not knowing what the status was. One of the things that really bothered Mr. Loranger was the change of a Conditional Use Permit. Apparently, the permit can be transferred to a new owner at some point. It is fundamentally changing a single-family residence and zoning it to something different. We don't know what will happen in the future. Will this thing succeed? Clearly, they have looked at expanding this initial school to include middle school and high school as a stretch goal. That was very concerning to Mr. Loranger, because of what many of the other neighbors have said. What are we really looking at here in terms of expansion and overall traffic? He finds the Conditional Use Permit to be one major red flag. He explained that he didn't know a lot of history about the Conditional Use Permits. He knew that there had been, maybe four permits transferred to new owners. He asked for some clarification on that. He thought that put everyone in a situation of not knowing what the property is going to be in the future. You have changed the fabric and culture of a well-established and mature neighborhood; by someone bringing in, what is essentially a business. Mr. Loranger thought the Committee should consider denying this, because it really is an increased safety, health, and insurance risk for the people that live in the neighborhood due to additional pedestrian and traffic congestion during multiple times of the day on a residential street that is already seeing increased traffic from non-residents. Another one of Mr. Loranger's major concerns was the off-street parking. He thought it was quite enlightening that at some point he was going to be looking at a parking lot across the street from him. He didn't consider that a good use of the property. He understood that there was a lot of logistics involved with that. That parking lot would also increase multiple vehicle incident risk. He thought one thing that hadn't been looked at hard enough was some sort of risk assessment that included all stakeholders involved with the potential Conditional Use Permit. Ultimately, Mr. Loranger was recommending that the Commission deny the permit. There are a lot of other opportunities. Right now, there are 16 commercial properties listed in Elko. Not all of them will fit the applicant's criteria, or their goals, but they are out there. There are other options too. There is a potential for capital appreciation from a sale. He stated that he hoped that Acton of the Rubies succeeded, but somewhere else.

Chairman Dalling wanted to help with Mr. Loranger's question. He pointed out Staff Recommendation No. 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.”

Michele Walsh, 491 W. Ash Street, said she could attest to the traffic issues with having Angel Park and kids running wild. She didn't know if this school would add to that. She stated that she agreed with her neighbors. Her concerns were twofold. Her understanding was that this was an online school. She asked if they were accredited and if they had a board. If they are not, Ms. Walsh thought the Commission would be getting into some swampy, weedy areas that they may not want to get into. The second question Ms. Walsh had was whether the Commission was setting a precedent that they may not have to deal with years from now. Setting a precedent in a residential neighbor, by bring in commercial properties. The Commission may not have to deal with it, but those that live in neighborhood would. She asked the Commission to consider that while they were making their decision.

Ajeet Milliard, 755 Country Lane, explained that she chose to have her child attend Acton of Rubies. It is a home school supplement, where parents choose to take their children to have their home school supplemented with accredited online versions of programs. She chose to take her kid to Acton because it is small, and because it is run by somebody who really cares. No, Ms. Heguy is not an accredited teacher, but it is a home school supplement and it's the choice of the people who take their children there. There are only ten families that bring their children to the academy. It is called an academy by name, but it is a 401(c) 3. By definition, it is not a school. The families that choose to take their children there take them there because they want something different for children. They all live in neighborhoods; none of them wants additional traffic. All the children that attend Ruby are under 12 years old. At this point, there is not going to be a big community of teenagers. The kids that do attend Acton, and the Families that take their children to Acton, are all very responsible. They all want something better for their children, the future, and the community. There was a lot of mention of the community having a lot of kids, and that is what they are here to support, that is what Acton is there to support. Ms. Milliard wanted to be a voice in favor of Acton. It is positive and well established, and the families that take their children there are good people. They don't have teenagers that run around, and they are responsible. They want their children to have the best that they can. She also mentioned that with the number of people that take their children there, there would not be a huge increase in traffic. They are all willing to work with Angie the way that they have to, to help her be successful in the location that she has chosen. Ms. Milliard explained that Ms. Heguy chose this location because she is a nonprofit. She just wants to provide a service for home school families that choose something different for their children. No one wants to see the neighborhood ruined or degraded in any way.

Lisa Donalson, 998 Northside Drive, explained that her children, Jillian and Hugh, attend Acton Academy. Acton focuses on community, and on developing good community members and leaders in the community. When this topic came up, both her children expressed interest in speaking to the Commission.

Jillian Donalson said this was her speech about why Acton should get the permit. First of all, why she thought Acton should get the permit was because they need a new space. At their current space, they can't hang their artwork up on the walls, or leave their stuff out, because the Girl Scouts need that space for Girl Scouting. Miss Donalson thought that was very frustrating, because they have to get their work done that day, unless they have a computer. At Acton, they learn to be problem solvers, so if anyone has a problem they help them solve it, and they will continue to do that at their new location too.

Hugh Donalson said the first thing that comes to mind when he thinks about Acton, is the word learn, which learning is a little different for him because he learns reading differently. Acton opens up possibilities, because you can learn in whatever way you want. He thought that was really great, because he recently finished his first ever chapter book with no help. He thought that was amazing. Why he thought Acton should get the permit was because they are working in a shared space right now, which means they can't leave their stuff out. If they do, it could get messed up. Having a new space would make them able to leave out their work and display their accomplishments. Mr. Donaldson thought that would help the Eagles work harder.

Vance McCann, Harper Drive, thought Acton should get the permit because they tend to learn from their mistakes. It helps them learn. He really thought that they could use the space, so they could show everyone the things that they accomplish. When they accomplish them and put them on display and people see it, they'll be like "Yay! They did something and we really think it's great!"

Cathy McCann, 5348 Harper Drive, Osino, explained that she was Vance's mom. She said they were looking forward to being neighbors to the people in the area. The reason they want to be neighbors is so that they can teach their children responsibility in a community. Sometimes living far away from their neighbors makes it hard to serve their neighbors. They are looking forward to being able to rake leaves and shovel snow for people. Ms. McCann said she appreciated everyone's concerns, and she understood that it is scary. She hoped that they would get the chance to prove to everyone that they would be excellent neighbors.

Brinley Spencer, Osino, explained that she traveled to town all last year to be part of Acton. Acton is a place where they gain support to their home school education, as well as develop their leadership skills and find their passion for life. Please consider allowing Acton the Conditional Use Permit for the property on Birch Street.

Joe Heguy, Elko County, explained that he was married to Angie Heguy. She started an amazing program called Acton Academy. It is not technically a school. Their children are being homeschooled, as well as the other children that are involved. They get together three times a week so that they can do collaborative projects. It is an amazing and beautiful thing. However, that's not the point. The use of the property on Birch Street, as intended by the property owner, was to allow Angie to use it to get these kids together several days a week. He feared that the reason they were here was because they asked permission from all of the neighbors, instead of asking forgiveness. At the end of the day, the footprint that having Acton on West Birch was going to be minimal. We are talking about 5 or 6 cars a day, twice a day, three days a week. The benefits are far larger. To deny someone to use their own private property in the manner they see fit is Un-American. Mr. Heguy said he wished they could have gotten together with some of the

neighbors that had concerns, so that they could have avoided this situation. Mr. Heguy also read a letter from his daughter, Zoey Heguy.

Dear Planning Commission,

My name is Zoey Heguy. I want to ask you. If you ran a homeschool group guess how much money you would make? Angie Heguy makes \$0 and she puts all the money back into the group to purchase supplies and provide a meeting place. I love Acton because I get to see my friends, we get to play together and do projects. Please approve our permit. Thank you. From Zoey.

Eric Walsh, 1491 W Ash Street, explained that the first he had heard about this was yesterday evening, so he hasn't had an opportunity to learn much about Conditional Use Permits or about the Acton Academy. He stated that his concern had nothing to do with the school. His concern was about having a commercial property come into a residential neighborhood and impact his home value and potentially the taxes down the road. He wished he had learned about this earlier. One of the reasons why he moved into that neighborhood, after living here for 15 years, was because of the residential nature of that neighborhood. He moved from Juniper Street, where there are a lot of dual use properties and commercial entities, to get away from the traffic and to get away from the issues that come with that type of property. He purposely moved to a residential area, after taking 5 years to find a place that checked all the boxes. Seeing this sort of change coming makes him scared and nervous. That is why he is against the Conditional Use Permit. He didn't know what it would do to his home value or taxes.

Larissa Taylor, 101 Pine Street, explained that she had no idea what she was going to say, or if she was going to say anything. She came as a parent whose child attends Acton. Listening to the comments and concerns, Ms. Taylor felt that she needed to voice her concerns with what has been said. She felt like so many of the things that have been mentioned are fear based and have nothing to do with Acton. There were several things that she felt had nothing to do with Acton, such as drug use, speeding, using the road as a short cut, and home values being decreased. The plan is that Acton is there as a support for the community, and to better the community. She said she would venture to say that you would be hard pressed to find a better group of kids, a more responsible group of kids, than what you would find in attendance at Acton. The kids clean up at the end of the day. They clean the toilets and sweep the floors. That value is taught. They are there to be a support for parents and their kids' learning. It is not to bring things down. She felt it was necessary to make it known that that stigma is being attached to Acton, and it has nothing to do with Acton. They are more than willing to learn and take the necessary steps in order to make those things happen. They don't want the kids to be in danger. They want them to be able to get out of the car and feel safe going into a space. She chose to take her kids to Acton as support to herself. One of the main concerns that you'll hear from non-homeschool families is "How is your kid going to socialize and be able to be a member of society without being weird?" This is a way for them to have their kids go out and socialize with other kids, and to be in a positive and safe environment that promotes growth, individuality, and leadership. Ms. Taylor urged the Commission not to take that away. She also mentioned that Angie was willing to work with the City on sidewalks and parking.

Mike Lesbo, 1010 Dotta Drive, explained that his family built that house in 1967, and finished it in 1969. He and his wife bought the house in 2004. He stated that he did not have any problem, what so ever, with this academy, what they do, and how the kids benefit. However, as property owners, they are talking about a neighborhood of \$300,000 and above homes. He stated that he

was angry that this even got this far. He was surprised that they were at a meeting discussing how someone who doesn't live in the neighborhood could do this. He asked the Commission to respect the property owners that live in the neighborhood when they are making their decision.

Jeanne Goss, 313 Fir Street, explained that she has lived in six houses within the tree streets. She truly felt that that was her community. She walks in the community daily and knows many of the people that have spoken both for and against this application. Ms. Goss said she could understand being a part of that community that there is an increase in traffic and there are different zoning things. She explained that her children started attending Acton after Covid-19 and they have flourished. It is a wonderful group of people. They truly support community and positive growth. Ms. Goss thought it would be beneficial to the neighborhood. They are asking permission. There is drug use in the neighborhood, and those people don't come and ask for permission. She explained that she would be walking to school every day. The way she understood it was the Commission had 1 year to give Acton a chance. She guaranteed that everyone in the community would be happy if they did.

Ms. Laughlin explained that with any application that is received within the City of Elko, staff evaluates all aspects of the City Code. She wanted to go through some of those and emphasize some key elements. She said she would do her best to address the questions for the City that were brought up in public comment. She then began to go through the City of Elko Staff Report dated July 20, 2020. She clarified that this was not a rezone and the property would remain zoned residential. Ms. Laughlin wanted to bring up the NRS. NRS 484(B).287, "*When pedestrian must yield right-of-way to vehicle; when crossing at crosswalk is required; crossing diagonally; additional penalty if violation occurs in pedestrian safety zone*", states that every pedestrian crossing a highway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the highway, and a pedestrian shall not cross an intersection diagonally unless authorized by official traffic-control devices. The NRS does not state that students, or parents, cannot cross this street at that intersection just because it does not have a crosswalk. There is pedestrian access through sidewalks throughout the neighborhood that can get the students to the proposed location. There is not sidewalk in front of the property, but one of the conditions is talking about the drop-off and pick-up zone. If this approved, and plans are submitted to the City, then staff would look at whether it is necessary to have sidewalk in front of the property. One of the public comment questions was regarding the setbacks of the property, and how the property is developed. The property, as the principal permitted structure, does meet all yard requirements for the principal permitted structure.

Chairman Dalling asked how many students were enrolled.

Ms. Heguy stated that she had 24 students.

Chairman Dalling thought they would need three stalls. He then asked how many employees Ms. Heguy had.

Ms. Heguy explained that it was just herself.

Chairman Dalling thought that figured out to be three parking spaces for the students, and one for the employee. He said it would be four. He asked if it would be four spaces, plus a handicap space.

Ms. Laughlin clarified that it would be four, plus the access isle for the handicap.

Chairman Dalling asked if they had that currently. He asked if there was a three-car garage.

Ms. Heguy explained that there was room for 3.4 spaces, and they would widen that to account for the accessibility.

Ms. Laughlin continued going through the Staff Report. She thought it might be a good time to answer some of the questions about transferring the CUP. Two years ago, there was a new owner for the Noah's Ark Daycare Center. With the new owner, the Planning Commission transferred their CUP. That is a facility in a residential zoning district, surrounded by other schools and neighborhoods. They do have a CUP, and they got it transferred. The Planning Commission had that hearing, and made the determination on whether it was transferable or not. It does state that there is one year to be actively engaged. Staff has considered "actively engaged" to be items such as getting a building permit or a business license. One other point, just because you are issued a Conditional Use Permit doesn't mean you have to continue that use at that property. She continued to go through Staff Report. Staff recommended conditional approval, with the eight findings and eleven conditions listed in the Staff Report. Several of the conditions address the concerns of the neighbors and City Staff. When Staff follows up on Conditional Use Permits it is usually when there is a complaint from adjacent neighbors. Staff wants to eliminate any of these conflicting issues before a permit is issued. Condition No. 3 states that the garage and the street cannot be used as part of the required off-street parking stalls, which is how all commercial and residential properties are treated. A Variance for parking in the front yard setback must be approved prior to issuing the Building Permit for the parking area. The reason for that condition is that in Section 3-2-17 it states that no required off-street parking can be in the front yard setback or the side yard setbacks in a Residential Zoning District. A Parcel map is required to be approved and recorded prior to the opening of the school. As many of the old tree street properties are, this parcel was created by Map No. 5, and it was created with 25' wide lots. There are several lots, but it is evaluated as one parcel. If you look at the legal description this parcel was created by lots 9, 10, 11, and a portion of vacated E Street. A Parcel map would combine all of that into one parcel. We don't allow buildings to cross lot lines, therefore the Parcel Map would clean that up. Another condition is that a designated drop-off and pick-up location shall be established. This area can only be in front of 675 W. Birch Street and should be properly marked. The permittee is required to prevent disruption to vehicular traffic, and ensure pedestrian safety by establishing staggered drop-off and pick-up times at sufficient intervals to ensure the street is not blocked and parking does not extend beyond the frontage of 675 W. Birch Street. The drop-off and pick-up times are restricted to 3 days a week. The ADA Ramps shall be installed in the front and rear yards, and any other areas where stairs prohibit the equitable use of the property. As this is a change in Occupancy, the structure shall be brought into compliance with current Building Code to conform to an education use. This shall include all accessibility requirements per ICC A117.1 2009 as referenced by 2018 IBC. All work will require permits through the City of Elko Building Department. Ms. Laughlin wanted to go through the questions for the City from Liza. Ms. Bauman asked what the minimum requirements were for the Zoning District. Ms. Laughlin explained that would be the yard setbacks, which would be 5 ½ feet on each interior

side yard, 15 feet to the house, 20 feet to the garage, and 15 feet in the rear, so it does meet those requirements. Traffic Access Parking and Loading Regulations. Ms. Bauman asked what the maximum capacity occupant load for the location, and if the City was requiring compliance for an elementary or middle school. Ms. Laughlin explained that it would be up to Ms. Heguy to provide the City the number of students based on the occupant load that is allowed within the property and have to comply with 3-2-17 providing parking for that amount of occupant load. Ms. Laughlin explained that the Conditional Use Permit isn't renewed every year. Once you have established your CUP and been approved, you have one year to be actively engaged in that use at that property. If you are not, you lose your permission for that CUP. The only way a CUP is going to be revoked is if there is a serious enough claim against the Conditional Use that Staff brings it back to Planning Commission and asked to have the CUP revoked. She also explained that the Planning Department and the Compliance Department within the City of Elko follow up on the CUP. Staff reviews CUPs as conditions come up. Planning and Compliance Departments staff are the ones that are responsible for continuing to make sure that they are in compliance. Ms. Laughlin wanted to clarify again that this is not a rezone, it is not putting a Commercial Zone on that property, and it will not change the valuation of a property based on the zoning of the property. It will still be a principle permitted use of a single-family dwelling in an R Zoning District, with a Conditional Use on that property.

Ms. Rambo stated that all her comments and conditions were incorporated into the Staff Report. She wanted to touch on one of the public comments. Someone mentioned that the City didn't have a Compliance Department. Ms. Rambo stated that she is the Compliance Department. If staff get complaints, or sees an obvious violation, then they do follow up. There are several steps they have to go through in order check compliance and get people back into compliance.

Ms. Winrod explained that Chief Griego and she was working with Angie. Through their discussions, they have found no issues with the 2018 Fire Code.

Ms. Laughlin stated that the City Manager's Office recommended approval as presented by staff, and any comments from the Engineering Department were incorporated into the Staff Report.

Commissioner Stefan Beck stated, as an educator, he recognized the importance of education. His main concern was whenever a good portion of the neighborhood shows up, the Planning Commission needed to take it seriously. That's what our Country is supposed to be about. Initially, he thought that it was going to be chaos with traffic, which was the portrait that was initially painted. The applicant would be there Tuesday, Wednesday, and Thursday, and they would have a pick-up twice a day. He thought the main concern was traffic patterns, kids getting hurt, and disruption of a quiet neighborhood. That alone would be enough to cause serious concern, but he wasn't sure if that would actually happen. He said this was a tough one and he just didn't know. He thought it would be a minimal impact, not a major one. He said it was just tough when that many neighbors show up and object. Commissioner Beck said that he would want some assurance, but he didn't know if that could be done. He asked if there was a way they could assure the neighbors that it would be minimal impact.

Ms. Heguy stated that she had some stuff prepared for the Commission in regards to the questions. She thought overall, and in general, everyone agreed. This is a neighborhood in a wonderful community. It is their intention to keep it that way. She said that her grandparents built the house 60 years ago and lived in it. They decided, instead of selling the home, that they

would like to see Ms. Heguy host the kids there three times a week. There will be minimal traffic. There is a small number of families. Just because they are talking about 24 kids, it is not 24 cars. There are multiple kids per family, which includes her family. Many of the children live in, or around, the neighborhood. They would be willing to walk and/or bike, as applicable. The other families have worked out the best way to carpool and minimize traffic. They will also be respectful of the neighbors and the other kids in the neighborhood. She has created some staggered drop-off and pick-up times in order to minimize the traffic and to utilize off-street parking. They will be operating Tuesday, Wednesday, and Thursday only. They will be very respectful of loading and unloading in the designated area. Ms. Heguy also wanted to make a quick comment. She explained that she was speaking with some of the families yesterday, in regards to the context of the meeting, and what the purpose was of them being here tonight. She asked the question, what does it mean to be a good neighbor. The children, for the most part, came up with responses. Some of the response were: keeping the yard clean; being nice, kind, and quiet; saying hello to the neighbors; lending a helping hand when you see something that needs to be done, or someone that needs help; being in the neighborhood allows the children that live outside of the City the opportunity to be good neighbor; to serve the community and serve the neighborhood better, etc.

Commissioner Beck said this was a tough call. He asked if it was an economic advantage because they already own the house. He also asked if they had looked at a commercial property, or if they had explored other options.

Ms. Heguy said yes, and that she had looked at multiple different things. As far as being economically advantaged, they are a 501(c)3 with limited funds. She explained that she was not getting any financial gain, especially personally.

Chairman Dalling asked if they thought about selling the house and moving to a commercial location.

Mr. Heguy said yes. Their intent with the house, because what Ms. Heguy is doing is expanding so quickly, was to use it for a small amount of time in between what they are planning on doing. They don't want to change anything about the house. The traffic will be minimal, so any changes that occur to the house will be for ADA compliance. Mr. Heguy said they were planning to do something else soon, and they don't want to change it from a residential property. In the meantime, it would be a great place to use for the kids. He didn't think it would detract from the neighborhood at all, or affect the neighbors.

Commissioner Gratton Miller asked what time the school started and ended. He also asked exactly what times the staggering drop-offs and pick-ups would be occurring.

Ms. Heguy explained that the school would begin at 8 a.m. In the afternoon, the younger children leave at 1 p.m., and the older children leave at 3 p.m. Afternoon pick-up will be even less of an impact.

Commissioner Tera Hooiman asked with the Covid-19 situation if Ms. Heguy thought there was going to be an influx of students. She asked if that was something that they planned for and what that looked like.

Ms. Heguy stated that she has had a lot of people contact her because of the Covid-19 situation. She explained that she was at capacity right now. Every child that is coming next year was there last year. Ms. Heguy felt it was important to serve those families first. They could possibly grow into another location at some point, but not at W. Birch.

Commissioner Hooiman asked how many years Ms. Heguy has been doing this.

Ms. Heguy stated that it would be her 3rd year going into the fall.

Mr. Wilkinson said the limitation on parking would limit the occupancy.

Ms. Heguy said it was also the intention of really keeping the integrity there and maintaining the neighborhood.

Chairman Dalling asked what the sidewalk story was. He felt like they hammered everyone on sidewalk. He wondered if they could get a better clarification.

Ms. Laughlin said as the subdivision was developed many years ago the south side of W. Birch does not have sidewalk, all the way from Dotta down the corner to Highland. Across the street and the adjacent streets north of this property, do have sidewalk. Why this street wasn't required sidewalk at the time of development was beyond her. Keep in mind, if we require sidewalk just in front of 675 W. Birch Street, you still don't have connectivity to the east and west.

Ms. Heguy said based on parking, the parking that they were going to have would negate the need for the sidewalk, as far as dropping and picking the kids up. The drop-off and pick-up will be in the driveway and parking area.

Chairman Dalling asked for final comments from the applicants.

Ms. Heguy thanked the Commission for listening and thanked the neighbors for raising their concerns. She said that she appreciated knowing so that they could be held to a higher standard. She added that they really hoped to be able to be good neighbors.

Commissioner Dalling called for final public comment.

Robert Loranger, 1000 Dotta Drive, said his comment was to everyone and to the applicants. Mr. Heguy made a comment about how they got to this point without having any feedback. Mr. Loranger wanted to say that one of the things with doing something like this in a residential neighborhood is that the person and the people that have the passionate drive need to be passionately, and actively seeking buy in from the surrounding property owners, and people who may be impacted. You've got to sell it and going forward you need to be interactive with the neighborhood. That's how things progress and how you get full backing from a community.

Ms. Heguy agreed with Mr. Loranger about being proactive and including the neighbors. That was something they commented on and one of the things that the kids would like to do. In respect to that, Ms. Heguy stated that she submitted several letters to the neighbors and tried to give them some information. She said that she would do a better job at that, and that she

appreciated the encouragement there. She would be happy to share their goals and to help in any way possible as a neighbor.

Scott Conley, 3724 Wright Way, wanted point out something he noticed about the number of children per parking spot. He said Ms. Heguy might want to consider kids moving from the elementary stage upwards. You might have to upgrade your driveway and it might be something to think about.

Commissioner Buell said as she was doing her homework she wanted to dig into the zoning issues related to this application. That began with the semantics of dancing around the term "school." That struck her as odd, because when the question came up she looked up the accreditation for this organization. It is accredited by the International Association of Learner Driven Schools, an organization that shares employees with Acton Academy. The issue Commissioner Buell had there wasn't so much any potential conflict of interest, it is more that the accrediting body refers to these as schools. She looked at medium density residential neighborhoods, and common best practices related to this. What you wind up with is schools, private or otherwise, within residences tend to be allowed with up to 10 students. This has 24 students. That is a notably higher number than standard. With that in mind and trying to avoid the term school, Commissioner Buell stated that she could not vote for this Conditional Use Permit.

Chairman Dalling asked Ms. Heguy if 24 students was her maximum and that she wasn't going to be taking any more. (Correct) He asked what happens if the kids keep coming and reach high school and driving age.

Ms. Heguy said that would be up to their parents. At this point, they are serving elementary, and are focusing on that age group. Their home schooling journey is up to their parents.

Chairman Dalling said the problem is sometimes things are easy and we just stay where we are. It could be an issue in the future when the kids start driving.

Mr. Wilkinson thought it would be appropriate if the Planning Commission looked at this application and with all the public comment that they've heard, that they determined that this Conditional Use Permit would be limited to a certain age of children. If the applicant was in agreement with that, it is probably a logical discussion to have.

Chairman Dalling said maybe Kindergarten through 8th Grade. He asked how everyone felt about that.

Ms. Heguy said that sounded good.

Chairman Dalling said he wondered, although it's not legal and he shouldn't advocate for it, if they just had the kids show up three days a week non-permitted. He said he shouldn't say that, but it would have saved them a little bit. Chairman Dalling said he liked the K through 8 condition. He didn't think anyone wanted extras in their neighborhood, so it's hard to not listen to the people. It's always a bad thing when the whole neighborhood shows up and voices their opinion. He thought the Commission appreciated the opinions in the end, both pro and con.

Commissioner Hooiman felt like the public concern that was voiced tonight could have been met with some clear communication on the applicant's part, and it wouldn't have been so hard met. There were a lot of people here that were frustrated with the process. She stated that she saw their concerns, and she saw where the applicant was coming from. Commissioner Hooiman said her struggle was that the community that the applicant was going into doesn't support the application.

*****Motion: Deny Conditional Use Permit 3-20.**

Moved by Evi Buell, None seconded.

***With no second the motion died.**

Commissioner Beck wanted to echo Commissioner Hooiman's statement. The problem he was having was when you get that many people that show up. It's tough when most of the neighbors show up and they're against the project. Commissioner Beck said his main concern was that they had a lot of people that were against it.

Mr. Heguy thought the connotation of having a school in the neighborhood was terrifying. He said it's not that, it is a Conditional Use Permit to have a few kids meet three times a week. He felt the footprint would be minimal and it fits within the City Codes, and they were willing to make the appropriate upgrades. Mr. Heguy didn't think it was going to be a detriment to the neighborhood.

Chairman Dalling said he was in the same spot, he could see both sides. It is a small learning hub, a school, and it's in someone's neighborhood.

Commissioner Miller asked if there was an option for the Commission to table the item and see if the applicant can convince their neighbors to go along with this. He asked if there was a precedent for that.

Chairman Dalling said they could do that. The problem is that it wouldn't be fair to the public who came out. They would have to come back again. He asked if there was a way they could make the decision at the end of the night.

Mr. Wilkinson suggested that Chairman Dalling entertain other motions before they move on.

Chairman Dalling asked for any other motions.

*****Motion: Table this and see if the applicant can convince their neighbors to get on board.**

Moved by Gratton Miller, None seconded.

***With no second the motion died.**

Mr. Wilkinson wanted to remind the applicant, public, and Planning Commission of the appeal process. Any party could take this to the City Council on an appeal. Whatever is decided tonight, the public and/or the applicant would have recourse before the City Council.

*****Motion: Deny Conditional Use Permit No. 3-20.**

Moved by Evi Buell, Seconded by Stefan Beck.

****Motion passed (4-2, Commissioners Dalling and Hooiman voted no).***

6. Review, consideration, and possible action on Variance No. 3-20, filed by Real Estate Pro, LLC, to allow required off street parking to be located within the interior side yard setback for each dwelling unit proposed to occupy a series of contiguous lots in a R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southwest side of Fir Street, between 2nd Street and 3rd Street. (APNs 001-096-010 through 001-096-015)

Jaime Alvarado, 225 Fir Street, explained that he and his wife have lived in their home since July 2001. All those years they have enjoyed the tranquility and peace of mind of the streets. They have serious concerns now of losing that. They were made aware that they are planning to build six little tiny homes. Mr. Alvarado said they would not be in opposition to two or three homes, but are opposed to six dwellings. There are parking issues along with other concerns. If the dwellings will be rentals, Mr. Alvarado had the following questions: Will there be someone to submit the roll of a rental property management? If so, will there be a background search conducted on the potential renters? They know their neighbors, and there is not one convicted criminal living across the street. He saw it appropriate that the said requirements remain as it is, and that the Department uphold their own requirements. They are requesting that the petition for Variance No. 3-20 be denied. The Real Estate Pro, LLC should be required to follow the City requirements.

Jeanne Goss, 313 Fir Street, said she was curious about the variance with the adding the parking, and worried about defensible space. If they are going to be adding parking to the alleyway, that is the main drainage through the area, so will they be upgrading the current alleyway. Right now, the water kind of flows through there, but not always. If that is going to become an actual street, then there will need to be improvements made to that. With additional homes, does that mean the City will put up stop signs in that area? Will the traffic patterns be changing? She was also wondering if they gave parking that close to a home, if they would need a curb, so they wouldn't run into their house. She was wondering what the exact plans were.

Chairman Dalling said he knew this was a terrible alley for standing water. He asked Mr. Wilkinson if the developer would be required to do a new complete alley. Chairman Dalling felt like that should be required.

Ms. Laughlin explained that she would address some of that in her presentation. With the Building Department Permit Application, there will be a site permit and a Building Permit for each of the residences, and Staff will be looking at a grading permit to show how the lots will

drain. There are Code requirements that will have to be followed. If that requires that they have to do some work in alley, staff can require that.

Chairman Dalling felt like it would be required, since there are six lots.

Ms. Laughlin explained that this variance was addressing a key element regarding the parking; it is not addressed to how the property is developed. Staff has not seen the Building Permit set, so we don't have information on how they plan to grade the lots.

Mr. Wilkinson explained that the properties drain somewhere today. When the developers get in there and do their Site Plan, they are going to have to show where those properties will drain to after development. Let's assume that they do not drain to the alley and they give the City a site plan that shows that they want to put their drainage to alley. Staff could determine at that time whether they will have an impact beyond their frontage. Typically, we are looking at just frontage improvements with these type of developments.

Chairman Dalling thought it was more complicated because they are actually that alley is going to be part of their driveway.

Mr. Wilkinson said typically, when you park in the back the City likes to see the drainage go to the right-of-way, and alleys are right-of-ways in these areas. If there are drainage problems in that alley, we can always require that the drainage report out to the street area. Mr. Wilkinson thought it was an issue that is easily addressed at the time that a site plan is submitted.

Ms. Goss asked about updating the sewer. She said that the sewer system in the tree streets is bad. If there will be extra strain on that, it is another thing that needs to be considered.

Mr. Wilkinson explained that there are lots of record that have an implied right to hook onto the City's utility systems. If there are some deficiencies in the City water or sewer in that area, that may be something that would be addressed as a result of this. Mr. Wilkinson said he wasn't sure what issues may be present in the area. It is something that the Utility Department would be aware of. They are involved in the plan review and approval process.

Ms. Laughlin went through City of Elko Staff Report dated July 20, 2020. Staff recommended approval with the findings and conditions listed in the staff report.

Ms. Rambo had no comments or concerns.

Ms. Winrod had no comments.

Ms. Laughlin stated that the Engineering Department and the City Manager's Office recommended approval as presented by staff.

Mr. Alvarado asked which map zoning was being used from 1976.

Chairman Dalling explained that these were old lots that have been around since before the 20's.

Mr. Alvarado said when he first bought his house it was explained to him that there were only two parcels there. He didn't know how there is now six parcels.

Chairman Dalling said there always had been six. They were never legally put together.

Mr. Alvarado asked if the homes that are going to be built would take value away from the surrounding homes, or if they would improve the values.

Chairman Dalling didn't think anyone had a crystal ball to tell for sure. He said they might do ok with property values, because there isn't a lot of new construction on the tree streets.

Commissioner Buell thought the big concern was the condition of alley, accessibility, and whose responsibility it is to make the improvements. She was concerned about the status of existing infrastructure.

Chairman Dalling wished they had drawings.

*****Motion: Conditionally Approve Variance No. 3-20 subject to the conditions in the City of Elko Staff Report dated July 20, 2020, listed as follows:**

- 1. Variance 3-20 from Elko City Code section 3-2-17(D)(2)(a) is for approval of required off street parking in interior side yard setback with access from the alley.**
- 2. Commencement within one year and completion within eighteen (18) months.**
- 3. Conformance to plans approved as a part of the variance.**
- 4. Subject to review in two (2) years if determined necessary by the planning commission.**

Commissioner Buell's findings to support the motion were the proposed variance is in conformance with the Land Use Component of the Master Plan is consistent with existing land uses in the immediate vicinity. 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 City of Elko Wellhead Protection Plan. The proposed development as a single family residence conforms to Section 3-2-4 of City Code. A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet a buildable lot for one single-family dwelling. Therefore, the minimum lot width of 60' and lot area of 5,000 sq. ft. is not required based on this exception. The proposed development is in conformance with Elko City Code 3-2-5(G) for the principal permitted use of a single family residence. The proposed development does not conform to Section 3-2-17 of City Code. A Variance for the parking in the interior side yard setback would be required to be approved for the proposed development to be in conformance. In accordance with Section 3-2-22, the applicant has demonstrated that the hardship is the narrow lots created by File #5 and the required width of 18' for the 2 off street parking. In accordance with Section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on the fact that the lots are narrow and the width of 25' minus the 18' parking required is less than the required interior side yard setbacks. Granting of the variance will not result in material damage or prejudice to other properties in the vicinity. This finding is based on other

similar properties within City of Elko, which were built within the last 15 years. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Single Family is listed as a principal use in the underlying zone. Granting of the variance will not impair natural resources. The parcel is not located within a designated Special Flood Hazard Area.

Moved by Evi Buell, Seconded by Stefan Beck.

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

2. Review, consideration and possible recommendation to City Council for Rezone No. 2-20, filed by the City of Elko, for a change in zoning from AG (General Agriculture) to PQP (Public, Quasi-Public) Zoning District, approximately 38.09 acres of property, to allow for the proposed development of a veterans cemetery and other future public uses, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is generally located north and south of Rocky Road, approximately 520' west of N. 5th Street. (APN 001-01A-012)

Ms. Laughlin went through the City of Elko Staff Report dated July 20, 2020. Staff recommended approval with the findings in the Staff Report. She added that the City Manager's office recommended approval as presented by staff.

Ms. Rambo and Ms. Winrod had no comments.

Scott Conley, 3724 Wright Way, said his property was right across from the area. He fully supported making a veterans cemetery. There was one thing he was confused on. He stated that "other future public uses" was very vague. He knew there was talk about putting a school up there, which he also supported. He hoped that with whatever the future public use is that we consider the roads, especially if it is a school. It is a nightmare on Jennings at 3:30 p.m. His children attend Mountain View, and he parks several blocks away and walks to the school because it is a nightmare for driving. He encouraged the City and the Elko Planning Commission to at least take public parking into account whatever is done.

Ms. Laughlin explained that there was a parcel map that was approved with some roadway dedication. The School District is off the table as far as the purchase of the property, because they would have needed all 38 acres to provide for their school and the VA is going through the process to purchase 15 acres in the center. The remaining Parcel A, the City of Elko is entertaining maintaining that for our own cemetery use. There are two more parcels, one above Rocky Road and one below. It would be limited to what could go on those two parcels.

*****Motion: Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 2-20.**

Commissioner Miller's findings to support the motion were the proposed zone district is not in conformance with the Land Use Component of the Master Plan. Master Plan Amendment 2-20 has been initiated and with approval, it will bring the zone amendment into conformance with the Master Plan Land Use Component. The proposed zone district

is compatible with the Transportation Component of the Master Plan and is consistent with the future transportation infrastructure. The property is not located within the Redevelopment Area. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B). The proposed zone district is in conformance with Elko City Code 3-2-8. The application is in conformance with Elko City Code 3-2-21. The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA). Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, flood plains etc., or pose a danger to human health and safety.

Moved by Gratton Miller, Seconded by Tera Hooiman.

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

***Chairman Dalling called for a five-minute break.**

3. Review, consideration and possible recommendation to City Council for Rezone No. 3-20, filed by Elko Institute for Academic Achievement, for a change in zoning from CT (Commercial Transitional) to PQP (Public, Quasi-Public) Zoning District, approximately 11.38 acres of property, to allow for the development of a school, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is generally located on the northeast corner of the intersection of College Avenue and Ruby Vista Drive. (APN 001-620-058)

*****Motion: Table Item No. I.A.3.**

Moved by Gratton Miller, Seconded by Evi Buell.

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

4. Review, consideration, and possible adoption of Resolution 2-20, containing amendments to the City of Elko Master Plan, specifically amending: 1) the Proposed Future Land Use Plan Atlas Map 8 on six parcels of land located on S. 5th Street generally between Carlin Court and S. 9th Street; 2) the Land Use Section to add RO (Residential Office) as a corresponding zoning under the Downtown Mixed-Use land use designation; and 3) the Proposed Future Land Use Plan Atlas Map 8 on one parcel located at the western terminus of Rocky Road, and matters related thereto. **FOR POSSIBLE ACTION**

Planning Commission reviewed and initiated the amendment to the City of Elko Master Plan at its July 7, 2020 meeting.

Ms. Rambo explained at the Planning Commission's last meeting on July 7th they initiated this amendment to make two make changes to Atlas Map 8 and one change to the text of the Master Plan to clean up some areas that needed to be changed based on current projects, or cleaning up

stuff from the past. Nothing has changed since the initiation. The Planning Commission has the resolution that needs to be forwarded on to City Council in order to get this process underway.

*****Motion: Adopt Resolution 2-20, containing amendments to the City of Elko Master Plan; directing that an attested copy of the foregoing parts, amendments, extensions of and/or additions to the Elko City Master Plan be certified to the City Council; further directing that an attested copy of this Commission's report on the proposed changes and additions shall have be filed with the City Council; and recommending to City Council to adopt said amendments by resolution.**

Moved by Evi Buell, Seconded by Gratton Miller.

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

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible recommendation to City Council for Vacation No. 2-20, filed by Real Estate Pro, LLC, for the vacation of the southeasterly portion of Fir Street abutting APNs 001-096-010 through 001-096-015, consisting of an area approximately 1,500 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The property owner is proposing to develop the six lots with single family homes and would like to vacate any excess right-of-way. City Council accepted the petition for the vacation on July 14, 2020.

Ms. Laughlin went through the City of Elko Staff Report dated July 20, 2020. Staff recommended approval with the findings and conditions listed in the Staff Report.

There were no other comments or concerns from any members of Staff.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No., 2-20, subject to the conditions listed in the City of Elko Staff Report dated July 20, 2020, listed as follows:**

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

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

Moved by Evi Buell, Seconded by Tera Hooiman.

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

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin said she didn't have much to report. There hasn't been a Redevelopment Advisory Committee Meeting or a Redevelopment Agency Meeting for some time. We are hoping to have one sometime in the first part of September. It does look like the Planning Commission Meeting for September will be back to a GoToMeeting.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

Exhibit 1

8/4/2020

To Whom it May Concern,

As you know, we as neighbors that will be impacted by the presence of a **501(c)(3) Organization Youth Organization** in our neighborhood, have several questions and concerns. Please understand that given our significant investment in this neighborhood, it is not unreasonable for us to feel this way.

The applicant has made it clear that this is NOT a school, but regardless of the tax status of this organization, all of the CUP requirements are for compliance of a school/child care facility.

Questions for the City:

Transportation

3.the south side of West Birch Street does not have pedestrian access. Sidewalks are a necessary safety feature, particularly in residential neighborhoods where children walk to and from school.

This section states the lack of and importance of sidewalks. Will the applicant be required to install sidewalks?

If NO Why? Applicant has stated in her letter that students will be encouraged to walk or bike to the school to keep traffic to a minimum, how will they safely cross West Birch Street with out a cross walk? They will not be able to access the property safely from South side of West Birch without sidewalks.

If YES, will it be a requirement only in front of their residence? Or the whole South side of West Birch Street? If whole South side of West Birch, how will that affect my property located at 975 Dotta Dr?



Section 3-2-4 Establishment of Zoning Districts

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

What are the minimum requirements?

Section 3-2-17 Traffic, Access, Parking and Loading Regulations

1. Section 3-2-17(F) Requires 1 parking stall per 6 students for Elementary Schools and for middle schools, 1 per 10 students and 1 per employee. The building size will determine the occupant load allowed and off-street parking will be required to be in conformance with 3-2-17(f)

What is the max capacity occupancy load for the location? Is the city requiring compliance for an elementary school or a middle school?

2. Section 3-2-17(D)(2)(a) ...no off street parking space shall be located in a required front yard or interior side yard.....for conditional use permit, the garage will not be allowed to be counted toward required off street parking and therefore a variance will be required to be approved to allow parking in the front yard set back

Are they looking to convert the side yard to the right of the existing driveway and/or an area in the front yard? What are the requirements for obtaining this variance?

Where are Lots 9,10 and 11 and the vacated portion of former E Street right of way? Is this referring to the area to the right of the existing garage slab?

Section 3-2-18 Conditional Use Permits

2. Every conditional use permit issued,...shall automatically lapse and be of no effect (1) year from the date of it's issue unless the permit holder is actively engaged in developing the specific property for the use for which the permit was issued

What are a few examples of further development to this property at each 1 year anniversary in order for the CUP to be renewed?

4. Conditional use permits shall be reviewed from time to time by City personnel.....In the event that any or all of the conditions of the permit in this chapter are not adhered to, the conditional use permit will be subject to revocation.

Who is responsible to review the CUP? How often are they reviewed? Is this the same person that would monitor whether the Organization is in compliance as far as enrolled students?

Note: The city currently does little to no snow plowing or removal in this area, If the intended CUP is approved, is the city committed to dedicating more resources to snow plowing and removal in our neighborhood?

Questions for the Applicant:

How many children are currently enrolled for the fall semester? Of those enrolled, how many separate families? (for traffic volume purposes)

If the max occupancy load for the residence allows for additional enrollments, do you plan to enroll as many students as is allowed?

Will additional business be conducted at the property on days other than your stated days of operation?

What is the contact information for your compliance department? Name and phone number.

What is your reason for no longer using the Girl Scout House?

What business license are you currently doing business under?

Is your non-profit set up as a trust, corporation or association?

May we have a copy of your tax-exempt application? (Form 1023) **Required to be public record**

May we have a copy of your last 3 years of tax reporting (Form 990) **Required to be public record**

May we have a copy of your articles (**corporate** articles of incorporation, **LLC** articles of organization, articles of association or constitution of an unincorporated association, or **trust agreement or declaration of trust**)

May we have a copy of your Bylaws?

How many staff members are there? Are they independent contractors or employees?

We do not support the approval of this CUP for the following reasons:

When we purchased our home 8 years ago, part of the appeal was that it sits in a quiet neighborhood. If at that time there had been a school so close (non-profit or not) it would have weighed into our decision. As such, it is reasonable to assume that it would be a consideration of other people looking to buy a home. This in itself could affect the value of our homes.

The approval of this CUP will drastically change our neighborhood due to the amount of people that will now be in and out of it.

Traffic flow is already congested due to Dotta Drive and W Birch not being complete through streets. If the pick-up/Drop off zone is on the south side of W. Birch in front of the residence, every vehicle will travel on Dotta Dr to access the school in order to be on that side of the street.



Sidewalks are an issue. Children will not be able to safely walk to the property without extensive civil work that may affect every property owner on the South Side of W. Birch Street.

Exhibit 2

Steven + Jennifer Hayes
1024 Dotta Drive
Elko, NV 89801

August 3rd, 2020
To whom it may concern:

We are writing this in response to the notice of public hearing regarding the Conditional use permit No. 3-20 filed by Gladys Burns located at 675 W. Birch St.

We are located down the street at 1024 Dotta Drive (Steven + Jennifer Hayes).

Right now we have a quiet street with minimal traffic, mostly residents. We do not agree with a neighbor using a residence for business purposes, we don't think it's a good idea. That's what commercial space is designed for, not our neighborhood.

Sincerely,

Jennifer Hayes

Exhibit 3

August 4, 2020

To the City of Elko Planning Commission

RE: Conditional Use Permit 3-20

Our home is located at 1030 Dotta Drive, and we are OPPOSED to the approval of CUP 3-20 for the following reasons.

We enjoy our residential neighborhood and feel that the approval of a conditional use permit sets a precedent for future CUPs.

Dotta Drive already has quite a lot of traffic, and the intersection where Dotta Drive meets West Birch is a hazardous tight curve especially with vehicles parked on the corner. Also, where Sewell Drive meets Birch Drive, the road widens so that people driving east on Birch often "cut the corner" turning onto Sewell.

The neighborhood is blessed with quite a few children now who sometimes play in the street.

There are quite a few commercial buildings for sale in the city of Elko.

For these reasons, we hope you will reconsider your recommendation for Approval of CUP 3-20.

Sincerely,

Earl and Mary Craig

Earl M. Craig
Mary S. Craig

Shelby Archuleta

From: MELISSA DUKE <mduke13@gmail.com>
Sent: Tuesday, August 4, 2020 5:27 PM
To: Shelby Archuleta
Subject: Not in favor of the Ruby Mtn Acton Academy

Our family moved to 1011 Dotta Drive July 17,2020.

We chose this neighborhood for the quiet streets, well groomed yards and the elder residents.

We have 4 active children from ages 14-9. They have spent a lot of their time riding along the sidewalk and streets of our new neighborhood.

We are concerned that extra traffic in our neighborhood will be a nuisance. We fear for our children's safety while they ride their bikes and scooters. There is not a sidewalk after our house so they ride in the road sometimes along a blind corner very near to the proposed business.

We moved into this home with the expectation that residential zoning protects neighborhoods, businesses, and industrial areas from uses incompatible with the zoning and ownership interest of the area.

If this school is approved, the neighborhood will be flooded with extra traffic. The staggered start and stop times will leave us wondering when it will be safe to ride throughout the day.

As we have been getting to know neighbors in our new neighborhood, they have expressed their disapproval of the new school/childcare facility potentially coming to the neighborhood.

The construction of a parking lot invites a construction project in a well established neighborhood where expectation of that big a project could never have been projected. In addition, the residential neighborhood could not accommodate celebrations, such as open houses and parties, that are typical at schools, without displacing first residents and their guests.

While the CUP may have stipulations we are aware that enforcement would be improbable, considering there is no compliance department within the city.

We are speaking our concerns as well as being a voice for our new neighbors who are very disappointed in this prospect.

This is not a neighborhood for a school/childcare facility.

Please, City of Elko, maintain this long-established, quiet and quaint neighborhood. We ask that you deny the CUP request.

Incidentally, I inquired with the city 3 years ago to establish an appointment only cosmetology business within my separate garage on a huge corner lot with ample parking. I was told I would have to attempt to get a zoning change as it would likely disrupt traffic patterns in a residential neighborhood. I was also told that even attempting it would be prohibitively expensive. I respected the cities guidance, because I understood the residential interests would supersede a business.

In many counts this proposed business will be disruptive to residential life . I question how the prospect of a school is in any way less obtrusive than a little cosmetology business, where I would have taken individual appointments only, and would have not needed any disruptive construction.

Thank you for your consideration
Jordan and Melissa Duke
1011 Dotta Drive
Elko, NV 89801

Hello! My name is Louri Lesbo. Our family has lived at 1010 Dotta Drive for 51 years. It has come to our attention that Ruby Mountain Acton Academy is to be located at 675 Birch Street.

Our neighbors have many concerns. Mine are as follows:

1. We have a blind corner at this location. Ten children live in surrounding homes. With the increase in traffic, what will be done to assure the safety of the neighborhood children.
2. Parking- How is the city going to address the increase need of parking in this area, and how is the city going to address the congestion from the increase flow of traffic on this tiny two-lane street?
3. We have a problem with teenagers congregating and racing by Angel Park. With the teenagers within the population of the school, there is a possibility that this problem may extend even farther down the side streets. Will there be extra law enforcement to keep this from happening?

Many of the families in this neighborhood have lived in their homes for over fifty years. The noise and confusion generated from these children may be detrimental or disorienting to our older residences.

I am concerned with how many children will be attending this program. This program's current building is large, with lots of parking. What has been done at the Birch Street property to address growth needs? I.E., how do we address overflow of students?

Who is going to oversee this program to see that what is being said is actually what is being done?

Thank you for your time and consideration,
Louri Lesbo

Cathy Laughlin

From: Nann C. Hanley <nannhanley@gmail.com>
Sent: Tuesday, August 04, 2020 3:41 PM
To: Shelley Petersen
Cc: Cathy Laughlin
Subject: Re: Cathy Laughlin - email address

Sent from my iPhone

On Aug 4, 2020, at 2:35 PM, Shelley Petersen <s.petersen@elkocitynv.gov> wrote:

To: Cathy Laughlin
Please respond.
From: Nann C. Hanley
City of Elko
Administrative Assistant
1755 College Avenue
Elko, NV 89801
775.777.7210
To: Cathy Laughlin
From: Nann C. Hanley
Re: CUP 3-20

I chose not to attend the public hearing because of the COVID 19 pandemic. I am in the most vulnerable older population & have not gone anywhere in a group since Feb. I am continuing to isolate at home. I live at 685 W. Birch Street, next door to the parcel under consideration for CUP. My initial concern was that a sidewalk would be required for all of West Birch. This would have been detrimental to my property. Now I understand that the only sidewalk concern might be at the 675 W. Birch property. However, there are three other issues I must address.

1. I didn't realize that you the CUP could go with the property & last forever. This type of change in the neighborhood will lower property values.
2. When I first heard of this idea, I thought of a small, private school trying to give a better education to a FEW lucky students. However, 20 to 30 children in a quiet, residential neighborhood is just too much...too many.
3. This is a more individual, personal issue. I rescued a neurologically disabled dog from the shelter. For him I created a kennel, run, & inside/outside doggie door. I go to Twin Falls regularly for cancer treatments & checkups. I'm very concerned that all the extra noise & activity (when the children have recess or exercise in the school's back yard) will cause my dog to get overly excited & bark too much & endanger his health. When I'm home, no problem. But when I have to leave, I worry about my dog & the consequences in the neighborhood.

If/when my concerns are addressed in a positive way, I would be satisfied with the CUP...otherwise... NO.
For further inquiries call: 775-738-4949

PS. I thought they were talking about 5-10 children at the maximum.

To Whom it May Concern

Re: 075 W. Birch Street

This letter is regarding the Conditional Use Permit application in the name of Acton of the Rubies for the above stated address. We are not a resident of the neighborhood; however, we recently sold my husband's family home of 58 years at 1011 Dotta Drive, which is across from the applicants address of interest. There are several things we would like to see addressed before permission is granted in this case.

1. The traffic around the corner of Dotta Drive and West birch is dangerous. It is a blind corner that exceeds the normal 45-degree turn. Not only will the increase in traffic be affected by this corner, the speed at which we have seen this corner being taken will be a danger for children.
2. The CUP requires a certain amount of off street parking and at the normal requirements for a parking spot being 9' x 18', we are having a difficult time figuring out where you would put the minimum of 6 parking spaces in addition to a student drop/pickup space and a van handicapped space. In addition to that, a 5' wide sidewalk.
3. The people who have built and purchased a home in this neighborhood during the last 60 years or so have had the privilege to live in a quiet, bucolic area. It has the advantage of having two street convene in an area that is not a direct path to anything making it a wonderful neighborhood.
4. We sold my mother in laws home to a couple who deserve to live in the same type neighborhood as the applicant's father enjoyed growing up in at 075 W. Birch Street. Having 20+ cars dropping off and picking up students twice a day for three days a week, and the increase in traffic will be a detriment to the entire neighborhood and will most definitely affect the value of the homes in this neighborhood.
5. As for the students, there is obviously going to be outdoor activities and recess. The immediate neighbors will be affected by the noise created by such activities. There are animals that will respond do the added noise issue.
6. Lastly, our main concern regarding this application is where will it stop. If you allow this type of a Conditional Use Permit in this neighborhood, what will happen when the same type situation is wanted in another neighborhood, maybe YOUR neighborhood. When it comes to something like this, those watching the process may say, "I don't have a problem with it, but I certainly don't want in in MY neighborhood". There are plenty of commercial properties available in Elko with the proper permitting and zoning. We believe that the applicant should go in that direction.

Thank you for taking our opinion into consideration for this Conditional Use Permit
Rick and Begona Hull

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review and consideration of Tentative Map 6-20, 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 residential development and 1 common lot within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 1, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **20 Minutes**
5. Background Information: **Subject property is located on the west side of N 5th Street at the intersection of Rolling Hills Drive. (APN 001-610-093)**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application and Staff Report**
8. Recommended Motion: **Recommend that the City Council conditionally approve Tentative Map 6-20 based on facts, findings, and conditions as presented in Staff Report dated August 18, 2020.**
9. Findings: **See Staff Report dated August 18, 2020**
10. Prepared By: **Michele Rambo, AICP, Development Manager**
11. Agenda Distribution: **Legion Construction and Development, LLC
Attn: John Smales
599 Shadybrook Drive
Spring Creek, NV 89815

Shanks Engineering
Attn: Mike Shanks
982 Wolf Creek Drive
Spring Creek, NV 89815**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 9/1

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

Title: Tentative map No. 6-20 Jarbidge Estates
Applicant(s): Legion Construction + Development, LLC
Site Location: NE side of N 5th St, across from Rolling Hills - APN 001-610-093
Current Zoning: AG Date Received: 6/21/20 Date Public Notice: 8/18
COMMENT: This is to divide 2.16 acres into 18 lots and a common area

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 8/21/20
Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 8/21/20
No comments/concerns.

CK

Initial



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

CITY OF ELKO STAFF REPORT

REPORT DATE:	August 18, 2019
PLANNING COMMISSION DATE:	September 1, 2020
AGENDA ITEM NUMBER:	I.A.1.
APPLICATION NUMBER:	Tentative Map 6-20
APPLICANT:	Legion Construction and Development, LLC
PROJECT DESCRIPTION:	Jarbridge Estates

A Tentative Map for the proposed division of approximately 2.16 acres of property into 18 townhouse lots for residential development and 1 common lot within an A (General Agriculture) Zoning District.



STAFF RECOMMENDATION:

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

SUMMARY NARRATIVE

The proposed subdivision is a townhome subdivision located on the east side of N 5th Street at the intersection of Rolling Hills Drive. The 2.16-acre parcel in question would be divided into 18 residential lots and one common lot to be controlled by a Homeowner's Association. The existing grading of the parcel has been incorporated into the subdivision's design wherever possible. Water and sewer service will be extended and connected to existing City infrastructure.

A Slope Analysis was completed, which showed the average slope of the property to be 5.2%. Section 3-2-28 states that hillside development standards and regulations are required for site with an average slope of 15% or greater.

The proposed Tentative Map conforms with all city documents, plans, and ordinances. In addition, all required findings can be made in the affirmative. A Modification of Standards is required for four of the five lots to accommodate the smaller lot widths around the bulb of the cul-de-sac, which is included as part of this approval.

Several conditions of approval have been added at the end of this report for modifications of the subdivision map to be made before moving forward to final approval by the City Council.

TECHNICAL INFORMATION

PARCEL NUMBER:	001-610-093
PARCEL SIZE:	2.16 Acres
EXISTING ZONING:	(A) General Agriculture
MASTER PLAN DESIGNATION:	(RES-MD) Residential Medium Density
EXISTING LAND USE:	Vacant

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

-)} North: A (General Agriculture) / Vacant
-)} South: R (Single and Multiple Residential) / Developed
-)} East: R (Single and Multiple Residential) / Vacant
-)} West: R (Single and Multiple Residential) / Developed

PROPERTY CHARACTERISTICS:

-)} The property is an undeveloped agricultural parcel.
-)} The site abuts previous residential development to the west, a church to the south, and vacant land to the north and east.
-)} The parcel has an average slope of 5.2%. The existing slope is incorporated into the

- design of the common lot where possible.
-) The property will be accessed from N 5th Street.

APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Master Plan – Transportation Component
-) City of Elko 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 3-2-5(E) Single Family and Multiple Family Residential District
-) City of Elko Zoning – Section 3-2-5(G) Residential Zoning Districts Area, Setback, and Height
-) City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
-) City of Elko Zoning – Chapter 3 Subdivisions
-) City of Elko Zoning – Section 3-8 Flood Plain Management
-) City of Elko Public Ways and Property – Title 9, Chapter 8 Post Construction Runoff Control and Water Quality Management

BACKGROUND:

1. The property owner and applicant is Legion Construction and Development, LLC.
2. The subdivision is located on APN 001-610-093.
3. The property is undeveloped.
4. The proposed subdivision consists of 18 townhouse lots and 1 common lot.
5. The total subdivided area is approximately 2.16 acres.
6. The proposed density is 8.80 units per acre.
7. No phasing is proposed as part of this subdivision.
8. There are no new roads or dedications offered as part of the project.
9. The property is located on the east side of N 5th Street approximately 450 feet north of Dakota Drive.
10. Stage 1 meetings for the proposed subdivision were held on May 13, 2020, June 10, 2020, and July 1, 2020.

MASTER PLAN

Land Use:

1. The land use is shown as Residential Medium Density. Medium Density is identified as having a density of 5-8 units per acre.
2. Single Family and Multiple Family Residential (R) zoning is not listed as a corresponding district for the Medium Density Designation in the Master Plan. Therefore, a Change of Zone is required to bring this parcel into conformance with the Master Plan. The needed Change of Zone application has been submitted to the City Planning Department and should be approved and in place prior to the development of this Tentative Map.
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 subdivision meets several of the methods described to achieve a diverse mix of single family homes in the community.
 - b. Best Practice 1.3 – The location of the proposed subdivision 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.” Staff believes there will be no negative impacts to natural systems and no issue with regard to human health and safety.

Upon approval of the associated Change of Zone, the proposed subdivision and development is in conformance with the Land Use component of the Master Plan.

Transportation:

1. The project will be accessed from N 5th Street.
2. This portion of N 5th Street is classified as a Minor Arterial road with a Regional Roadway overlay.
3. The interior circulation of the project will be provided by a private driveway.
4. The Master Plan requires Minor Arterial roads to have 80 feet of right-of-way.
5. N 5th Street has 80 feet of right-of-way. No further dedications are required.
6. Upon full buildout, the proposed subdivision is expected to generate approximately 105 additional Average Daily Trips based on 5.81 trips/townhome (ITE Trip Generation, 10th Edition).

The proposed subdivision and development 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 a capture zone for any 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 3-3-5 TENTATIVE MAP STAGE (STAGE II):

Tentative Map Approval 3-3-5(E)(2)(a)-(k) – Requires the following findings:

- a. Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal, and, where applicable, individual systems for sewage disposal.
 -) The proposed subdivision will be connected to the city's water supply system, programmed sewer system and is required to be in compliance with all applicable federal, state, and local requirements.
- b. The availability of water which meets applicable health standards and is sufficient in quantity for the reasonably foreseeable needs of the subdivision.
 -) The City of Elko Engineering Department is required to model the anticipated water consumption of the subdivision. The City of Elko Utility Department will be required to submit a "Tentative Will-Serve Letter" to the State of Nevada. The water modeling requires an update to reflect the increased number of lots. Current City-wide annual water usage is approximately 50% of the total allocated water rights.
 -) City of Elko currently has excess pumping capacity of 3,081 gallons per minute. Sufficient infrastructure and pumping capacity exists to provide the required water volume to serve the proposed subdivision and development.
 -) The Developer will extend properly sized infrastructure as required for development of the property.
 -) The proposed subdivision and development will not create an unreasonable burden on the existing water supply.
- c. The availability and accessibility of utilities.
 -) Utilities are available in the immediate area and can be extended for the proposed development.
- d. The availability and accessibility of public services such as schools, police protection, transportation, recreation, and parks.
 -) Schools, fire and police, and recreational services are available throughout the community.
- e. Conformity with the zoning ordinance and the City's Master Plan, except that if any existing zoning ordinance is inconsistent with the City's Master Plan, the zoning ordinance takes precedence.
 -) The Master Plan Land Use Map shows the area as Medium Density Residential. The proposed subdivision and development have been designed in accordance with the Single Family and Multiple Family Residential (R) zone.

-) The result is a density of 8.8 units per acre, which is slightly over the maximum density of 8 units per acre specified in the Master Plan. However, this slight overage does not result in a site plan where minimum development standards cannot be met.
 -) The proposed subdivision is in conformance with the City's Master Plan. With the approval of the associated Rezone application, the subdivision will be in conformance with the Zoning Ordinance.
- f. General conformity with the City's Master Plan of streets and highways.
 -) The proposed subdivision is in conformance with the Transportation Component of the Master Plan.
- g. The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision.
 -) The proposed subdivision and development will add approximately 105 Average Daily Trips to N 5th Street. Based on the threshold of 1,000 ADT referenced in the Master Plan, a traffic study is not required with this subdivision.
 -) The proposed subdivision and development will not cause unreasonable traffic congestion or unsafe conditions with respect to existing or proposed streets.
- h. Physical characteristics of the land, such as floodplain, slope, and soil.
 -) The proposed subdivision and subsequent development of the property is expected to reduce the potential for erosion in the immediate area. Development of the property will not cause unreasonable soil erosion.
 -) A hydrology report is required with the Final Map and Construction Plan submittal.
 -) The proposed subdivision and development is not expected to result in unreasonable erosion or reduction in the water holding capacity of the land thereby creating a dangerous or unhealthy condition.
- i. The recommendations and comments and those entities and persons reviewing the Tentative Map pursuant to this Chapter and NRS 278.330 to 278.3485, inclusive.
- j. The availability and accessibility of fire protection, including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires, including fires in wild lands.
- k. The submission by the subdivider of an affidavit stating that the subdivider will make provision for payment of the tax imposed by Chapter 375 of NRS and for compliance with the disclosure and recording requirements of Subsection 5 of NRS 598.0923, if applicable, by the subdivider or any successor in interest.

There are no obvious considerations or concerns which indicate the proposed subdivision would not be in conformance with all applicable provisions.

SECTION 3-3-6 CONTENT AND FORMAT OF TENTATIVE MAP SUBMITTAL:

- A. Form and Scale – The Tentative Map conforms to the required size and form specifications.
- B. Identification Data
 - 1. The subdivision name, location, and section/township/range, with bearing to a section corner or quarter-section corner, is shown.
 - 2. The name, address, email, and telephone number of the subdivider is shown.
 - 3. The engineer's name, address, and telephone number are shown.
 - 4. The scale is shown on all sheets.
 - 5. The north arrow is shown on all sheets.
 - 6. The date of initial preparation and dates of any subsequent revisions are shown.
 - 7. A location map is provided.
 - 8. A legal description is provided.
- C. Physical Conditions
 - 1. The existing topography of the site is shown.
 - 2. Existing drainage conditions are shown on the Tentative Map.
 - 3. There are no Special Flood Hazards within the proposed subdivision.
 - 4. All roadways, easements, and corporate limits are shown within and adjacent to the subdivision.
 - 5. Dimensions of all subdivision boundaries are shown on the Tentative Map.
 - 6. Gross and net acreage of the subdivision is shown.
- D. Recorded Map Information:
 - 1. Any previously recorded maps for adjacent properties is labeled on the Tentative Map.
- E. Existing Zoning:
 - 1. The zoning is shown for the subject property. Zoning classifications for adjacent properties are also shown on the Tentative Map.
- F. Proposed Improvements and Other Features Data:
 - 1. The proposed interior driveway layout is shown. None of the streets are named or proposed for dedication. The grades of the proposed streets are shown on the grading plan. The continuation of roadways is not required of the proposed subdivision.
 - 2. The lot layout with consecutively numbered lots is shown. The area and dimensions for each lot are shown, as well as the total number of lots.
 - 3. Typical easements will be required along all lot lines.
 - 4. No street dedications are proposed.
 - 5. A Conditional Use Permit is required to allow for the use of townhouses in the Single Family and Multiple Family Residential zoning. This application has been submitted and is being processed by the Planning Department.
- G. Proposed Deed Restrictions:
 - 1. Proposed CC&R's for the subdivision are in development. A condition of approval has been included to require their submitted prior to City Council approval.
- H. Preliminary Grading Plan:
 - 1. A grading plan has been provided showing estimated cut and fill information.
- I. NPDES Permit Compliance:

1. The subdivider will be required to comply with the City of Elko's storm water regulations.
- J. Proposed Utility Methods and Requirements:
 1. The proposed sewage disposal infrastructure connecting to the City's infrastructure is shown on the utility plan.
 2. The proposed water supply infrastructure connecting to the City's infrastructure is shown on the utility plan.
 3. The Tentative Map shows storm water infrastructure. A hydrology report will be required with the Final Map and Construction Plan submittal.
 4. Utilities in addition to City utilities must be provided with construction plans required for Final Map submittal.
 5. The City will not require a traffic impact study for the proposed subdivision.

SECTION 3-3-9 GENERAL REQUIREMENTS FOR SUBDIVISION DESIGN:

- A. Conformance with Master Plan: The proposed subdivision is in conformance with the Master Plan objectives for density and applicable zoning.
- B. Public Facility Sites: No public facility sites are proposed for dedication.
- C. Land Suitability: The area proposed for subdivision is suitable for the proposed development based on the findings in this report.

The proposed subdivision is in conformance with Section 3-3-9 of City code.

SECTION 3-3-10 STREET LOCATION AND ARRANGEMENT:

- A. Conformance with Plan: The proposed subdivision utilizes an existing section of N 5th Street for access.
- B. Layout: Street continuation through the proposed subdivision is not required.
- C. Extensions: No extensions are required as part of the proposed subdivision.
- D. Arrangement of Residential Streets: The arrangement of streets within the subdivision prevents outside traffic from utilizing the neighborhood for cut-through traffic.
- E. Protection of Residential Properties: There are no lots that have frontage or access from arterial streets. A note has been required on the Tentative Map that no lots shall front on N 5th Street, a Minor Arterial.
- F. Parallel Streets: Consideration of street location is not required.
- G. Topography: The residential driveway has been designated to address the topography of the area.
- H. Alleys: No alleys are proposed.
- I. Half-Streets: There are no half-streets proposed.
- J. Dead-End Streets: There are no public dead-end streets proposed. The private roads, while technically considered as dead-end streets, are designed to allow for appropriate turnaround areas for traffic, as well as fire trucks.
- K. Intersection Design: The proposed intersection with N 5th Street is code compliant.

The proposed subdivision is in conformance with Section 3-3-10 of City code.

SECTION 3-3-11 STREET DESIGN:

- A. Required Right-of-Way Widths: N 5th Street currently consists of the required 80 feet of right-of-way. No new public streets are proposed.
- B. Street Grades: The proposed street grades are code compliant.
- C. Vertical Curves: The vertical curves are code compliant.
- D. Horizontal Alignment: The horizontal alignment of the driveway and intersection are code compliant.

The proposed subdivision is in conformance with Section 3-3-11 of City code.

SECTION 3-3-12 BLOCK DESIGN:

- A. Maximum Length of Blocks: The block design does not exceed the maximum length of a block and maximizes block length. Turnaround areas have been provided at the end of each driveway to allow for safe vehicular movement.
- B. Sidewalks or Pedestrian ways: The proposed sidewalks on N 5th Street are code compliant. No other public pedestrian ways are proposed.

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

SECTION 3-3-13 LOT PLANNING:

- A. Lot Width, Depth, and Area: The lots are in conformance with the specifications stipulated for the zoning in Elko City Code 3-2-5.
- B. Building Setback: The proposed subdivision, when developed, can meet setback requirements as stipulated in Elko City Code 3-2-5(G).
- C. Side Lot Lines: The side lot lines are generally at right angles to the interior driveway. Deviations occur on inside curves and are appropriate.
- D. Accessibility: The development abuts a public street. All residents will have access to N 5th Street.
- E. Prohibitions: No units shall have direct access to N 5th Street. All access is to be through the proposed driveway.

The proposed subdivision is in conformance with Section 3-3-13 of City code with the note added as part of section E (above).

SECTION 3-3-14 EASEMENT PLANNING:

- A. Utility Easements: Typical side and rear yard easements are already in place. Easements exist for public utilities and power lines that run across the center of the property. The easement along the eastern property line for an existing water main is being widened to match the route of the main. A new access easement is provided to allow City staff to access the new utility and drainage infrastructure in the southeast corner.
- B. Underground Utilities: Overhead utilities are not typically allowed within new subdivisions. However, the power lines crossing the middle of the parcel are part of a

larger main line that would be difficult to place underground, if NV Energy was willing to do that.

- C. Lots Facing Curvilinear Streets: None of the proposed lots face curvilinear streets.
- D. Public Drainage Easement: Typical side and rear yard easements for drainage and/or utilities are already in place.
- E. Easement Land Not Considered and Considered in Minimum Lot Area Calculation: All calculations appear to be correct.
- F. Lots Backing Onto Arterial Streets: There are no lots proposed which back onto an arterial street.
- G. Water and Sewer Lines: The utilities are shown in the streets, within existing side or rear easements, and in the proposed driveway access. Sanitary sewer will tie into the existing city infrastructure via an existing easement from the southeast corner of the parcel running south through the adjacent parcel.

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

SECTION 3-3-15 STREET NAMING:

No new streets are proposed as part of this project.

The proposed subdivision is in conformance with Section 3-3-15 of City code.

SECTIONS 3-3-16 STREET LIGHT DESIGN STANDARDS:

Conformance is required with the submittal of construction plans.

SECTION 3-3-17 through 3-3-22 (inclusive):

All referenced sections are applicable to Final Map submission, approval, and construction plans.

SECTION 3-3-23 PARK LAND DEDICATIONS:

There is no offer of dedication for park lands.

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 subdivision and development 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 subdivision is in conformance with Section 3-2-4 of City code.

SECTION 3-2-5(E) R – SINGLE FAMILY AND MULTIPLE FAMILY RESIDENTIAL:

Section 3-2-5(E)(2) Principal Uses Permitted:

1. Adult care facility serving ten (10) or fewer.
2. Electric power substations, sewer lift stations, and water pump stations wherein service to district residents requires location within the district.
3. Multiple-family residential units, including a duplex, triplex, or a fourplex located on a single lot or parcel, provided area and setback requirements are met.
4. One single-family dwelling of a permanent character in a permanent location with each dwelling unit on its own parcel of land and provided all area and setback requirements are met.
5. Publicly owned and operated parks and recreation areas and centers.
6. Residential facility for groups of ten (10) or fewer.

With the approval of the associated Rezone, the proposed subdivision and development is in conformance with Section 3-2-5(E)(2). Conformance with Section 3-2-5(E) is required as the subdivision develops.

SECTION 3-2-5(G) RESIDENTIAL ZONING DISTRICTS AREA, SETBACKS, AND HEIGHT:

1. Lot areas are shown.

2. Lot dimensions are shown. The lot dimensions are in conformance with Section 3-2-5(G) of City code.

The proposed subdivision and development is in conformance with Section 3-2-5(G) of City code.

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

1. N 5th Street is designated as a Minor Arterial in the Master Plan. No new streets are being proposed as part of the proposal.
2. The proposed lots are large enough to develop the required off-street parking. Each townhouse unit will include a two-car garage within the individual lots. Additional guest parking will be provided in the common lot owned and maintained by the Homeowner's Association.
3. The access driveway is designed to line up with the existing intersection of Rolling Hills Drive.

The proposed subdivision and development is in conformance with Section 3-2-17 of City code. Conformance with Section 3-2-17 is required as the subdivision develops.

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.

TITLE 9, CHAPTER 8 POST CONSTRUCTION RUNOFF CONTROL AND WATER QUALITY MANAGEMENT:

Final design of the subdivision is required to conform to the requirements of this title. The Tentative Map storm drain infrastructure is shown through the area.

OTHER:

The following permits will be required for the project:

1. State storm water general permit: Required submittals to the City of Elko are a plan view showing the storm water controls, a copy of the Storm Water Pollution Prevention Plan (SWPPP) and a copy of the certified confirmation letter from the Nevada Department of Environmental Protection.
2. A Surface Area Disturbance (SAD) is required if the disturbed area is equal to or greater than five (5) acres. A copy of the SAD permit is required to be submitted to the City of Elko.
3. A street cut permit from the City of Elko.
4. A grading permit from the City of Elko.
5. All other applicable permits and fees required by the City of Elko.
6. The City of Elko also requires submittal of the plans to the individual utility companies before permits will be issued for the project.

FINDINGS

1. The proposed subdivision and development is in conformance with the Land Use and Transportation components of the Master Plan.
2. 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, or the Wellhead Protection Program.
3. The property is not located within the Redevelopment Area.
4. A zoning amendment is required for the proposed subdivision. This application has been submitted to the Planning Department.
5. In accordance with Section 3-3-5(E)(2), the proposed subdivision and development will not result in undue water or air pollution based on the following:
 - a. There are no obvious considerations or concerns which indicate the proposed subdivision would not be in conformance with all applicable environmental and health laws and regulations.
 - b. There is adequate capacity within the City's water supply to accommodate the proposed subdivision.
 - c. The proposed subdivision and development will not create an unreasonable burden on the existing water system.
 - d. There is adequate capacity at the Water Reclamation Facility to support the proposed subdivision and development.
 - e. The proposed subdivision and development will be connected to the City's programed sanitary sewer system. Therefore, the ability of soils to support waste disposal does not require evaluation prior to Tentative Map approval.
 - f. Utilities are available in the immediate area and can be extended for the proposed development.
 - g. Schools, fire and police, and recreational services are available throughout the community.
 - h. The proposed subdivision and development will not cause unreasonable traffic congestion or unsafe conditions with respect to existing or proposed streets.
 - i. The area is not located within a designated flood zone. Concentrated storm water runoff has been addressed as shown on the grading plan.
 - j. The proposed subdivision and development is not expected to result in unreasonable erosion or reduction in the water-holding capacity of the land thereby creating a dangerous or unhealthy condition.
6. The proposed subdivision is in conformance with Sections 3-3-6, and 3-3-9 through 3-3-15 of City code.
7. The proposed subdivision and development is in conformance with Section 3-2-3 through 3-2-5, and 3-2-17 of City code.

8. The proposed subdivision and development is not located in a designated flood hazard area and is in conformance with Section 3-8 of City code.
9. The proposed subdivision design shall conform to Title 9, Chapter 8 of City code.

STAFF RECOMMENDATION:

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

Development Department:

1. Conditional Use Permit 4-20 must be approved and all conditions be met.
2. Rezone 5-20 must be approved and in place and any/all conditions be met.
3. The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.
4. Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.
5. The Tentative Map and construction plans must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval to the City of Elko.
6. Tentative Map approval does not constitute authorization to proceed with site improvements.
7. 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.
8. A soils report is required with Final Map submittal.
9. A hydrology report is required with Final Map submittal.
10. Final Map construction plans are to comply with Chapter 3-3 of City code.
11. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.
12. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.
13. Submit CC&Rs prior to approval by the City Council.
14. Add a note to the map restricting access to individual townhomes from N 5th Street.

Engineering Department:

1. Sheet T1 – Revise note 1. Townhome parcels should not be subject to additional easements.
2. Sheet T1 – Revise location of proposed 15-foot utility easement, to align with the sewer and to not encroach onto the adjacent parcel.
3. Sheet T3 – Revise location of proposed hammerhead turnaround for fire, to not include any unpaved areas or parking stalls.
4. Sheet T3 – Revise sewer design so that no proposed manhole turns the flow more than 90 degrees. This occurs at the manhole on Dakota Drive, and possibly at the northerly end of the existing 25-foot easement.
5. Sheet T3 – Center the proposed sewer line in the existing easement to allow adequate room on both sides for trenching.
6. All Sheets – Signature of design professional is required on final submittal.

Fire Department:

1. Fire Department access roads shall be provided and maintained in accordance with Sections 5-3.1.1 of the 2018 IFC.

Public Works Department:

1. All public improvements to be installed at time of development per Elko city code.



CITY OF ELKO

Planning Department

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

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

August 25, 2020

Legion Construction & Development, LLC
Attn: John Smales
599 Shadybrook Drive
Spring Creek, NV 89815
Via Email: johns.builder@gmail.com

Re: Tentative Map No. 6-20, Rezone No. 5-20, & Conditional Use Permit No. 4-20

Dear Applicant/Agent:

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

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

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone at **+1 (224) 501-3412**. The **Access Code** for this meeting is **472-220-037**. If you do not wish to use GoToMeeting you may call in at **(775)777-0590**.

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

Sincerely,


Shelby Archuleta
Planning Technician

Enclosures

CC: Shanks Engineering, Attn: Mike Shanks, 982 Wolf Creek Drive, Spring Creek, NV 89815
Via Email: shankseng@gmail.com

4/1/20

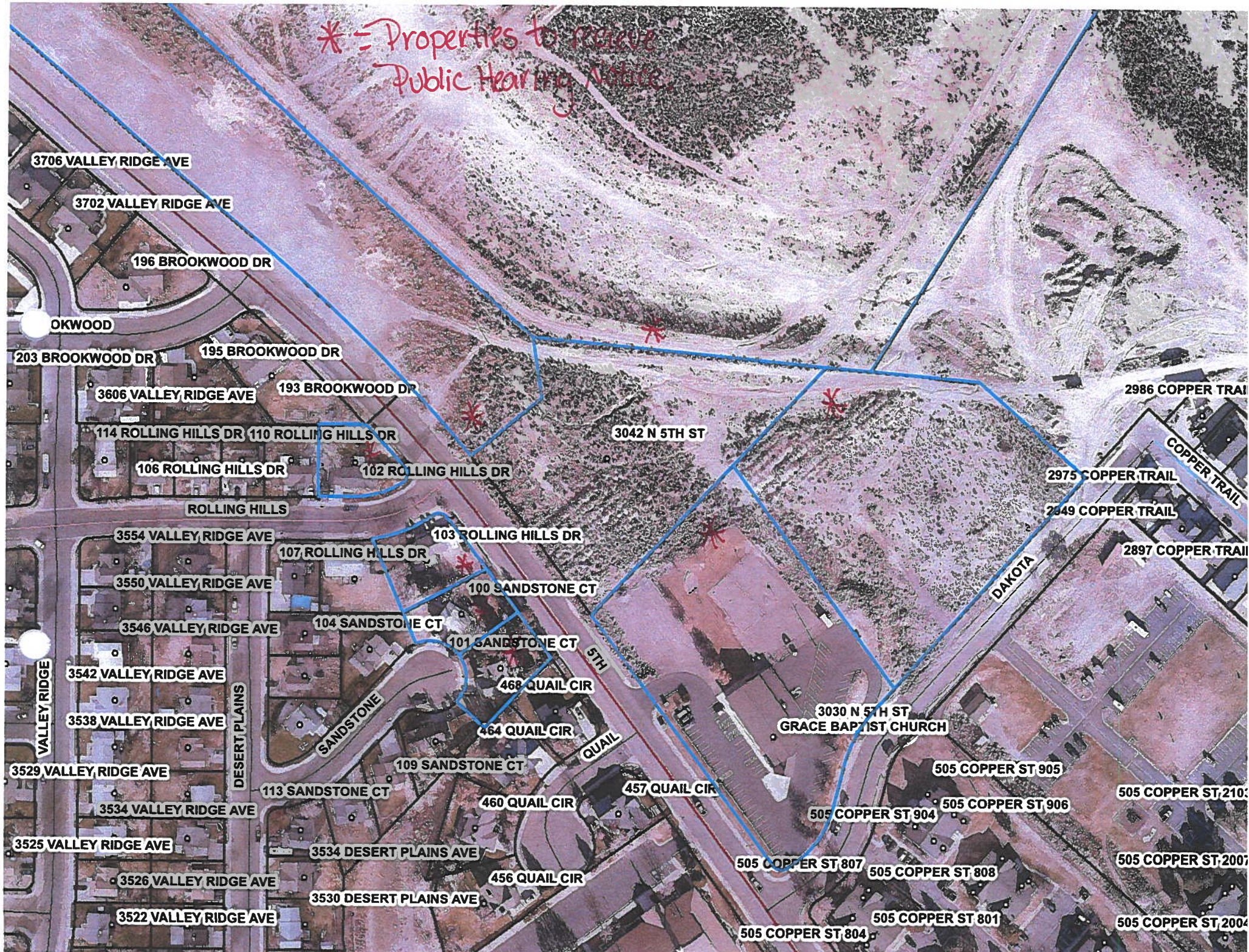
Tentative Map 6-20 Jarbridge Estates

YPNO	assess_nam	address1	address2	mcity	mzip
00161A025	BRANNEN CHARLES E & BERTHA D	100 SANDSTONE CT		ELKO, NV	89801-8420
001610094	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610103	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-3400
001610113	GRACE BAPTIST CHURCH	3030 5TH ST		ELKO, NV	89801-4470
001610112	GRACE BAPTIST CHURCH	3030 5TH ST		ELKO, NV	89801-4470
00161A018	MOSER NORMAN GUY	66 E MARS WAY		SANDY, UT	84070-1040
00161A017	VALLEY KEVIN & RUTH	102 ROLLING HILLS DR		ELKO, NV	89801-8400
00161A026	VANCE JERID S & AMANDA K	101 SANDSTONE CT		ELKO, NV	89801-8420

6

Postmarked 8/21/20

* = Properties to receive
Public Hearing Notice



NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, September 1, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: <https://global.gotomeeting.com/join/472220037>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone. **+1 (224) 501-3412** Access Code: **472-220-037**. Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

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

- Rezone No. 5-20, filed by Legion Construction and Development, LLC, for a change in zoning from AG (General Agriculture) to R(Single-Family and Multiple-Family) Zoning District, approximately 2.415 acres of property, specifically APN 001-610-093, located generally on the northeast side of N. 5th Street, across from Rolling Hills Drive, more particularly described as:

A parcel of land to be rezoned from A-Agriculture to R-Residential, defined as parcel # 1 file 415475 being a portion of Section 9, Township 34 North, Range 55 East, M.D.B.&M. and now known as parcel 1 on amended map file 530051 including the frontage along said parcel 1 to the centerline of N. 5th Street in Elko County, Nevada and more particularly described below:

Parcel No. 1 – APN 001-610-093

Commencing at the north east section corner of said section 9, a brass cap;
Thence, on a bearing of north 89°46'09" west for a distance of 5,000.27 feet to a point on the North 5th Street right of way line;

Thence along said right of way on a circular curve to the right from a tangent bearing S 54°40'12" east, with a radius of 11,140 feet, through an internal angle of 4°43'28" for an arc length of 918.58 feet;

Thence along said right-of-way on a bearing south 49°56'44" east, for a distance of 583.04 feet;

Thence along said right of way on a circular curve to the right with a radius of 2,460 feet, through an internal angle of 9°59'44", for an arc length of 429.16 feet to corner No 1, the north west corner of Parcel No. 1 and the true point of beginning;

Thence on a bearing north 50°03'00" east, for a distance of 126.46 feet to corner No. 2;

Thence on a bearing north 08°33'25" west, for a distance of 85.61 feet to corner No. 3;

Thence on a bearing south 84°27'44" east, for a distance of 405.88 feet to corner No. 4;

Thence on a bearing south 42°52'32" west, for a distance of 472.41 feet to corner No. 5, a point on the North 5th Street right of way line;

Thence along said right of way bearing north 36°01'25" west, for a distance of 107.15 feet to corner No. 6;

Thence along said right of way on a circular curve to the left, with a radius of 2,460 feet through an internal angle of 3°55'36", for an arc length of 168.58 feet to corner No 1; the point of beginning.

Said Parcel No. 1 contains 2.163 acres, more or less.

North 5th Street Frontage

Commencing at the northwest property corner of said Parcel No. 1 identified above as corner No. 1, a point on the North 5th Street right of way line and the true point of beginning;

Thence along said right of way of North 5th Street on a circular curve to the right from a tangent bearing S 39°57'01" east, with a radius of 2,460 feet, through and internal angle of 3°55'36" for an arc length of 168.58 feet to corner No. 6;

Thence along said right of way on a bearing south 36°01'25" east, for a distance of 107.15 feet to Corner No. 5;

Thence on a bearing south 53°58'35" west for a distance of 40.00 feet to corner No. 7, a point on the center line of North 5th Street;

Thence along the centerline of North 5th Street on bearing north 36°01'25" west for a distance of 107.15 feet to corner No. 8;

Thence along said centerline of North 5th Street on a circular curve to the left with a radius of 2,420 feet, through an internal angle of 3°55'36", for an arc length of 165.84' to corner No. 9;

Thence on a bearing north 50°02'59" east, for a distance of 40.00 feet to corner No. 1; the point of beginning.

Said frontage of North 5th Street contains 0.252 acres more or less.

The total gross area to be rezoned contains 2.415 acres more or less.

The intent of the zone change is to allow for a townhome development.

- Conditional Use Permit No. 4-20, filed by Legion Construction and Development, LLC, which would allow for a townhome development within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located on the northeast side of N. 5th Street, across from Rolling Hills Drive. (APN 001-610-093)
- Tentative Map No. 6-20, 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 residential development and common area lot within the R (Single-Family Residential) Zoning District, and matters related thereto. The subject property is located on the northeast side of N. 5th Street, across from Rolling Hills Drive. (APN 001-610-093)

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

ELKO CITY PLANNING COMMISSION

Shelby Archuleta

From: Amanda Marcucci <Amanda.Marcucci@swgas.com>
Sent: Thursday, August 13, 2020 6:56 AM
To: Shelby Archuleta
Subject: Tentative Map No. 6-20/Jarbridge Estates
Attachments: Tentative Map 6-20.pdf

Hi Shelby,

Southwest Gas does not have any objections to Tentative Map No. 6-20/Jarbridge Estates.

Amanda



Amanda Marcucci, PE | Supervisor/Engineering

PO Box 1190 | 24A-580 | Carson City, NV 89702-1190
direct 775.887.2871 | mobile 775.430.0723 | fax 775.882.6072
amanda.marcucci@swgas.com | www.swgas.com

The information in this electronic mail communication (e-mail) contains confidential information which is the property of the sender and may be protected by the attorney-client privilege and/or attorney work product doctrine. It is intended solely for the addressee. Access to this e-mail by anyone else is unauthorized by the sender. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution of the contents of this e-mail transmission or the taking or omission of any action in reliance thereon or pursuant thereto, is prohibited, and may be unlawful. If you received this e-mail in error, please notify us immediately of your receipt of this message by e-mail and destroy this communication, any attachments, and all copies thereof.

Southwest Gas Corporation does not guarantee the privacy or security of information transmitted by facsimile (fax) or other unsecure electronic means (including email). By choosing to send or receive information, including confidential or personal identifying information, via fax or unencrypted e-mail, you consent to accept any associated risk.

Thank you for your cooperation.



CITY OF ELKO

Planning Department

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

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

July 31, 2020

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

SUBJECT: Tentative Map No. 6-20/Jarbridge Estates

To Whom It May Concern:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Jarbridge Estates subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their September 1, 2020 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



CITY OF ELKO

Planning Department

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

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

July 31, 2020

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

SUBJECT: Tentative Map No. 6-20/Jarbidge Estates

Dear Mr. Lino:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Jarbidge Estates subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their September 1, 2020 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



CITY OF ELKO

Planning Department

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

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

July 31, 2020

Frontier Communications
John Poole
1520 Church Street
Gardnerville, NV 89410

SUBJECT: Tentative Map No. 6-20/Jarbridge Estates

Dear Mr. Poole:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Jarbridge Estates subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their September 1, 2020 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



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

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

July 31, 2020

Elko County School District
Ms. Michele Robinson
PO Box 1012
Elko, NV 89803

SUBJECT: Tentative Map No. 6-20/Jarbridge Estates

Dear Ms. Robinson:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Jarbridge Estates subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their September 1, 2020 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



CITY OF ELKO

Planning Department

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

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

July 31, 2020

Zito Media

Mr. Joe Bates

VIA Email: joe.bates@zitomedia.com

SUBJECT: Tentative Map No. 6-20/Jarbridge Estates

Dear Mr. Bates:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Jarbridge Estates subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their September 1, 2020 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



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

July 29, 2020

Shanks Engineering
Attn: Mike Shanks
982 Wolf Creek Drive
Spring Creek, NV 89815

Re: Jarbridge Estates – Complete Submittal

Dear Mr. Shanks:

The City of Elko has reviewed your Tentative Map application materials for Jarbridge Estates (submitted July 27, 2020) and has found them to be complete. We will now begin processing your application by transmitting the materials to other City departments for their review. You may receive further comments or corrections as these reviews progress. Barring any complications, this Tentative Map will be scheduled for Planning Commission on September 1, 2020 and City Council on September 22, 2020.

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

Sincerely,

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: Legion Construction and Development LLC
Attn: John Smales
599 Shadybrook Drive
Spring Creek, NV 89815

City of Elko – File



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

July 22, 2020

Shanks Engineering
Attn: Mike Shanks
982 Wolf Creek Drive
Spring Creek, NV 89815

Re: Jarbridge Estates – Incomplete Submittal

Dear Mr. Shanks:

The City of Elko has reviewed your Tentative Map application materials for Jarbridge Estates (submitted July 21, 2020) and has found it to be incomplete. Please revise the Tentative Map to include the information listed below.

1. A location map showing the location of the parcel to be divided.
2. A full legal description of the property boundaries.
3. Estimated amount (cubic yards) of cut and fill

In addition, a copy of the CC&Rs for the development will be required. Please submit these as soon as possible.

Please resubmit the revised Tentative Map plans by August 7, 2020 to ensure sufficient time for other departments to review and comment prior to the September 1, 2020 Planning Commission meeting. Please include in your resubmittal a new PDF copy of the revised Tentative Map. As outlined in Section 3-3-5(C)(4), these revisions must be received within 90-days of the original filing date (July 21, 2019), or the submittal will automatically expire.

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

Sincerely,

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: Legion Construction and Development LLC
Attn: John Smales
599 Shadybrook Drive
Spring Creek, NV 89815

City of Elko – File



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR TENTATIVE MAP (STAGE II) APPROVAL

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

APPLICANT(s): Legion Construction and Development LLC

MAILING ADDRESS: 599 Shadybrook Dr, Spring Creek, NV 89815

PHONE NO (Home): 775-778-1539

(Business): Same

EMAIL: johns.builder@gmail.com

NAME OF PROPERTY OWNER (if different):

(Property owner consent in writing must be provided)

MAILING ADDRESS:

LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):

ASSESSOR'S PARCEL NO.: 001-610-093

Address N 5th Street

Lot(s), Block(s), & Subdivision

Or Parcel(s) & File No. 001-610-093 PARCEL 1 FILE 415475

APPLICANT'S REPRESENTATIVE: Mike Shanks

MAILING ADDRESS: 982 Wolf Creek Drive, Spring Creek, Nevada 89815

PHONE NO: 775-9349356

EMAIL: shankseng@gmail.com

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 42 days (6 weeks) prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1st Tuesday of every month), and must include the following:

1. One .pdf of the entire application, and three (3) 24" x 36" copies of the tentative map, grading plan, and utility plan folded to a size not to exceed 9"x12" provided by a properly licensed surveyor or civil engineer, and any required supporting data, prepared in accordance with Section 3-3-5(C) and 3-3-6 of the Elko City Code (see attached checklist).
2. A Development Master Plan when, in the opinion of the Planning Commission, the proposed subdivision possesses certain characteristics, such as size, impact on neighborhoods, density, topography, utilities, and/or existing and potential land uses, that necessitate the preparation of a Development Master Plan.
3. Applications/fees for State of Nevada review. (See Page 5)

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

1200

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

PROJECT DESCRIPTION OR PURPOSE:

The property will be subdivided into 18 town homes. The town homes will be two story and contain approximately 1471 square feet with 466 sq ft two car garages. The units will be combined to form 2, 3, and 4 unit clusters. They will have approximately 15 foot rear yards and 20 foot deep driveways that will accommodate two on site parking spaces independent from the garages. The total project contains 2.16 acres. The individual town home lots contain approximately 1461 square feet.

(Use additional pages if necessary)

Tentative Map Checklist as per Elko City Code 3-3-6

Date	Name
Identification Data	
✓	Subdivision Name
✓	Location and Section, Township and Range
✓	Reference to a Section Corner or Quarter-Section Corner
✓	Name, address, phone number, and email of subdivider
✓	Name, address, phone number, and email of engineer/surveyor
✓	Scale, North Point and Date of Preparation
✓	Dates of Revisions
✓	Location maps
✓	Legal description of boundaries
Existing Conditions Data	
✓	2' contours on city coordinate system
✓	Location of Water Wells
✓	Location of Streams, private ditches, washes and other features
✓	Location of Designated flood zones
✓	The Location, widths and Names of all platted Streets, ROW
✓	Municipal Corporation Lines
✓	Name, book and page numbers of all recorded plats
✓	Existing Zoning Classifications in conformance with Master Plan Land Use
✓	Zoning of Adjacent Properties
✓	Dimensions of all tract boundaries, gross and net acreage
Proposed Conditions Data	
✓	Street Layout, location, widths, easements
✓	Traffic Impact Analysis
✓	Lot Layout, including dimensions of typical lots
✓	Corner Lot Layout
✓	Lot layout on Street Curves
✓	Each lot numbered consecutively
✓	Total number of lots
✓	Location, Width and proposed use of easements
✓	Location, extent and proposed use of all land to be dedicated
✓	Location and boundary of all proposed zoning districts
✓	Draft of proposed deed restrictions
✓	Preliminary Grading Plan
✓	Conceptual cut and fill
✓	Estimated quality of material to be graded
Proposed Utilities	
✓	Sewage Disposal, design for sewage disposal
✓	Water Supply, Evidence of adequate volume and quality
✓	Storm Drain, Preliminary Calculations and Layout
✓	Telephone, Power, Gas, Television
✓	Intent to Serve Letter from Utility Department

By My Signature below:

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

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

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

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

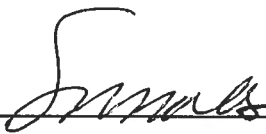
☐ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant / Agent Legion Construction and Development LLC
(Please print or type)

Mailing Address 599 Shadybrook Dr.
Street Address or P.O. Box
Spring Creek, NV 89815
City, State, Zip Code

Phone Number: 775-778-1539

Email address: johns.builder@gmail.com

SIGNATURE: 
John Smokes president

FOR OFFICE USE ONLY

File No.: 6-20 Date Filed: 7/21/20 Fee Paid: \$1,225 cx# 236
18 Lots + Common Area = 19 x \$25 = \$475
\$750
\$1,225

Shanks Enterprises Inc.

July 21, 2020

City of Elko
1751 College Avenue
Elko, Nevada 89801

RE: Jarbidge Estates Subdivision – N. 5th Street
Preliminary Hydrology Calculations

To whom this may concern,

To support the proposed development, we are providing this summary of existing and proposed drainage conditions for the proposed development located on North 5th street in Elko, Nevada. The site consists of a 2.16-acre parcel which generally slopes from the North 5th street in a northeasterly direction. The proposed development will create approximately 1.0-acres of new impervious coverage including 18 townhomes with driveways and pavement with sidewalks. It is anticipated that surface runoff flows from the developed areas will be conveyed via valley gutter to a 36" storage culvert with a 6" outlet located near the northeast corner of the parcel.

We have performed calculations utilizing TR-55 methods to determine existing and proposed peak flow and volumes for the 10-year and 100-year storm event for proposed subdivision, by utilizing published precipitation and soils data. A summary is as follows:

Basin	Area (ac.)	CN	10-yr Peak Flow (cfs)	10-yr Volume (cf)	Location	Notes
P1	2.12	88	2.68	5649	Not on property	Pre Pass-through
P2	2.16	82	1.98	3766	On Property	Total Pre-Property Drainage
D1	1.87	88	2.36	4982	Not on Property	Post Pass-Through to North Ditch
D2	0.39	84	0.40	817	On Property	Contributes to North Ditch
D3	0.49	78	0.31	569	On Property	Contributes to South Ditch
D4	1.35	93	2.71	4914	On Property	Contributes to valley gutters
D5	0.20	98	0.48	1100	Not on Property	Pass-through to North 5th Street

The proposed storm drain infrastructure shall be designed to capture, release no more than the pre-development peak flow, and store excess stormwater for the 10-year storm event. It shall also be designed to capture and release the 100-year storm utilizing overflow outlets.

Stormwater from Basin D1, and D2 will be conveyed through the proposed North Ditch with no outlet structure. Stormwater from Basin D3 will be conveyed through the proposed South Ditch with no outlet structure. Stormwater from D4 will be captured in valley gutters and conveyed to 76' of 36" storage culvert and a 6" outlet structure. The outlet structure peak flow will not exceed 1.27 cfs (1.98 cfs – 0.40 cfs – 0.31 cfs = 1.27). The outlet structure, North Ditch and South Ditch will combine to a combined ditch that travels from the northeast corner of the proposed subdivision to Dakato Drive.

This design would accomplish reducing the peak runoff rate and volume from the site to downstream areas.

Below is a list of attachments used to develop the table above.

Attachment 1 – P1 – D5 10 Year Storm Hydrograph

Attachment 2 – North Ditch Size Calculations

Attachment 3 – South Ditch Size Calculations

Attachment 4 – Combined Ditch Size Calculations

Please let me know if you have any questions or comments.

Sincerely,

Shanks Enterprises Inc.

Kenneth Frary-Skalla, P.E.
kennyskallaeng@gmail.com

Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

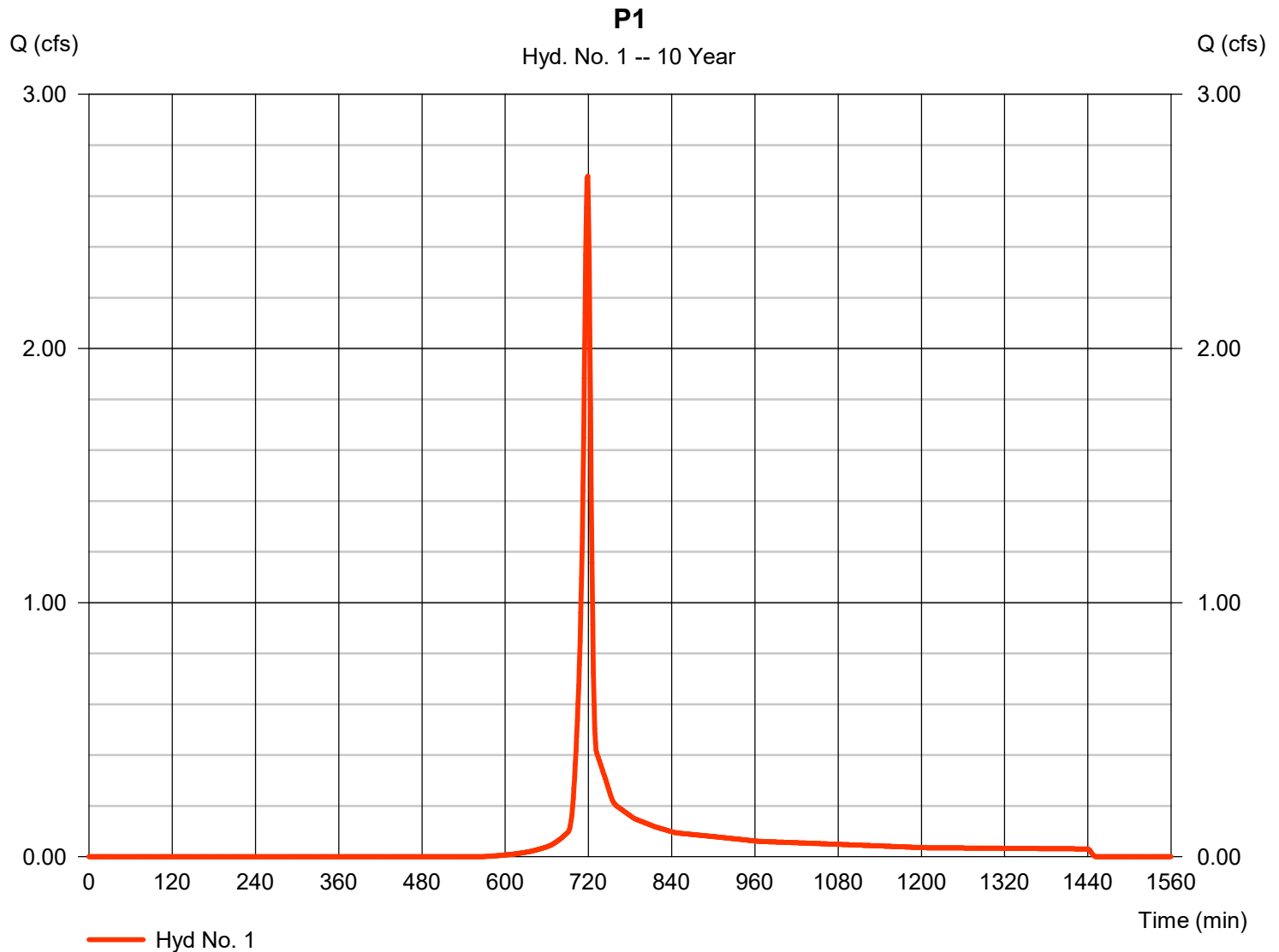
Tuesday, 07 / 21 / 2020

Hyd. No. 1

P1

Hydrograph type	= SCS Runoff	Peak discharge	= 2.678 cfs
Storm frequency	= 10 yrs	Time to peak	= 719 min
Time interval	= 1 min	Hyd. volume	= 5,649 cuft
Drainage area	= 2.120 ac	Curve number	= 88*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 7.70 min
Total precip.	= 1.73 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(1.038 \times 89) + (0.440 \times 98) + (0.645 \times 80)] / 2.120$



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

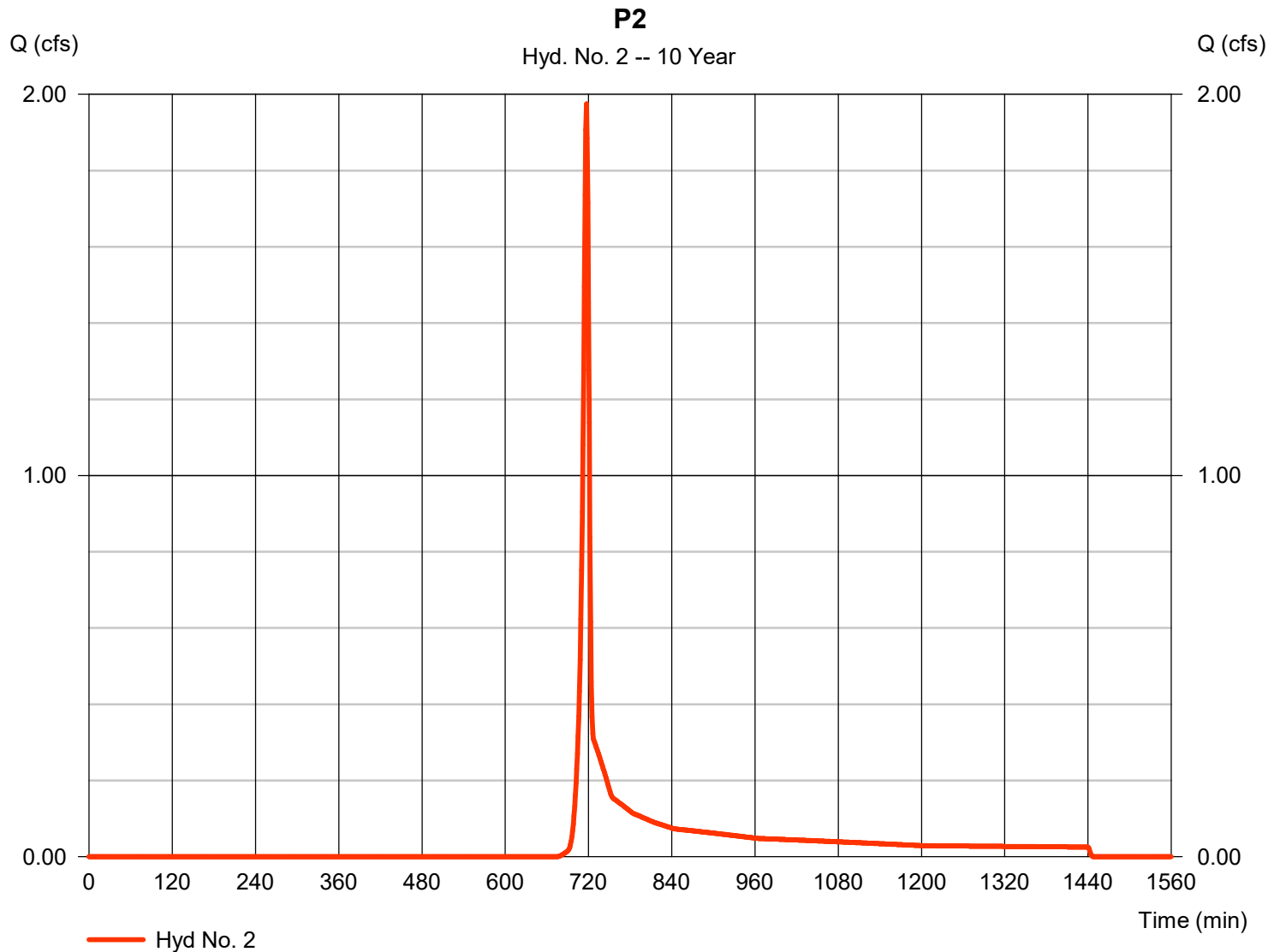
Tuesday, 07 / 21 / 2020

Hyd. No. 2

P2

Hydrograph type	= SCS Runoff	Peak discharge	= 1.975 cfs
Storm frequency	= 10 yrs	Time to peak	= 717 min
Time interval	= 1 min	Hyd. volume	= 3,766 cuft
Drainage area	= 2.170 ac	Curve number	= 82*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 4.30 min
Total precip.	= 1.73 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(1.648 \times 80) + (0.526 \times 89)] / 2.170$



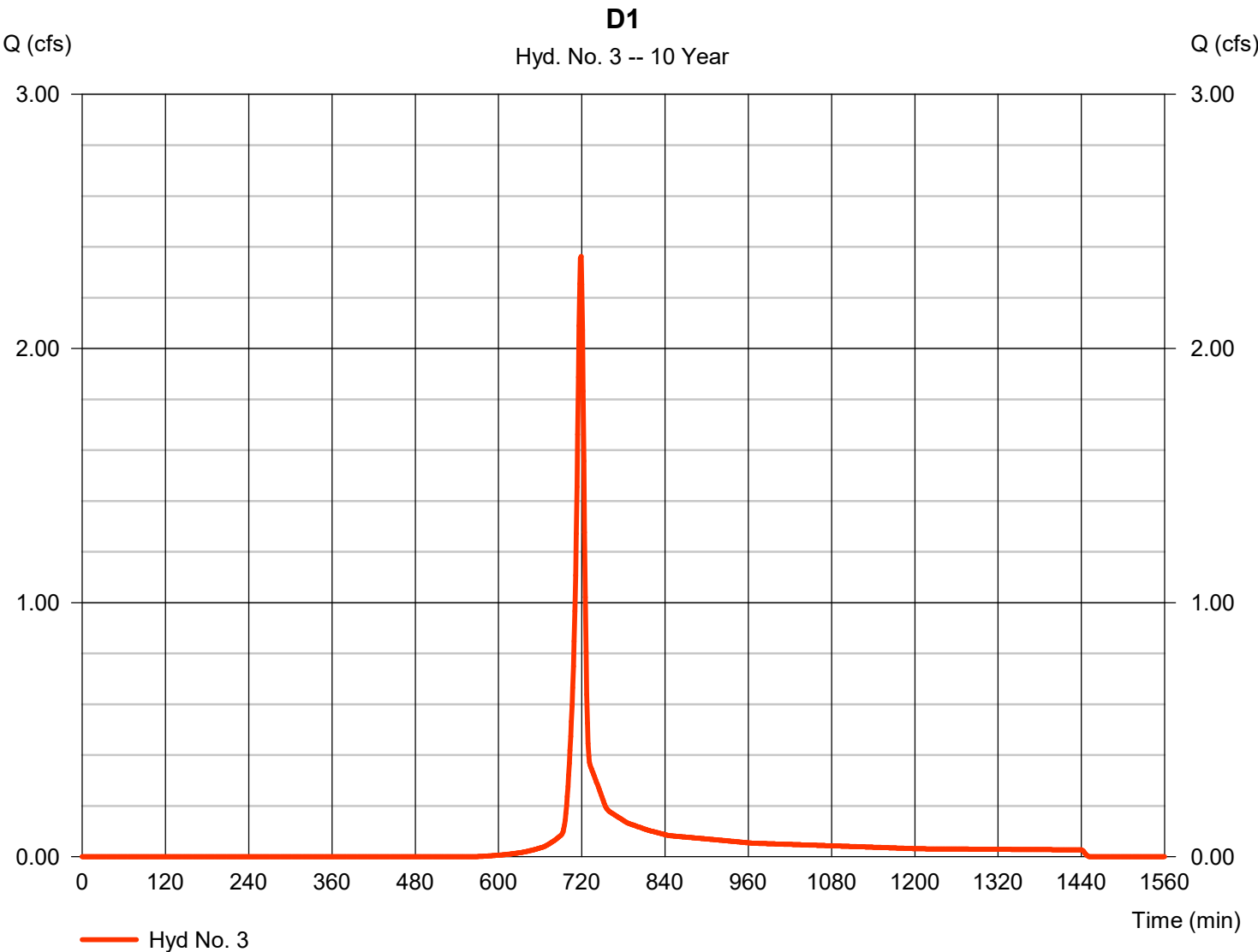
Hydrograph Report

Hyd. No. 3

D1

Hydrograph type	=	SCS Runoff	Peak discharge	=	2.362 cfs
Storm frequency	=	10 yrs	Time to peak	=	719 min
Time interval	=	1 min	Hyd. volume	=	4,982 cuft
Drainage area	=	1.870 ac	Curve number	=	88*
Basin Slope	=	0.0 %	Hydraulic length	=	0 ft
Tc method	=	TR55	Time of conc. (Tc)	=	8.20 min
Total precip.	=	1.73 in	Distribution	=	Type II
Storm duration	=	24 hrs	Shape factor	=	484

* Composite (Area/CN) = [(1.020 x 89) + (0.280 x 98) + (0.570 x 80)] / 1.870



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

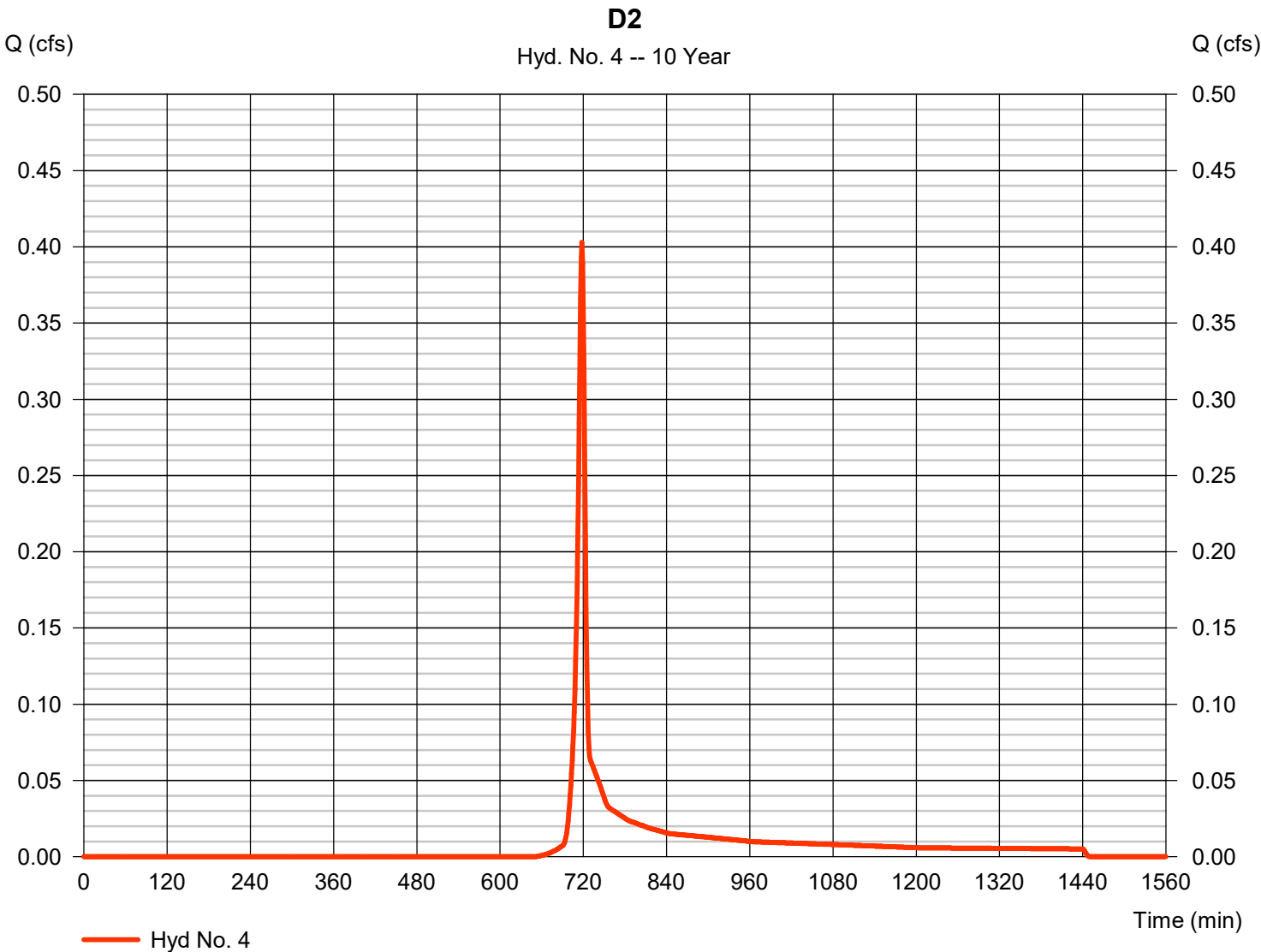
Tuesday, 07 / 21 / 2020

Hyd. No. 4

D2

Hydrograph type	=	SCS Runoff	Peak discharge	=	0.403 cfs
Storm frequency	=	10 yrs	Time to peak	=	718 min
Time interval	=	1 min	Hyd. volume	=	817 cuft
Drainage area	=	0.390 ac	Curve number	=	84*
Basin Slope	=	0.0 %	Hydraulic length	=	0 ft
Tc method	=	TR55	Time of conc. (Tc)	=	6.40 min
Total precip.	=	1.73 in	Distribution	=	Type II
Storm duration	=	24 hrs	Shape factor	=	484

* Composite (Area/CN) = [(0.246 x 78) + (0.105 x 98) + (0.040 x 80)] / 0.390



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

Tuesday, 07 / 21 / 2020

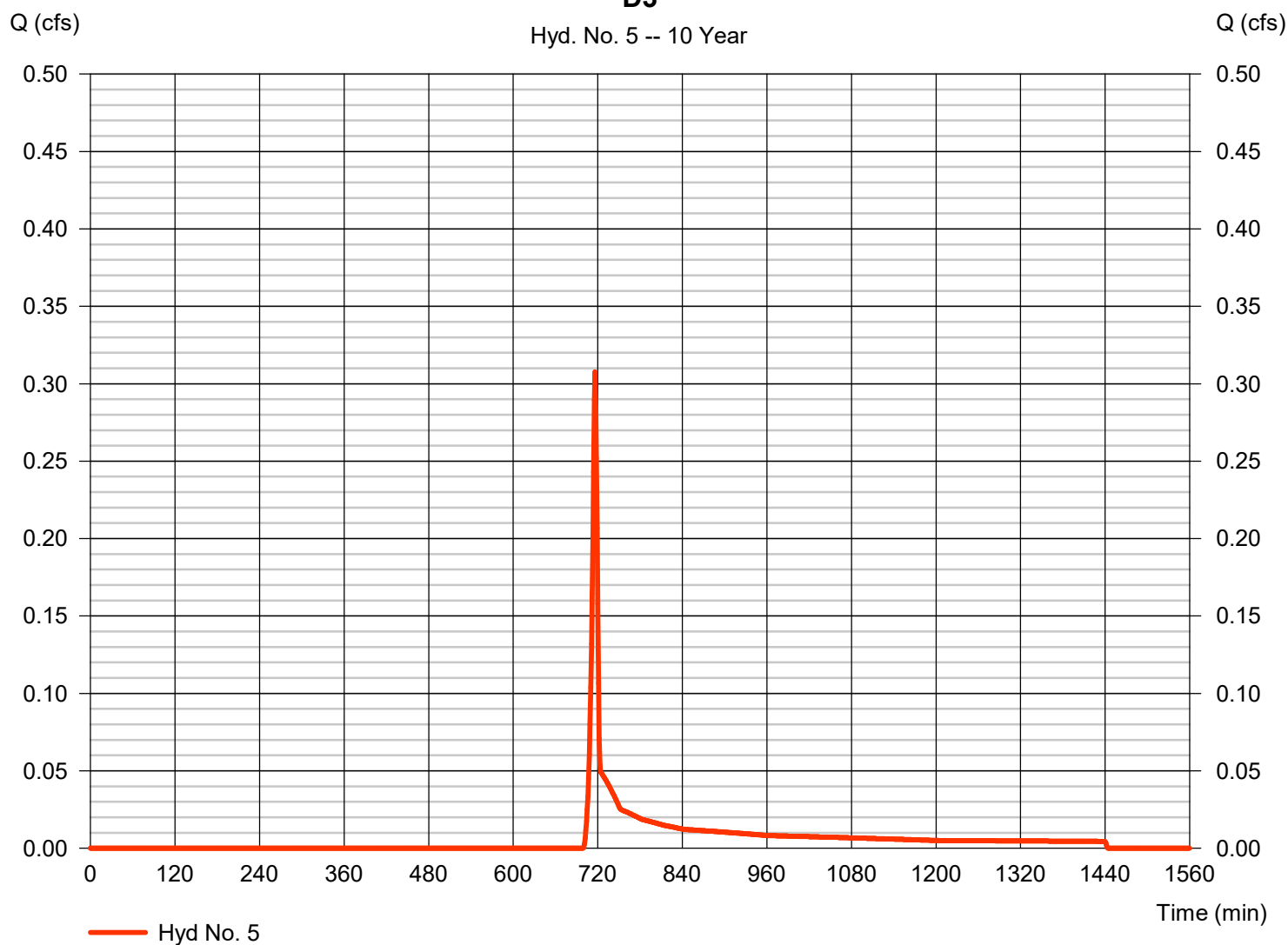
Hyd. No. 5

D3

Hydrograph type	= SCS Runoff	Peak discharge	= 0.308 cfs
Storm frequency	= 10 yrs	Time to peak	= 716 min
Time interval	= 1 min	Hyd. volume	= 569 cuft
Drainage area	= 0.490 ac	Curve number	= 78*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 2.40 min
Total precip.	= 1.73 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(0.486 \times 78)] / 0.490$

D3



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

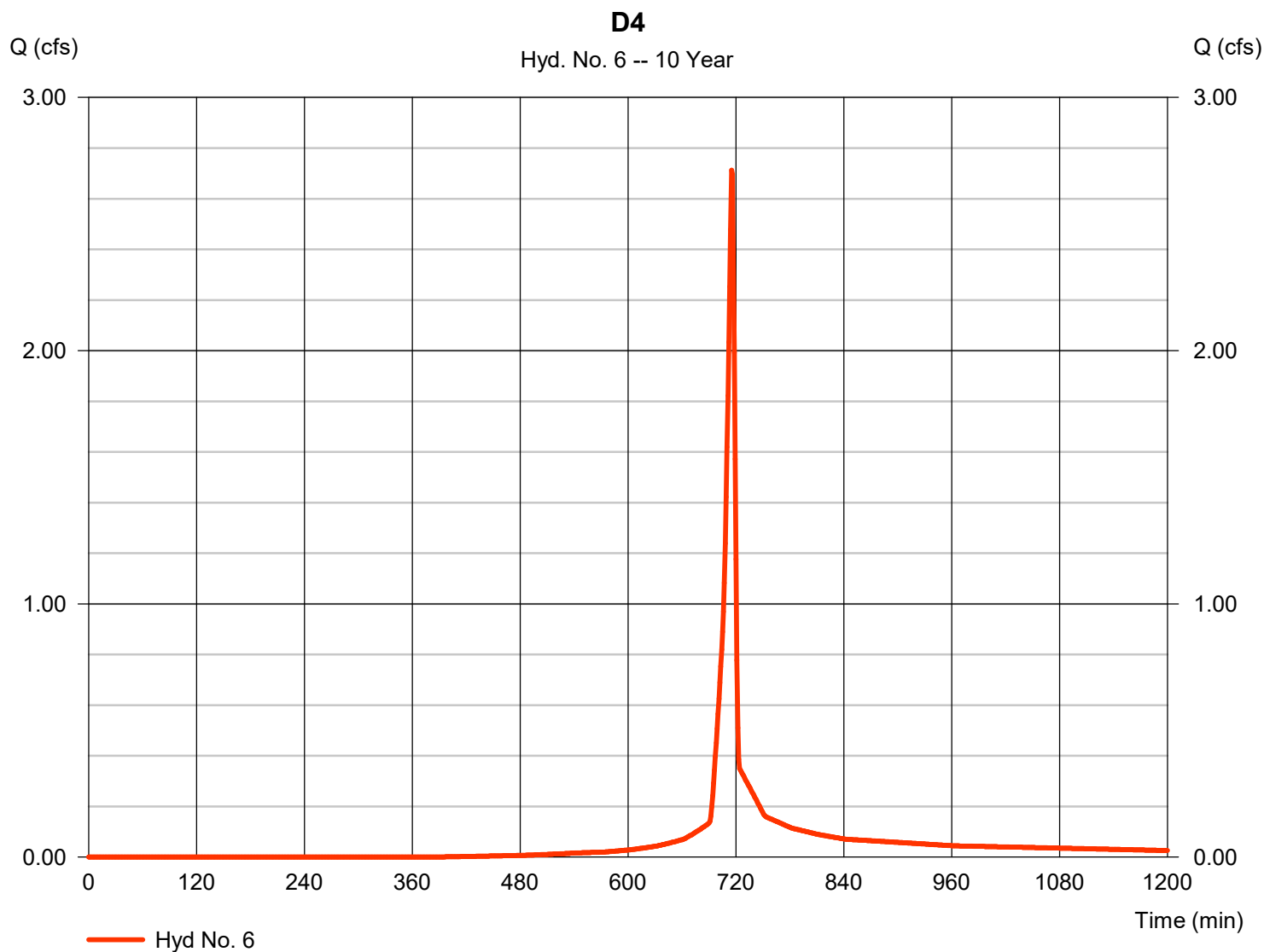
Tuesday, 07 / 21 / 2020

Hyd. No. 6

D4

Hydrograph type	= SCS Runoff	Peak discharge	= 2.712 cfs
Storm frequency	= 10 yrs	Time to peak	= 715 min
Time interval	= 1 min	Hyd. volume	= 4,914 cuft
Drainage area	= 1.350 ac	Curve number	= 93*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 3.00 min
Total precip.	= 1.73 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(1.020 \times 98) + (0.327 \times 78)] / 1.350$



Hydrograph Report

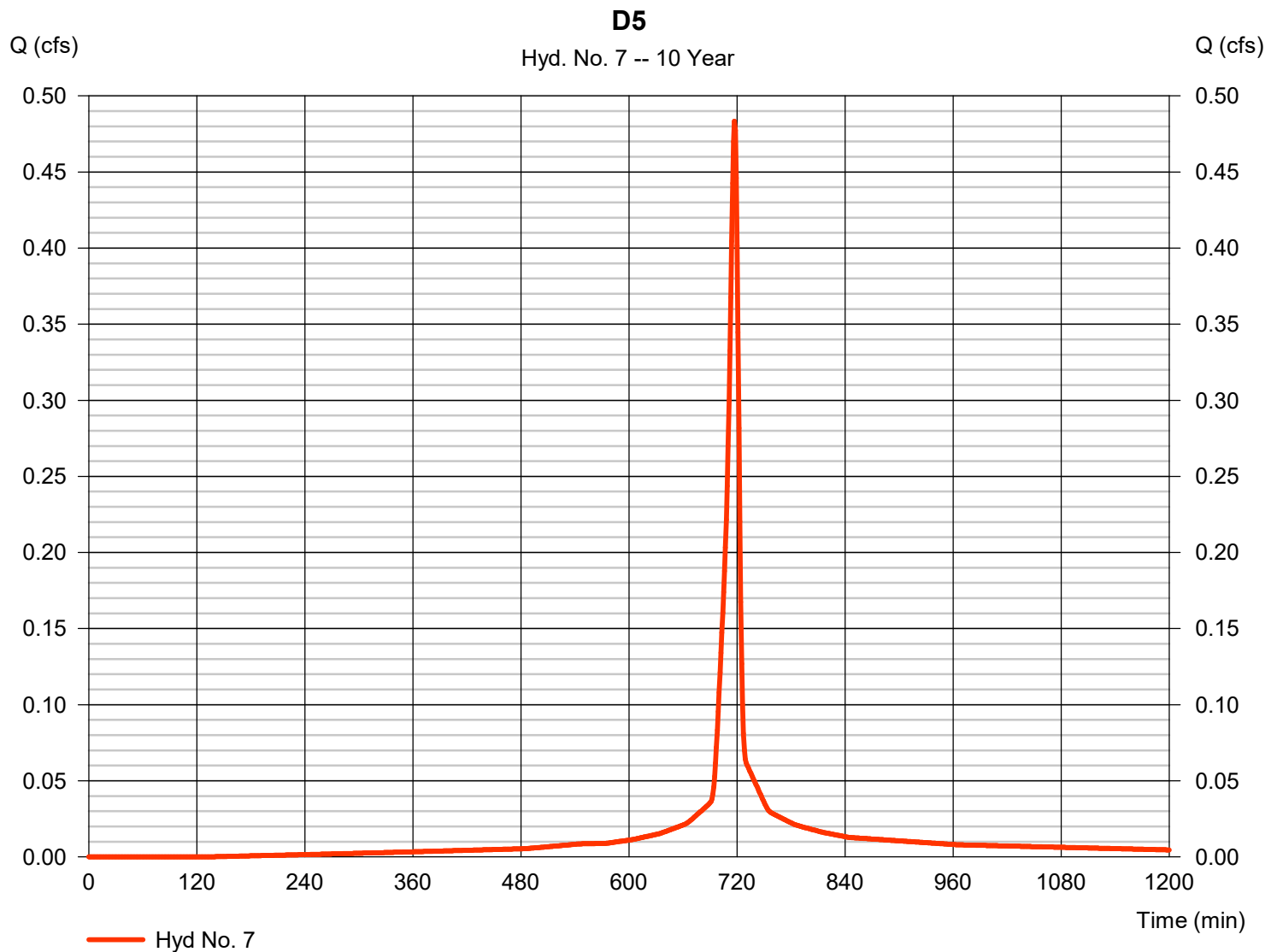
Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

Tuesday, 07 / 21 / 2020

Hyd. No. 7

D5

Hydrograph type	= SCS Runoff	Peak discharge	= 0.483 cfs
Storm frequency	= 10 yrs	Time to peak	= 717 min
Time interval	= 1 min	Hyd. volume	= 1,100 cuft
Drainage area	= 0.195 ac	Curve number	= 98
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 5.10 min
Total precip.	= 1.73 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

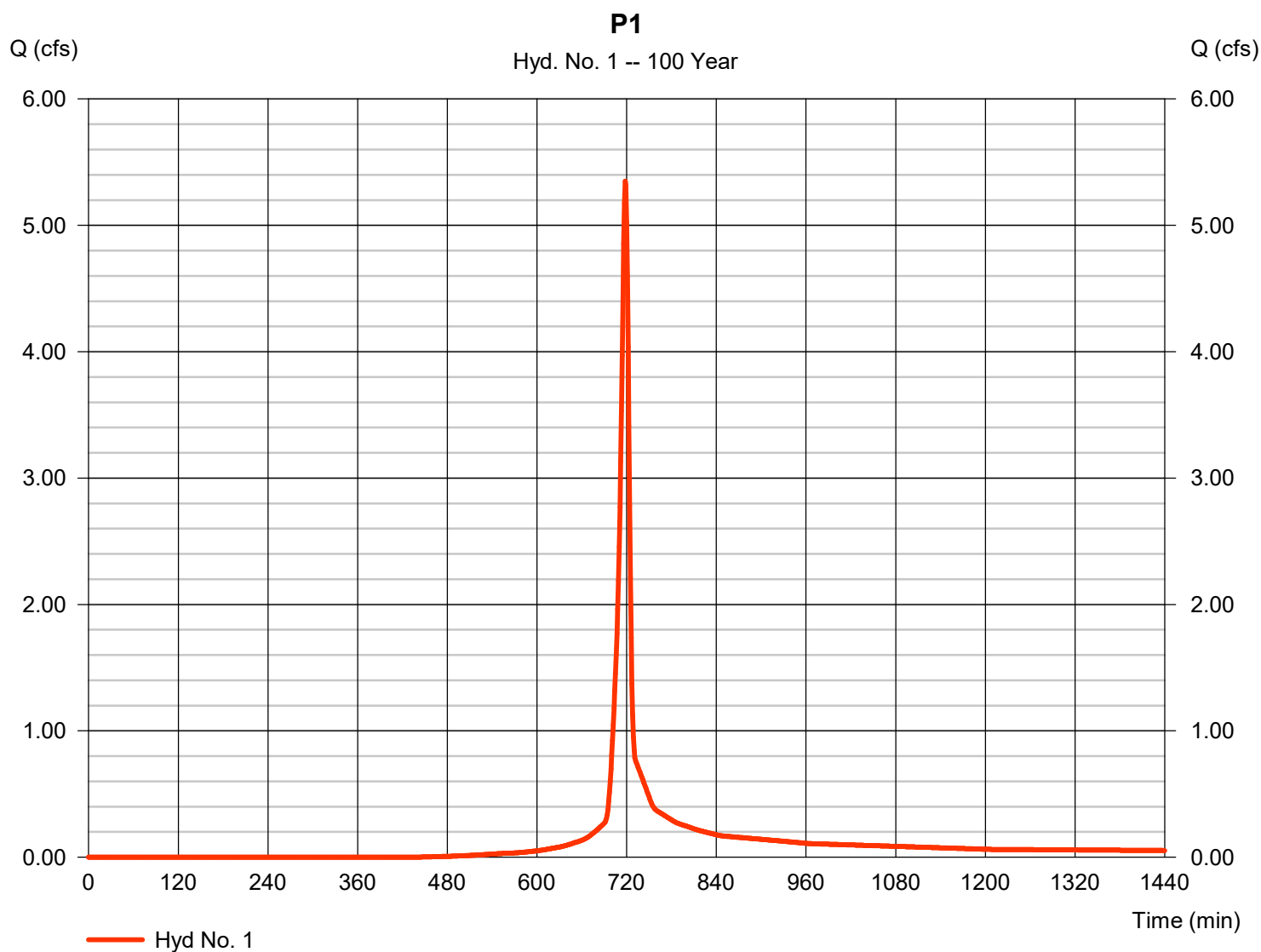
Tuesday, 07 / 21 / 2020

Hyd. No. 1

P1

Hydrograph type	= SCS Runoff	Peak discharge	= 5.349 cfs
Storm frequency	= 100 yrs	Time to peak	= 718 min
Time interval	= 1 min	Hyd. volume	= 11,400 cuft
Drainage area	= 2.120 ac	Curve number	= 88*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 7.70 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(1.038 \times 89) + (0.440 \times 98) + (0.645 \times 80)] / 2.120$



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

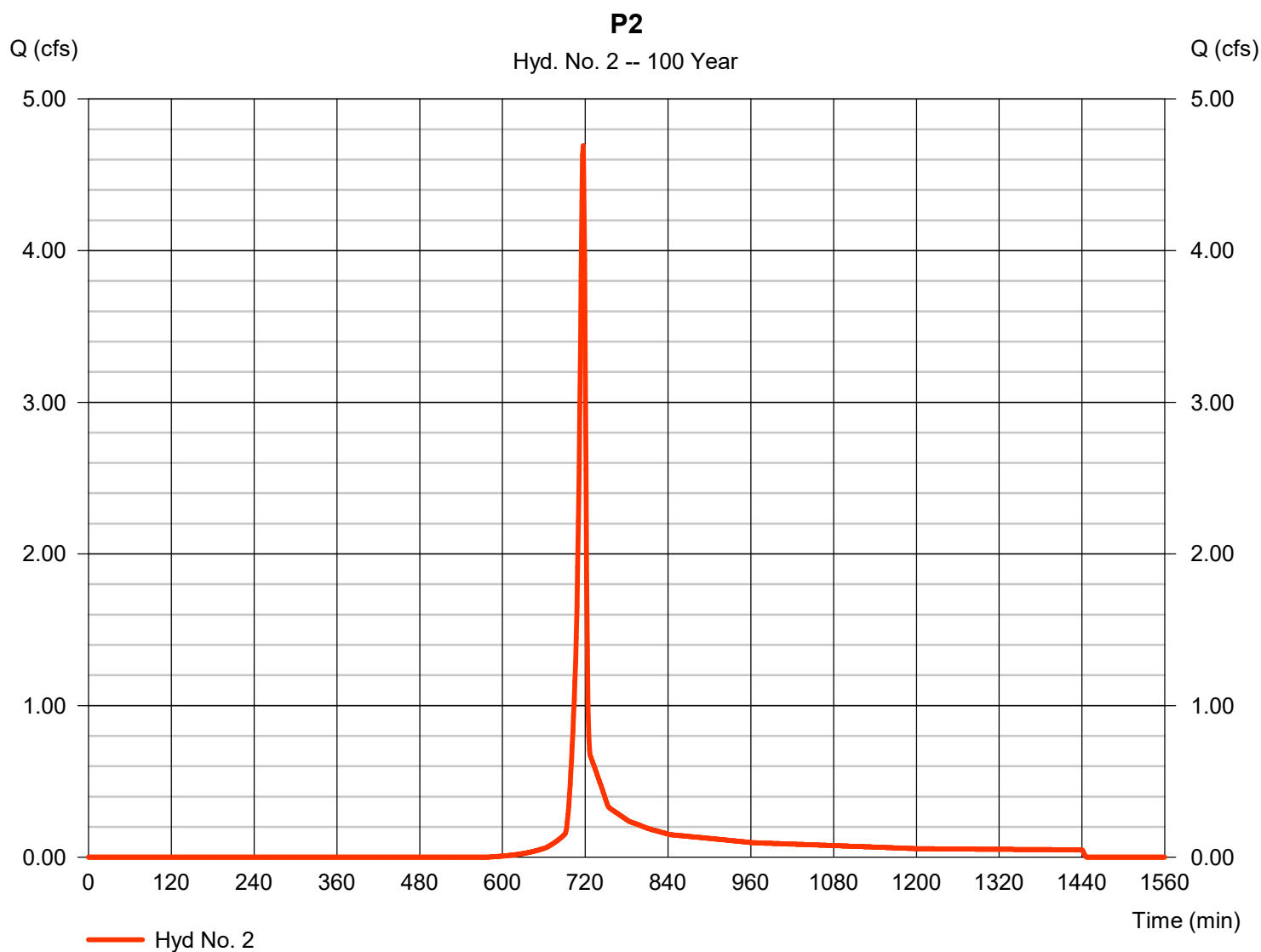
Tuesday, 07 / 21 / 2020

Hyd. No. 2

P2

Hydrograph type	= SCS Runoff	Peak discharge	= 4.692 cfs
Storm frequency	= 100 yrs	Time to peak	= 717 min
Time interval	= 1 min	Hyd. volume	= 8,799 cuft
Drainage area	= 2.170 ac	Curve number	= 82*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 4.30 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(1.648 \times 80) + (0.526 \times 89)] / 2.170$



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

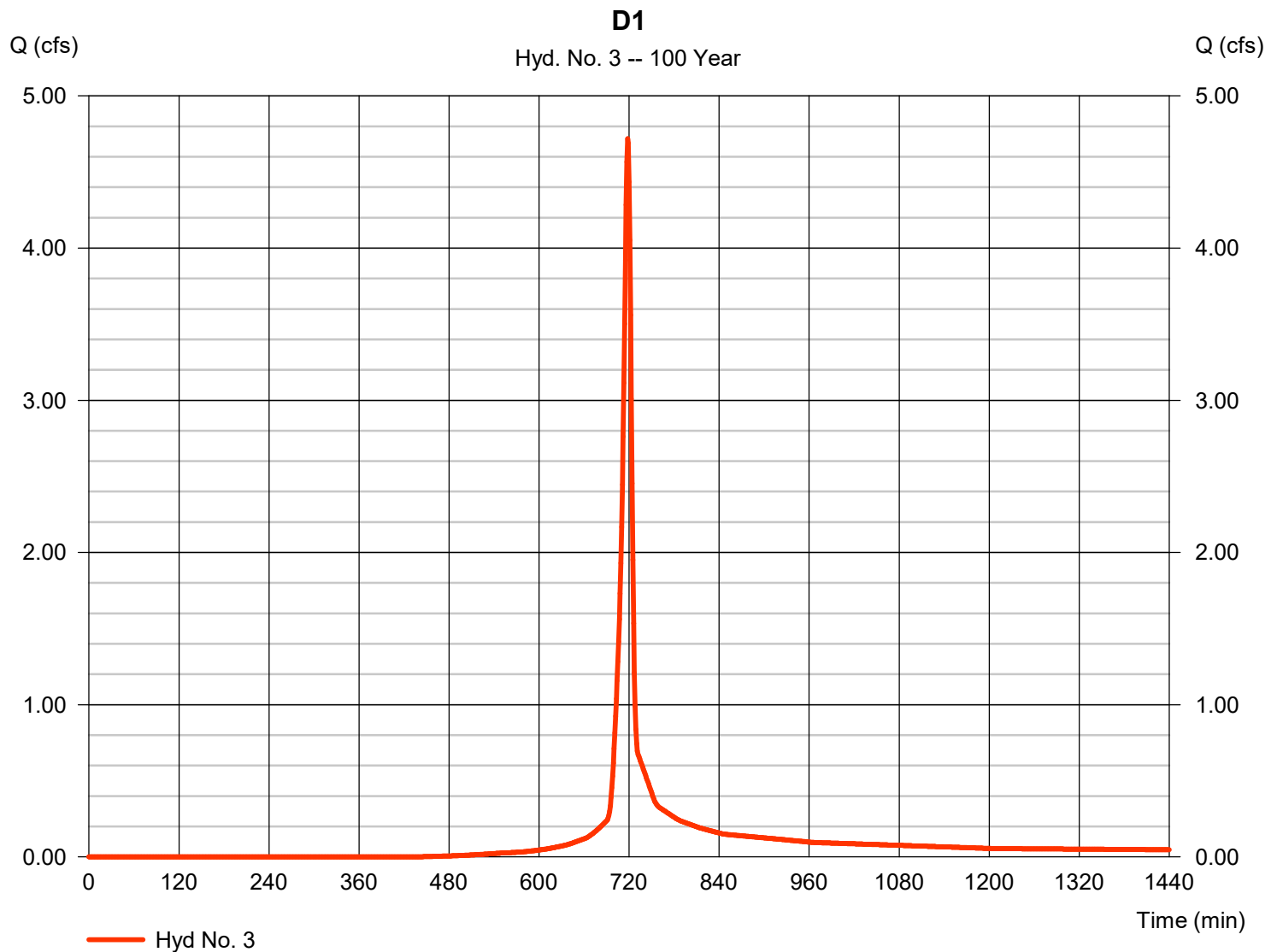
Tuesday, 07 / 21 / 2020

Hyd. No. 3

D1

Hydrograph type	= SCS Runoff	Peak discharge	= 4.719 cfs
Storm frequency	= 100 yrs	Time to peak	= 718 min
Time interval	= 1 min	Hyd. volume	= 10,056 cuft
Drainage area	= 1.870 ac	Curve number	= 88*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 8.20 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(1.020 \times 89) + (0.280 \times 98) + (0.570 \times 80)] / 1.870$



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

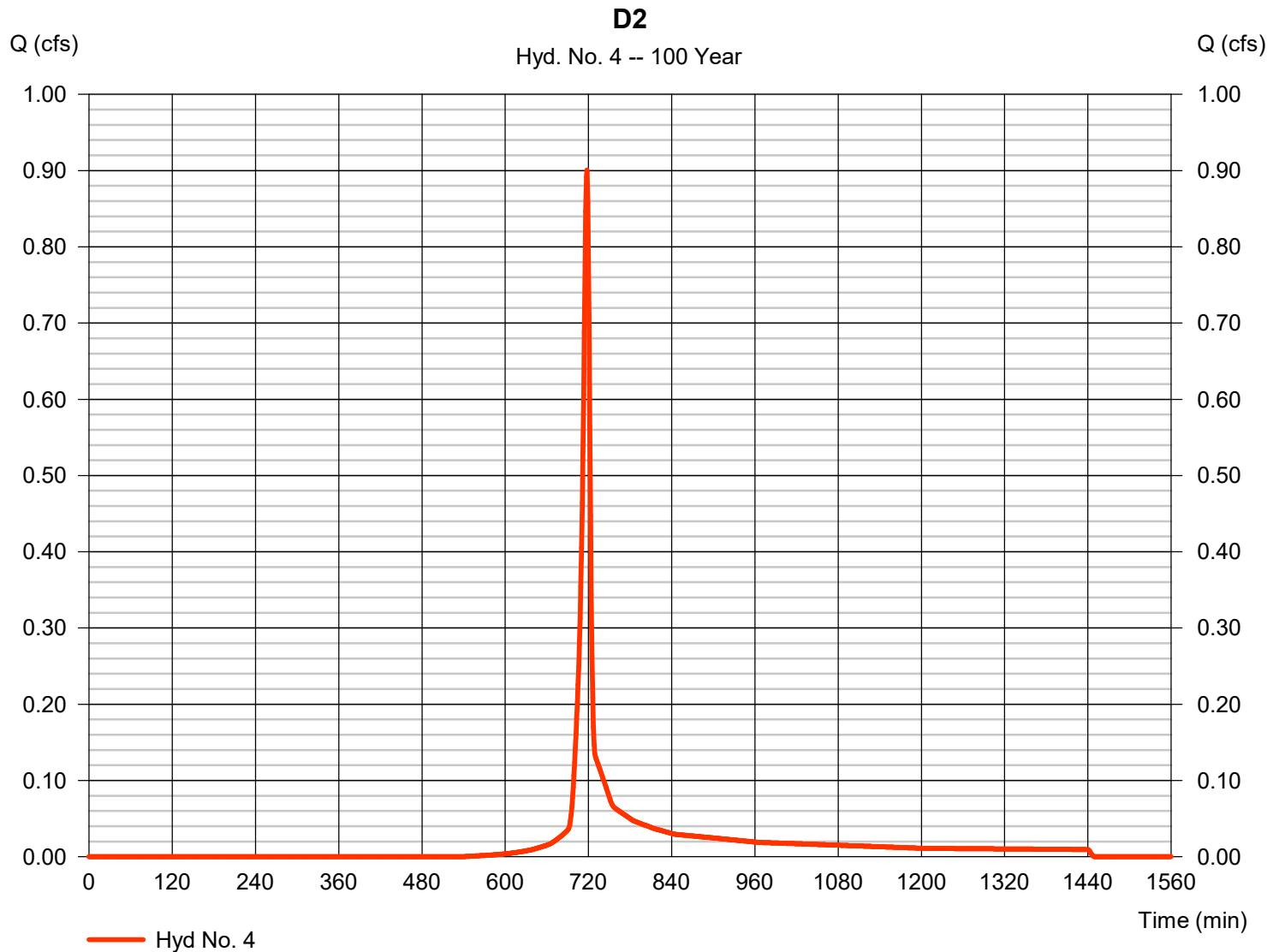
Tuesday, 07 / 21 / 2020

Hyd. No. 4

D2

Hydrograph type	= SCS Runoff	Peak discharge	= 0.900 cfs
Storm frequency	= 100 yrs	Time to peak	= 718 min
Time interval	= 1 min	Hyd. volume	= 1,812 cuft
Drainage area	= 0.390 ac	Curve number	= 84*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 6.40 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(0.246 \times 78) + (0.105 \times 98) + (0.040 \times 80)] / 0.390$



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

Tuesday, 07 / 21 / 2020

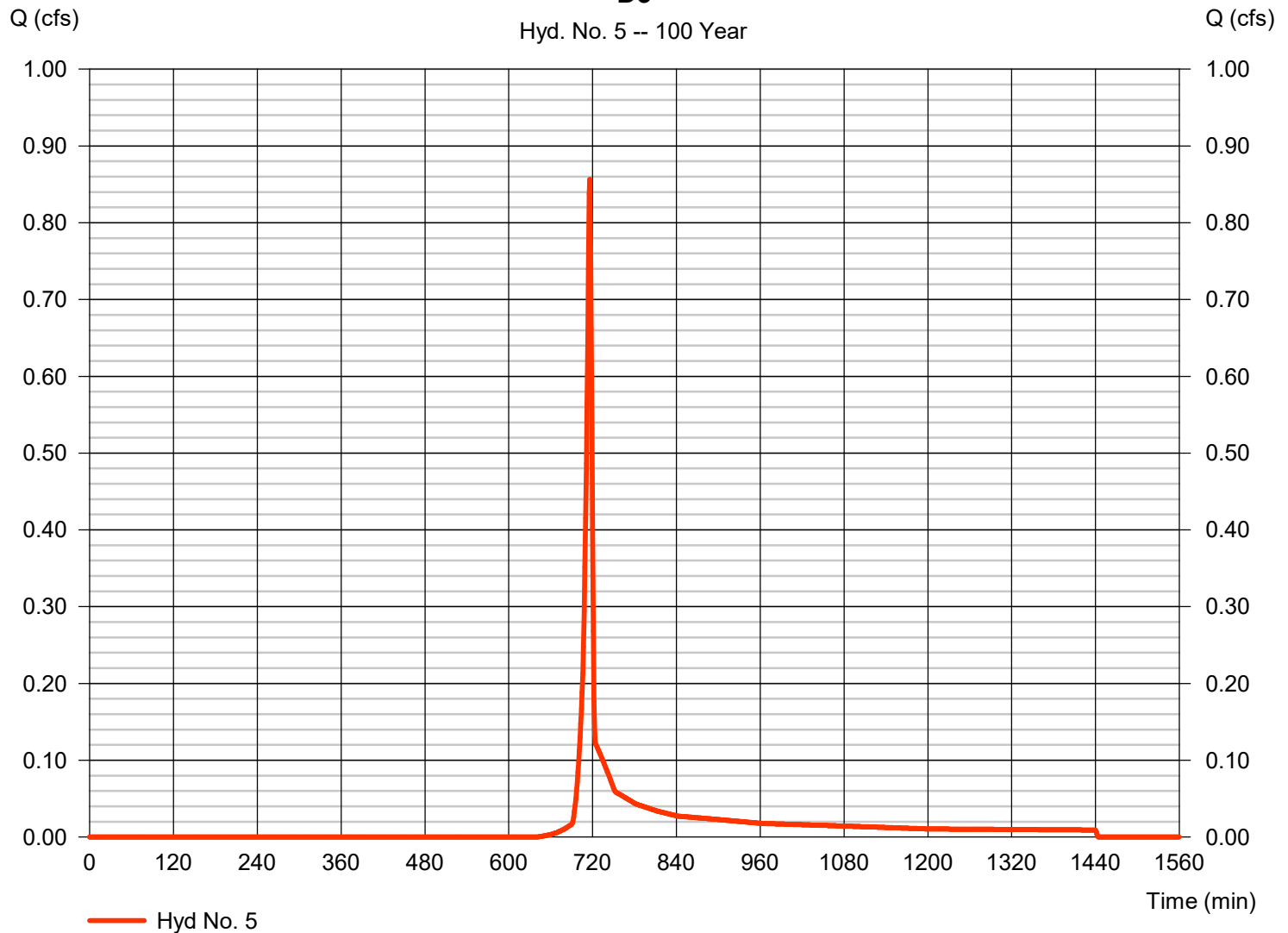
Hyd. No. 5

D3

Hydrograph type	= SCS Runoff	Peak discharge	= 0.857 cfs
Storm frequency	= 100 yrs	Time to peak	= 716 min
Time interval	= 1 min	Hyd. volume	= 1,490 cuft
Drainage area	= 0.490 ac	Curve number	= 78*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 2.40 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = $[(0.486 \times 78)] / 0.490$

D3



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

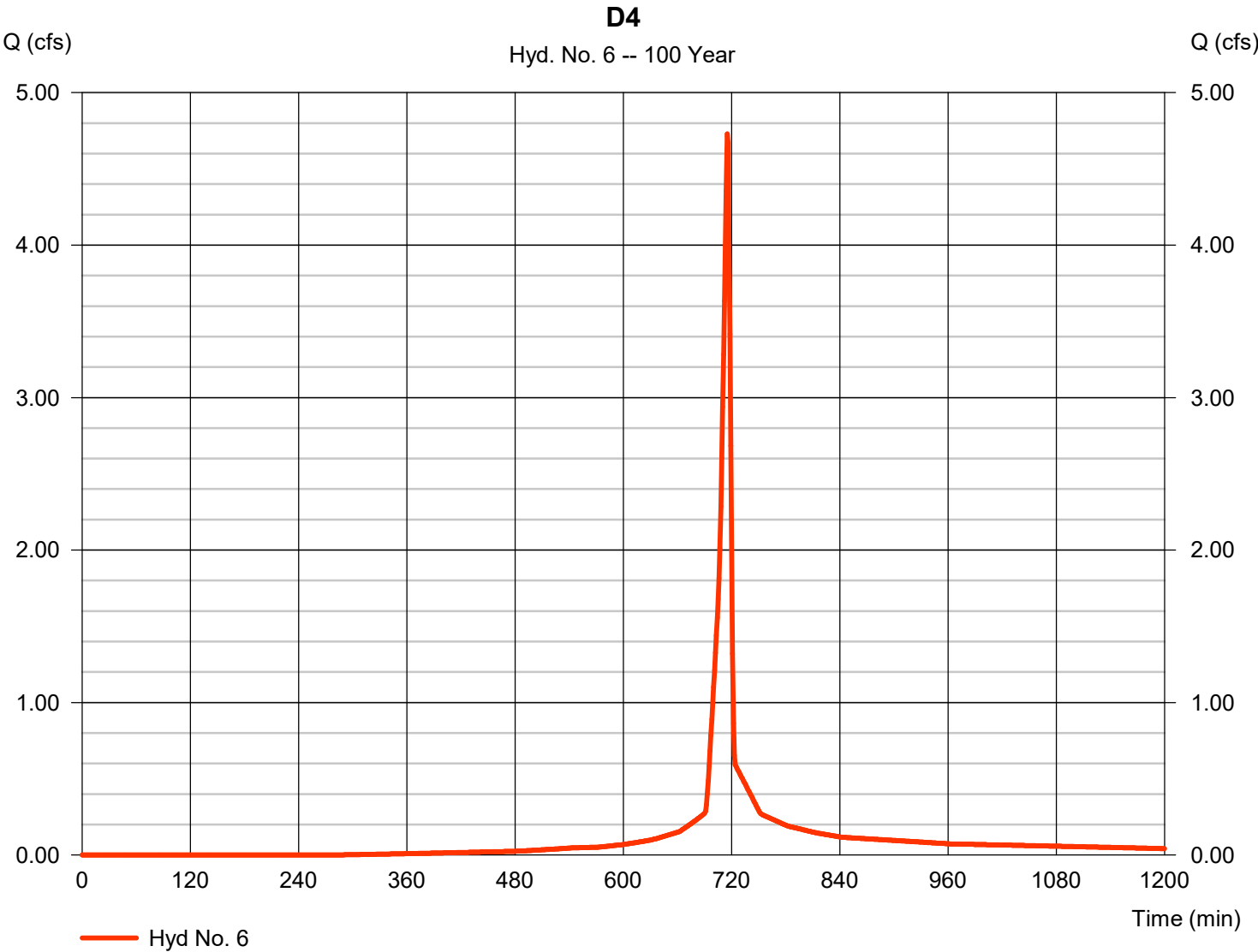
Tuesday, 07 / 21 / 2020

Hyd. No. 6

D4

Hydrograph type	= SCS Runoff	Peak discharge	= 4.730 cfs
Storm frequency	= 100 yrs	Time to peak	= 715 min
Time interval	= 1 min	Hyd. volume	= 8,869 cuft
Drainage area	= 1.350 ac	Curve number	= 93*
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 3.00 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

* Composite (Area/CN) = [(1.020 x 98) + (0.327 x 78)] / 1.350



Hydrograph Report

Hydraflow Hydrographs Extension for Autodesk® Civil 3D® by Autodesk, Inc. v2021

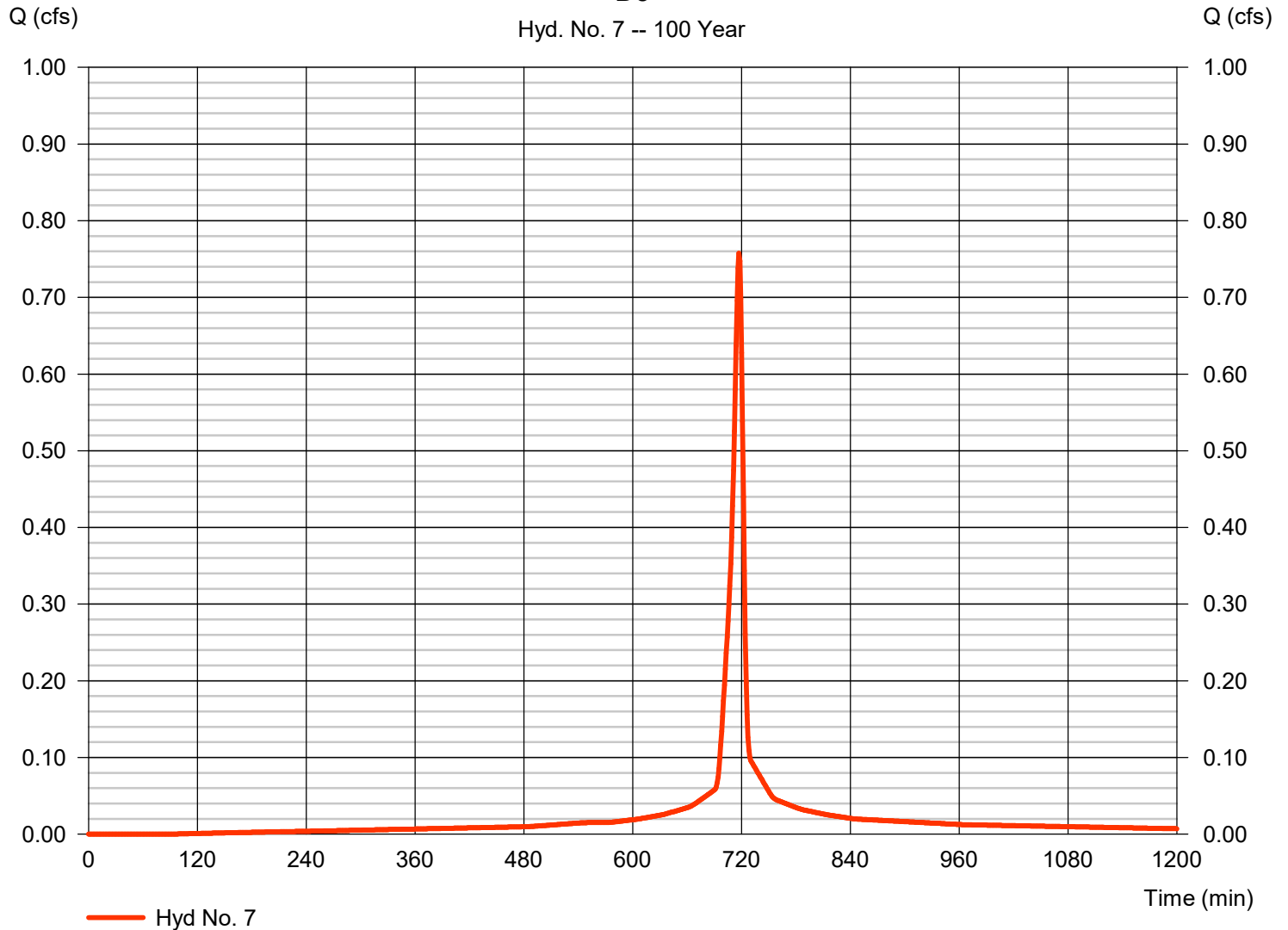
Tuesday, 07 / 21 / 2020

Hyd. No. 7

D5

Hydrograph type	= SCS Runoff	Peak discharge	= 0.758 cfs
Storm frequency	= 100 yrs	Time to peak	= 717 min
Time interval	= 1 min	Hyd. volume	= 1,774 cuft
Drainage area	= 0.195 ac	Curve number	= 98
Basin Slope	= 0.0 %	Hydraulic length	= 0 ft
Tc method	= TR55	Time of conc. (Tc)	= 5.10 min
Total precip.	= 2.66 in	Distribution	= Type II
Storm duration	= 24 hrs	Shape factor	= 484

D5



Channel Report

North Ditch

Triangular

Side Slopes (z:1) = 10.00, 3.00
Total Depth (ft) = 0.50

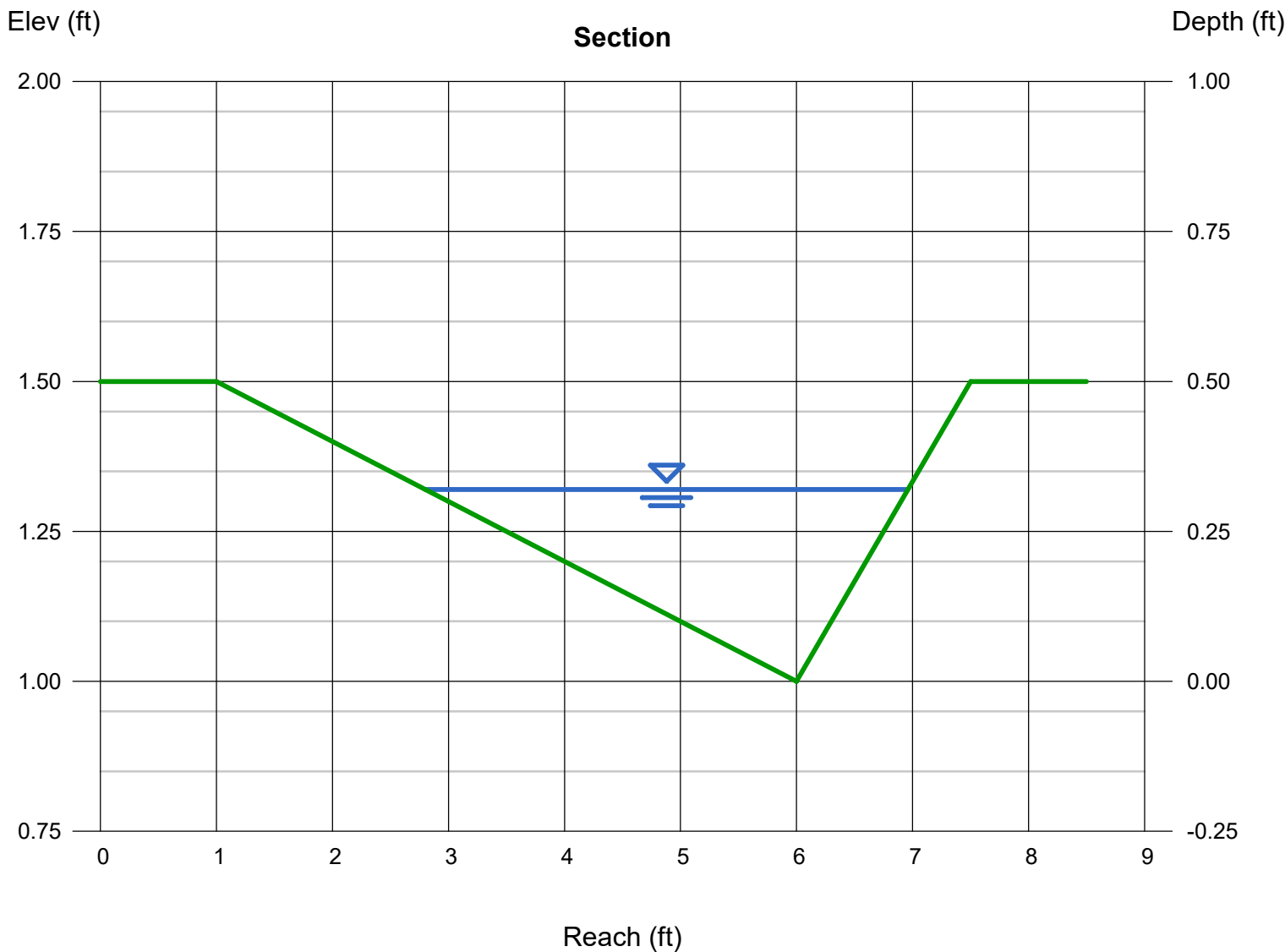
Invert Elev (ft) = 1.00
Slope (%) = 3.80
N-Value = 0.020

Calculations

Compute by: Known Q
Known Q (cfs) = 2.76

Highlighted

Depth (ft) = 0.32
Q (cfs) = 2.760
Area (sqft) = 0.67
Velocity (ft/s) = 4.15
Wetted Perim (ft) = 4.23
Crit Depth, Yc (ft) = 0.41
Top Width (ft) = 4.16
EGL (ft) = 0.59



Channel Report

South Ditch

Triangular

Side Slopes (z:1) = 3.00, 10.00
Total Depth (ft) = 0.50

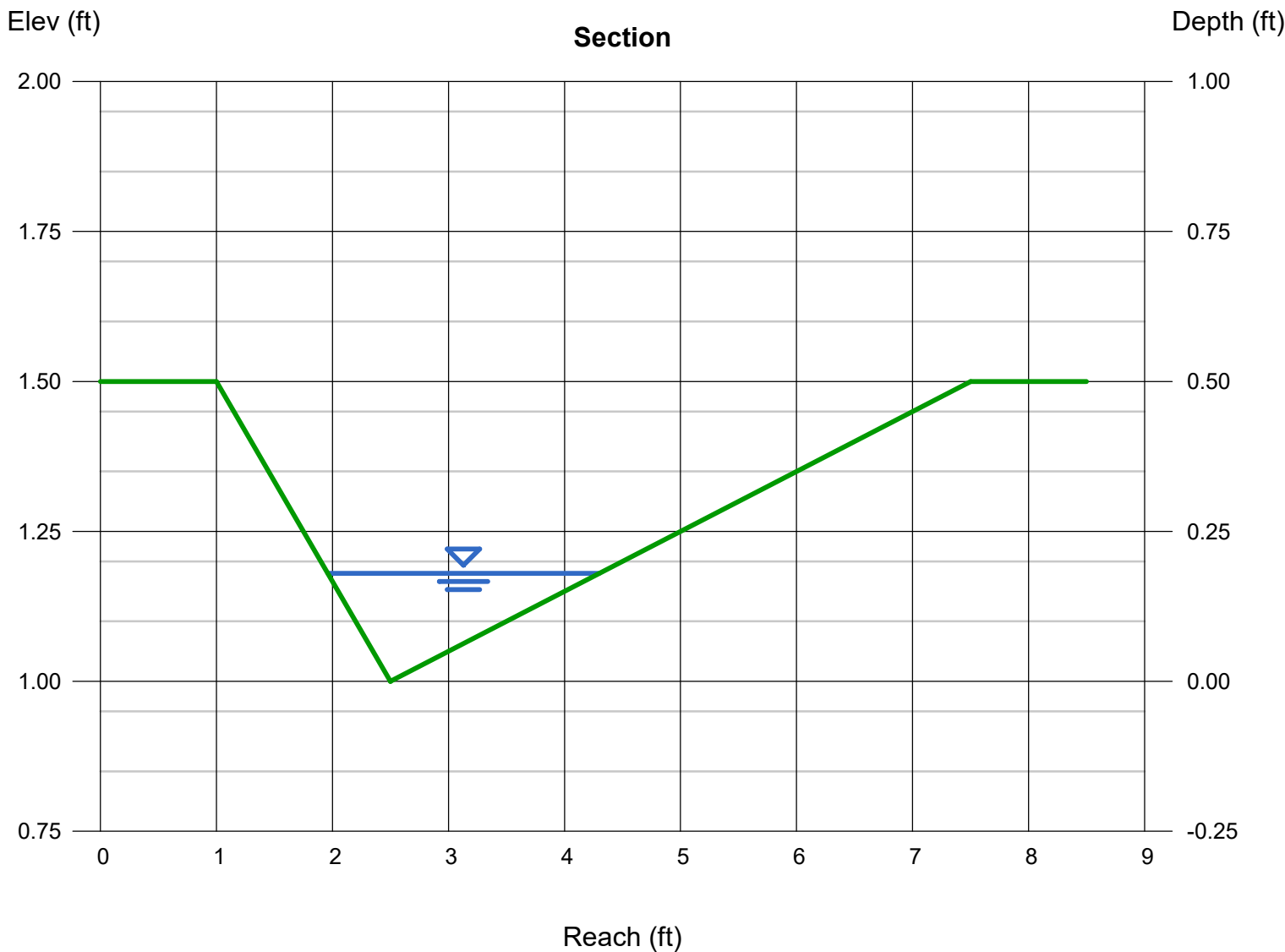
Invert Elev (ft) = 1.00
Slope (%) = 1.00
N-Value = 0.020

Calculations

Compute by: Known Q
Known Q (cfs) = 0.31

Highlighted

Depth (ft) = 0.18
Q (cfs) = 0.310
Area (sqft) = 0.21
Velocity (ft/s) = 1.47
Wetted Perim (ft) = 2.38
Crit Depth, Yc (ft) = 0.17
Top Width (ft) = 2.34
EGL (ft) = 0.21



Channel Report

Combined Ditch

Triangular

Side Slopes (z:1) = 5.00, 5.00
Total Depth (ft) = 1.00

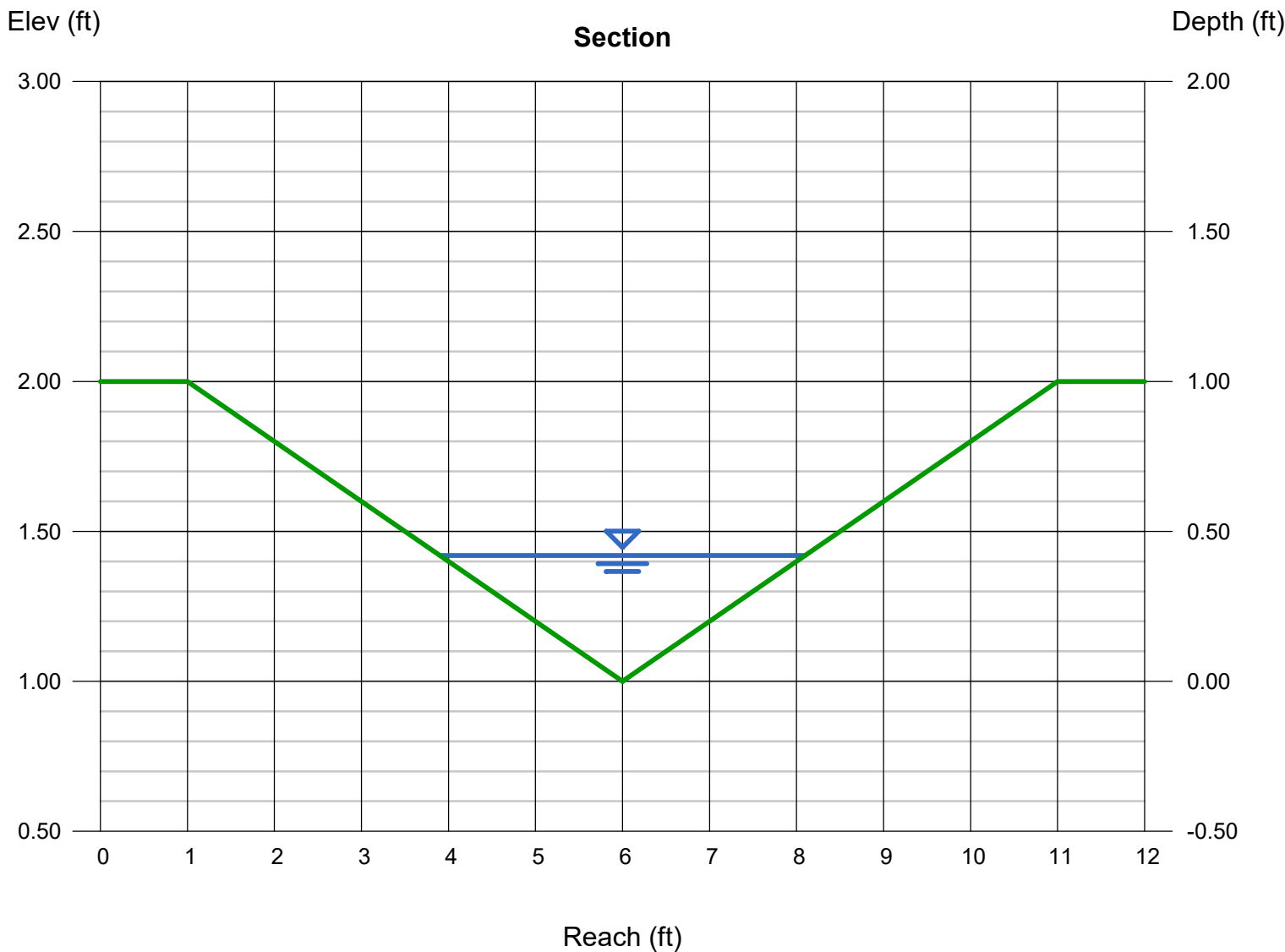
Invert Elev (ft) = 1.00
Slope (%) = 4.00
N-Value = 0.020

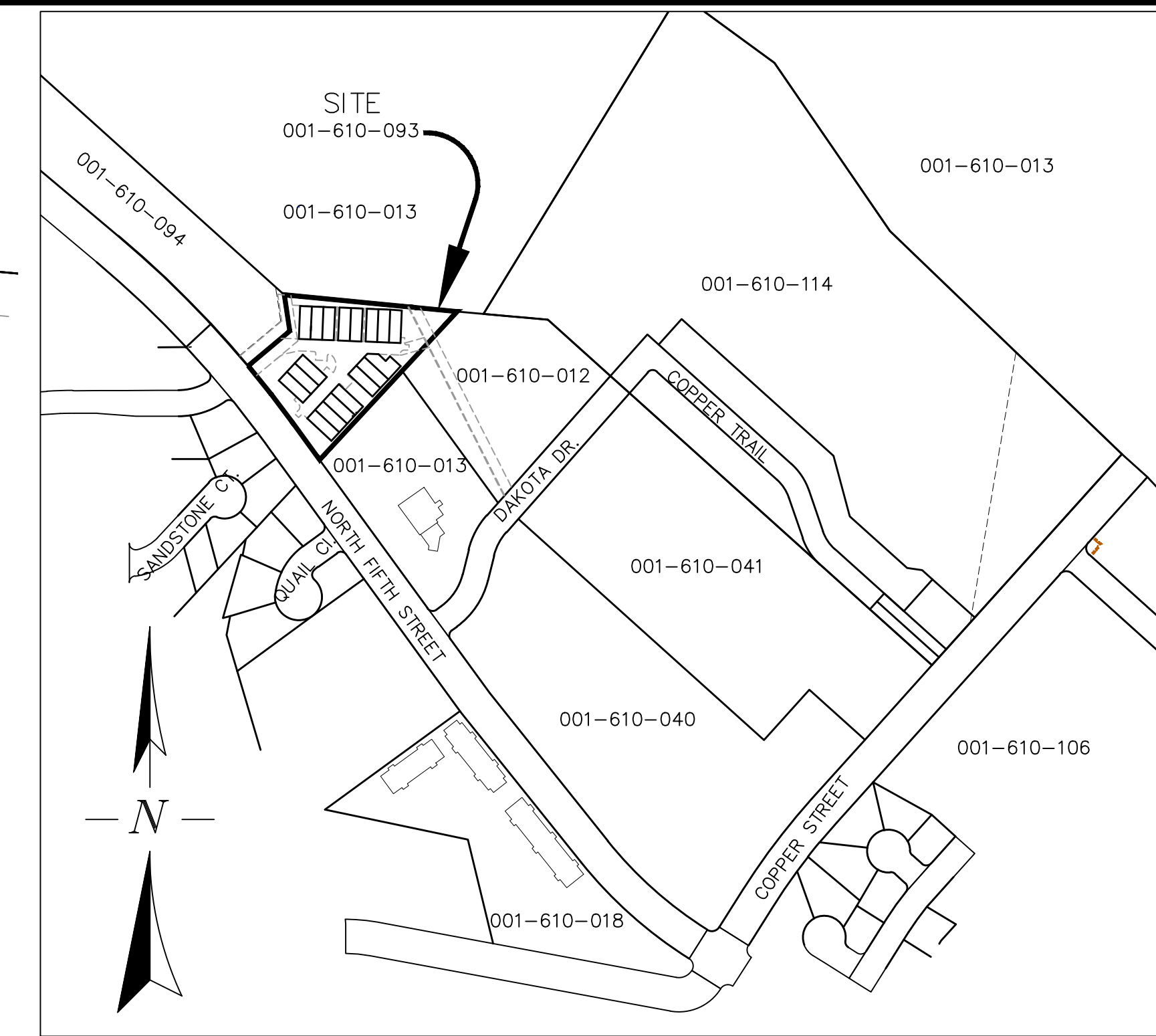
Calculations

Compute by: Known Q
Known Q (cfs) = 4.34

Highlighted

Depth (ft) = 0.42
Q (cfs) = 4.340
Area (sqft) = 0.88
Velocity (ft/s) = 4.92
Wetted Perim (ft) = 4.28
Crit Depth, Yc (ft) = 0.55
Top Width (ft) = 4.20
EGL (ft) = 0.80





SHEET 11

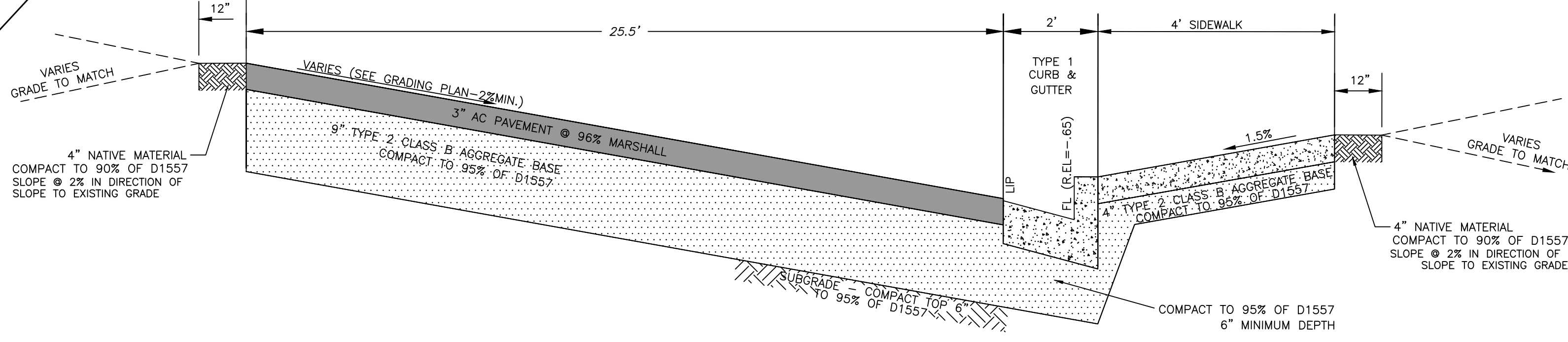


Diagram illustrating the cross-section of a driveway and access road, showing various layers and dimensions:

- Driveway Section (Left):**
 - Width: 20' DRIVEWAY
 - Surface Slope: VARIES 1% MIN 1.5% MAX
 - Layers: 4" PCC DRIVEWAY, 4" TYPE II AGGREGATE BASE
 - Subgrade: 4" TYPE 2 CLASS B AGGREGATE BASE COMPACT TO 95% OF D1557
 - Subgrade Preparation: COMPACT TO 95% OF D1557, 6" MINIMUM DEPTH
- Transition Section:**
 - Width: 4' SIDEWALK
 - Surface Slope: 1.5%
- Access Road Section (Right):**
 - Width: 24' ACCESS ROAD
 - Surface Slope: VARIES (SEE GRADING PLAN - 2% MIN.)
 - Layers: 3" AC PAVEMENT @ 96% MARSHALL, 9" TYPE 2 CLASS B AGGREGATE BASE COMPACT TO 95% OF D1557
 - Subgrade: SUBGRADE - COMPACT TOP 6" TO 95% OF D1557
- Other Dimensions and Features:**
 - Valley Gutter: 3' VALLEY GUTTER
 - Ac Pavement: 21' AC PAVEMENT
 - Native Material: 4" NATIVE MATERIAL COMPACT TO 90% OF D1557 SLOPE @ 2% IN DIRECTION OF SLOPE TO EXISTING GRADE
 - Match: VARIES GRADE TO MATCH
 - Final Width: 12"

TYPICAL ROAD SECTION B
SCALE: N.T.S.

20' DRIVEWAY 4' SIDEWALK 24' ACCESS ROAD 3' VALLEY GUTTER 4' SIDEWALK 20' DRIVEWAY

VARIES 1% MIN 1.3% MAX 1.5% VARIES (SEE GRADING PLAN--2% MIN.) 1.5% VARIES 1% MIN 1.3% MAX

4" PCC DRIVEWAY 4" TYPE II AGGREGATE BASE 4" TYPE 2 CLASS B AGGREGATE BASE COMPACT TO 95% OF D1557 3" AC PAVEMENT @ 96% MARSHALL 9" TYPE 2 CLASS B AGGREGATE BASE COMPACT TO 95% OF D1557 4" TYPE 2 CLASS B AGGREGATE BASE COMPACT TO 95% OF D1557 4" TYPE II AGGREGATE BASE 4" PCC DRIVEWAY 4" TYPE II AGGREGATE BASE

SUBGRADE - COMPACT TO 95% OF D1557 6" MINIMUM DEPTH

TYPICAL ROAD SECTIONS

TYPICAL ROAD SECTION LOCATION		
SECTION TYPE	ALIGNMENT	STATIONS
A	2	0+29 TO 1+70
B	2	1+70 TO 4+00
B	3	0+00 TO 0+93

TYPICAL ROAD SECTIONS



REGISTERED PROFESSIONAL ENGINEER-STATE OF NEVADA
MICHAEL E. SHANKS
CIVIL
No. 10385
EXPIRES: 6/30/22

PREPARED BY:

Shanks Engineering

982 WOLF CR. DR.
SPRING CREEK, NEVADA 89815
775-753-5100
shankseng@gmail.com

NO.	REVISION A	DESCRIPTION	BY	DATE
1	A		MES	7-21-20
2	A			
3	A			
4	A			
5	A			
6	A			
7	A			
8	A			
9	A			
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96	A			
97	A			
98	A			
99	A			
100	A			

PREPARED FOR:
JOHN SMALES

JARBIDGE ESTATES
TOWN HOME SUBDIVISION
TENTATIVE MAP
SITE PLAN

T2
HEET No

**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible recommendation to City Council for Rezone No. 5-20, filed by Legion Construction and Development LLC., for a change in zoning from AG (General Agriculture) to R (Single Family and Multiple Family Residential) Zoning District, approximately 2.415 acres of property, to allow for a proposed townhome development, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 1, 2020**
3. Agenda Category: **PUBLIC HEARINGS,**
4. Time Required: **15 Minutes**
5. Background Information: **This rezone would allow for the future development of a townhome subdivision. The rezone is being processed concurrent with TM 6-20 for Jarbidge Estates as required by Elko City Code 3-3-5(A)**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 5-20 based on facts and findings as presented in Staff Report dated August 12, 2020.**
9. Findings: **See Staff Report dated August 12, 2020.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Legion Construction and Development LLC
599 Shadybrook Drive
Spring Creek, NV 89815**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 9/1

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

Title: Rezone 5-20

Applicant(s): Legion Construction + Development, LLC

Site Location: NE side of N 5th Street, across from Rolling Hills - APN 001-1610-093

Current Zoning: AG Date Received: 8/11/20 Date Public Notice: 8/18/20

COMMENT: This is to rezone APN 001-1610-093 from General Agriculture to R-Single-Family + Multiple-Family Residential Zoning Districts

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 8/21/20

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 8/21/20

No comments/concerns.

CC

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE:	August 12, 2020
PLANNING COMMISSION DATE:	September 1, 2020
APPLICATION NUMBER:	Rezone 5-20
APPLICANT:	Legion Construction and Development LLC
PROJECT DESCRIPTION:	Zone amendment from AG to R associated with the subdivision of property, Jarbidge Estates Subdivision
ADDITIONAL APPLICATIONS:	Tentative Map 6-20, CUP 4-20



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-610-093

PARCEL SIZE: 2.16 acres

EXISTING ZONING: AG- General Agriculture

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

EXISTING LAND USE: Undeveloped

NEIGHBORHOOD CHARACTERISTICS:

-) The property is surrounded by:
 -) North: (AG)- Agriculture / Undeveloped
 -) West: (R) Residential / Developed
 -) South: (R) Residential / Developed
 -) East: (R) Residential / Partially developed, Church

PROPERTY CHARACTERISTICS:

-) The area is currently undeveloped.
-) The area has moderately sloping.
-) The area is accessed from North 5th Street.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Master Plan – Transportation Component
-) City of Elko Redevelopment Plan
-) City of Wellhead Protection Plan
-) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
-) City of Elko Zoning – Section 3-2-5 Residential Zoning Districts
-) City of Elko Zoning – Section 3-2-21 Amendments
-) City of Elko Zoning – Chapter 3 Subdivisions
-) City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. The property is owned by the applicant.
2. The rezone includes all of APN 001-610-093
3. The area fronts North 5th Street.
4. City water is located in the immediate vicinity. Sewer will need to be extended.
5. Other non-city utilities are located in the immediate area.

6. The application for rezone is based on an application for subdivision of property. As such, the rezone application must comply with section 3-3-5(A) Zoning Amendments.

MASTER PLAN:

Land use:

1. Land Use is shown as Medium Density Residential.
2. Supporting zone districts for Medium Density Residential are Single Family/Multi Family (R), Single Family (R1), Two Family (R2), Planned Unit Development (PUD), Residential Office (RO), Residential Business (RB), Mobile Home Subdivision (RMH-2), and Manufactured Home Subdivision (RMH-3).
3. Zone classification of the properties are required to conform to the Master Plan as per Elko City Code 3-3-5(A).
4. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
5. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

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

Transportation:

1. The area will be accessed from North 5th Street.
2. North 5th Street is classified in the Transportation Component as a minor arterial.

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

ELKO REDEVELOPMENT PLAN:

The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

1. The property sits outside any capture zone for the City of Elko wells.

The proposed zone district and resultant land use is in conformance with wellhead protection plan.

SECTION 3-2-4 Establishment of Zoning Districts:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
2. No building or other structure shall hereafter be erected or altered:
 - a. To exceed the heights required by the current City Airport Master Plan;
 - b. To accommodate or house a greater number of families than as permitted in this chapter;

- c. To occupy a greater percentage of lot area; or
 - d. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title; or in any other manner contrary to the provisions of this chapter.
- 3. No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
 - 4. 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 property meets the area requirements for the proposed zone district.

The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).

SECTION 3-2-5 (B) – Single Family Residential

- 1. The applicant has applied for a conditional use permit for the proposed development of townhomes, Elko City Code 3-2-5(E)(3).
- 2. As the property develops, it will be required to be consistent with the listed principal uses permitted or be approved a CUP for conditionally approved uses.
- 3. As the property develops, it will be required to be in conformance with the development standards in Elko City Code 3-2-5(E) 5 & 6.

The proposed zone district is in conformance with Elko City Code Section 3-2-5.

SECTION 3-2-21:

The application is in conformance with Elko City Code 3-2-21.

SECTION 3-3-5

- 1. The application for change of zoning district boundaries shall be heard by the Planning Commission at the same meeting as the tentative map is considered, but shall be acted upon as a separate item. The application for change of zoning district boundaries shall be heard prior to the action item for possible approval of the tentative map. When a tentative map constitutes only one unit of a larger development intended for progressive maps, the change of zoning district boundaries may be limited to the area contained in the tentative map application. Any required change of zoning district boundaries shall have been approved by the City Council prior to tentative map approval. A change of zoning district boundaries required under this Section must, without limitation, conform to all applicable master plan(s) adopted by the City.

The proposed zone district is in conformance with Elko City Code Section 3-3-5(A).

SECTION 3-8:

The proposed zone district is not located in a designated in a Special Flood Hazard Area (SFHA).

FINDINGS:

1. The proposed zone district is in conformance with the Land Use Component of the Master Plan.
2. The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure.
3. The property is not located within the Redevelopment Area.
4. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan.
5. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).
6. The proposed zone district is in conformance with Elko City Code Section 3-2-5.
7. The application is in conformance with Elko City Code 3-2-21.
8. The proposed zone district is in conformance with Elko City Code Section 3-3-5(A).
9. The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA).
10. The proposed zone district is consistent with surrounding land uses.
11. Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

STAFF RECOMMENDATION:

Staff recommends this item be approved as presented.



CITY OF ELKO

Planning Department

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

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

August 25, 2020

Legion Construction & Development, LLC
Attn: John Smales
599 Shadybrook Drive
Spring Creek, NV 89815
Via Email: johns.builder@gmail.com

Re: Tentative Map No. 6-20, Rezone No. 5-20, & Conditional Use Permit No. 4-20

Dear Applicant/Agent:

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

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

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone at **+1 (224) 501-3412**. The **Access Code** for this meeting is **472-220-037**. If you do not wish to use GoToMeeting you may call in at **(775) 777-0590**.

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

Sincerely,


Shelby Archuleta
Planning Technician

Enclosures

CC: Shanks Engineering, Attn: Mike Shanks, 982 Wolf Creek Drive, Spring Creek, NV 89815
Via Email: shankseng@gmail.com

Rezone 5-20 + Conditional Use Permit 4-20 Legion Construction + Development, LLC

YPNO	assess_nam	address1	address2	mcity	mzip
00161A015	BECK DEREK & CYDNEY K	110 ROLLING HILLS DR		ELKO, NV	89801-8400
00161A021	BENZIE MICHAEL J & BELINDA A	3554 DESERT PLAINS AVE		ELKO, NV	89801-8420
00161I050	BINGHAM ROBERT JASON	193 BROOKWOOD RD		ELKO, NV	89801-2300
00161A025	BRANNEN CHARLES E & BERTHA D	100 SANDSTONE CT		ELKO, NV	89801-8420
00161A028*	CHAPPELL JOSEPHINE S	109 SANDSTONE CT		ELKO, NV	89801-8420
001610114	COPPER TRAILS LLC	PO BOX 8070		RENO, NV	89507-8070
00161A023*	EDWARDS STEPHEN RALPH TR	108 SANDSTONE CT		ELKO, NV	89801-8420
001610092	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610036	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610094	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610103	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-3400
00161C004*	ELLEFSSEN DAVID J & PATRICIA KR	PO BOX 2050		ELKO, NV	89803-2050
00161A024	FINLAYSON SCOTT C & GWEN D TR	104 SANDSTONE CT		ELKO, NV	89801-8420
001610113	GRACE BAPTIST CHURCH	3030 5TH ST		ELKO, NV	89801-4470
001610112	GRACE BAPTIST CHURCH	3030 5TH ST		ELKO, NV	89801-4470
00161A014*	GRIESEL GERALD A & MICHELLE M	114 ROLLING HILLS DR		ELKO, NV	89801-8400
00161C001	HARRISON THOMAS DALE	468 QUAIL CIR		ELKO, NV	89801-8460
00161A019	KATSAR ADAM & ALICIA A	107 ROLLING HILLS DR		ELKO, NV	89801-8400
00161A022	LARRABEE BREANNA & DANIEL	3550 DESERT PLAINS AVE		ELKO, NV	89801-8420
001610093	LEGION CONSTRUCTION AND DEVELOPMENT LLC		599 SHADYBROOK DR	SPRING CREEK, NV	89815-
00161A018	MOSER NORMAN GUY	66 E MARS WAY		SANDY, UT	84070-1040
00161C005	MURRAY SHARON A		457 QUAIL CIRCLE	ELKO, NV	89801-
00161A027	MUTAMA KUDA R & PETRONELA N	105 SANDSTONE CT		ELKO, NV	89801-8420
00161A016	NAVARRO VICKIE A	106 ROLLING HILLS DR		ELKO, NV	89801-8400
00161I049	PENDLEY AARON J	195 BROOKWOOD DR		ELKO, NV	89801-
00161A020	ROYCE RODERICK A & CATHERINE M	3560 DESERT PLAINS AVE		ELKO, NV	89801-8420
00161C002	TEMPEL TRENT & KAREN TR	PO BOX 281727		LAMOILLE, NV	89828-1720
001610038	THE CHURCH OF JESUS CHRIST		50 E NORTH TEMPLE		
00161A017	VALLEY KEVIN & RUTH	TAX ADM DIV 536-4388	RM 2225	SALT LAKE CITY, UT	84150-0020
00161C003	VANCE DANIEL W	102 ROLLING HILLS DR		ELKO, NV	89801-8400
00161A026	VANCE JERID S & AMANDA K	460 QUAIL CIR		ELKO, NV	89801-8460
		101 SANDSTONE CT		ELKO, NV	89801-8420

26

Postmarked 8/21/20

* Properties outside the original 300ft radius to achieve 30 parcels

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, September 1, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: <https://global.gotomeeting.com/join/472220037>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone. **+1 (224) 501-3412** Access Code: **472-220-037**. Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

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

- Rezone No. 5-20, filed by Legion Construction and Development, LLC, for a change in zoning from AG (General Agriculture) to R(Single-Family and Multiple-Family) Zoning District, approximately 2.415 acres of property, specifically APN 001-610-093, located generally on the northeast side of N. 5th Street, across from Rolling Hills Drive, more particularly described as:

A parcel of land to be rezoned from A-Agriculture to R-Residential, defined as parcel # 1 file 415475 being a portion of Section 9, Township 34 North, Range 55 East, M.D.B.&M. and now known as parcel 1 on amended map file 530051 including the frontage along said parcel 1 to the centerline of N. 5th Street in Elko County, Nevada and more particularly described below:

Parcel No. 1 – APN 001-610-093

Commencing at the north east section corner of said section 9, a brass cap;
Thence, on a bearing of north 89°46'09" west for a distance of 5,000.27 feet to a point on the North 5th Street right of way line;

Thence along said right of way on a circular curve to the right from a tangent bearing S 54°40'12" east, with a radius of 11,140 feet, through an internal angle of 4°43'28" for an arc length of 918.58 feet;

Thence along said right-of-way on a bearing south 49°56'44" east, for a distance of 583.04 feet;

Thence along said right of way on a circular curve to the right with a radius of 2,460 feet, through an internal angle of 9°59'44", for an arc length of 429.16 feet to corner No 1, the north west corner of Parcel No. 1 and the true point of beginning;

Thence on a bearing north 50°03'00" east, for a distance of 126.46 feet to corner No. 2;

Thence on a bearing north 08°33'25" west, for a distance of 85.61 feet to corner No. 3;

Thence on a bearing south 84°27'44" east, for a distance of 405.88 feet to corner No. 4;

Thence on a bearing south 42°52'32" west, for a distance of 472.41 feet to corner No. 5, a point on the North 5th Street right of way line;

Thence along said right of way bearing north 36°01'25" west, for a distance of 107.15 feet to corner No. 6;

Thence along said right of way on a circular curve to the left, with a radius of 2,460 feet through an internal angle of 3°55'36", for an arc length of 168.58 feet to corner No 1; the point of beginning.

Said Parcel No. 1 contains 2.163 acres, more or less.

North 5th Street Frontage

Commencing at the northwest property corner of said Parcel No. 1 identified above as corner No. 1, a point on the North 5th Street right of way line and the true point of beginning;

Thence along said right of way of North 5th Street on a circular curve to the right from a tangent bearing S 39°57'01" east, with a radius of 2,460 feet, through and internal angle of 3°55'36" for an arc length of 168.58 feet to corner No. 6;

Thence along said right of way on a bearing south 36°01'25" east, for a distance of 107.15 feet to Corner No. 5;

Thence on a bearing south 53°58'35" west for a distance of 40.00 feet to corner No. 7, a point on the center line of North 5th Street;

Thence along the centerline of North 5th Street on bearing north 36°01'25" west for a distance of 107.15 feet to corner No. 8;

Thence along said centerline of North 5th Street on a circular curve to the left with a radius of 2,420 feet, through an internal angle of 3°55'36", for an arc length of 165.84' to corner No. 9;

Thence on a bearing north 50°02'59" east, for a distance of 40.00 feet to corner No. 1; the point of beginning.

Said frontage of North 5th Street contains 0.252 acres more or less.

The total gross area to be rezoned contains 2.415 acres more or less.

The intent of the zone change is to allow for a townhome development.

- Conditional Use Permit No. 4-20, filed by Legion Construction and Development, LLC, which would allow for a townhome development within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located on the northeast side of N. 5th Street, across from Rolling Hills Drive. (APN 001-610-093)
- Tentative Map No. 6-20, 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 residential development and common area lot within the R (Single-Family Residential) Zoning District, and matters related thereto. The subject property is located on the northeast side of N. 5th Street, across from Rolling Hills Drive. (APN 001-610-093)

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR ZONE CHANGE

APPLICANT(s):	Legion Construction and Development LLC		
MAILING ADDRESS:	599 Shadybrook Dr, Spring Creek, NV 89815		
PHONE NO (Home)	775-778-1539	(Business)	Same
NAME OF PROPERTY OWNER (If different):	Same (Property owner's consent in writing must be provided.)		
MAILING ADDRESS:			
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):			
ASSESSOR'S PARCEL NO.:	001-610-093	Address	N 5th Street
Lot(s), Block(s), & Subdivision			
Or Parcel(s) & File No.	Parcel 1 File 415475 as amended by Parcel 1 file 530051		

FILING REQUIREMENTS:

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

Fee: A \$500.00 non-refundable filing fee.

Area Map: A map of the area proposed for this zone change must be provided.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

Legal Description: A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "x" to "x"; (LI to R, for example).

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Rezone Application.

1. Identify the existing zoning classification of the property: A-Agrigulture

2. Identify the zoning Classification being proposed/requested: R-Residential

3. Explain in detail the type and nature of the use anticipated on the property:

The property will be subdivided into 18 town homes. The town homes will be two story and contain approximately 1471 square feet with 466 sft two car garages. The units will be combined to form 2, 3, and 4 unit clusters. They will have approximately 15 foot rear yards and 20 foot deep driveways that will accommodate two on site parking spaces independent from the garages. The total project contains 2.16 acres. The individual town home lot sizes range from 2080-2434 square feet.

4. Explain how the proposed zoning classification relates with other zoning classifications in the area:

The parcels on the same side (east) of North 5th Street are zoned residential to the South and agricultural to the north. The parcel to the north is undeveloped and the parcels to the south have been developed to either a church or multi family apartments. The parcels on the opposite side (west) of North 5th Street are zoned residential and are developed as single family homes.

5. Identify any unique physical features or characteristics associated with the property:

The lot isn't conducive to agricultural use due the the steep slope of the lot and the surrounding developed lots contain single family/multi family buildings.

(Use additional pages if necessary to address questions 3 through 5)

By My Signature below:

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

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

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

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

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

Applicant / Agent

Legion Construction and Development LLC

(Please print or type)

Mailing Address

599 Shadybrook Dr.

Street Address or P.O. Box

Spring Creek, NV 89815

City, State, Zip Code

Phone Number:

775-778-1539

Email address:

johns.builder@gmail.com

SIGNATURE:



FOR OFFICE USE ONLY

File No.: 5-20 Date Filed: 8/11/20 Fee Paid: \$500 CL# 240

August 17, 2020

Legion Construction and Development LLC
Legal Description – Parcel No. 1
APN 001-610-093

DESCRIPTION

A parcel of land to be rezoned from A-Agriculture to R-Residential, defined as parcel #1 file 415475 being a portion of Section 9, Township 34 North, Range 55E, M.D.B.& and now known as parcel 1 on amended map file 530051 including the frontage along said parcel 1 to the centerline line of N. 5th Street in Elko County, Nevada and more particularly described below:

Parcel No. 1 – APN 001-610-093

Commencing at the north east section corner of said section 9, a brass cap;

thence on a bearing of north 89°46'09" west for a distance of 5000.27 feet to a point on the North 5th St. right of way line.

Thence along said right of way on a circular curve to the right from a tangent bearing S 54° 40' 12" east, with a radius of 11,140 feet, through an internal angle of 4° 43' 28" for an arc length of 918.58 feet;

thence along said right-of-way on a bearing south 49°56'44" east, for a distance of 583.04 feet;

thence along said right of way on a circular curve to the right with a radius of 2,460 feet, through an internal angle of 9° 59' 44", for an arc length of 429.16 feet to corner No 1, the north west corner of Parcel No. 1 and the true point of beginning;

thence on a bearing north 50° 03'00" east, for a distance of 126.46 feet to corner No. 2;

thence on a bearing north 08° 33'25" west, for a distance of 85.61 feet to corner No. 3;

thence on a bearing south 84° 27'44" east, for a distance of 405.88 feet to corner No. 4;

thence on a bearing south 42° 52'32" west, for a distance of 472.41 feet to corner No. 5, a point on the North 5th Street right of way line;

thence along said right of way on a bearing north 36° 01'25" west, for a distance of 107.15 feet to corner No. 6;

thence along said right of way on a circular curve to the left, with a radius of 2,460 feet through an internal angle of 3° 55' 36", for an arc length of 168.58 feet to corner No 1; the point of beginning.

Said Parcel No. 1 contains 2.163 acres, more or less.

North 5th Street Frontage

Commencing at the northwest property corner of said Parcel No. 1 identified above as corner No. 1, a point on the North 5th Street right of way line and the true point of beginning,

Thence along said right of way of North 5th Street on a circular curve to the right from a tangent bearing S 39° 57' 01" east, with a radius of 2,460 feet, through an internal angle of 3° 55' 36" for an arc length of 168.58 feet to corner No. 6;

thence along said right of way on a bearing south 36° 01'25" east, for a distance of 107.15 feet to corner No. 5;

thence on a bearing south 53° 58' 35" west for a distance of 40.00 feet to corner No. 7, a point on the center line of North 5th Street;

thence along the centerline of North 5th Street on bearing north 36° 01'25" west for a distance of 107.15 feet to corner No. 8

thence along said centerline of North 5th Street on a circular curve to the left with a radius of 2,420 feet, through an internal angle of $3^{\circ} 55' 36''$, for an arc length of 165.84' to corner No. 9;

thence on a bearing north $50^{\circ} 02' 59''$ east, for a distance of 40.00 feet to corner No. 1; the point of beginning.

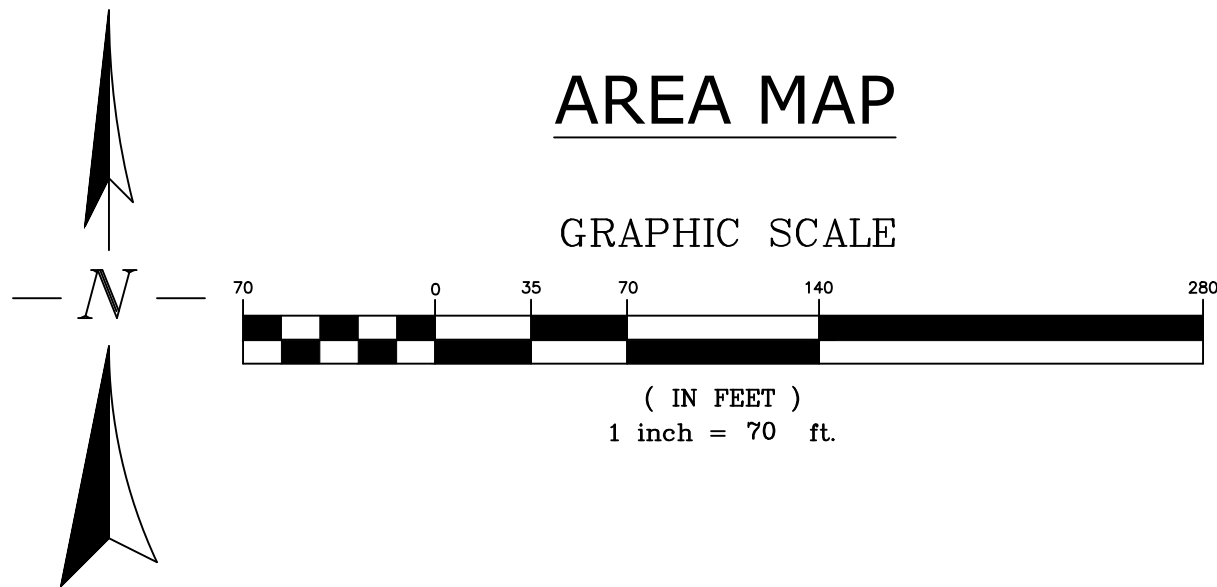
Said frontage of North 5th Street contains 0.252 acres more or less.

The total gross area to be rezoned contains 2.415 acres more or less.



SHEET INDEX	
SHEET	DESCRIPTION
Z1	AREA MAP
Z2	PLOT PLAN

LEGEND	
LEGAL DESCRIPTION ROUTE	
CENTER LINE	
PROPERTY LINE	
PROPOSED INTERIOR LOT	
TANGENT BEARING LINE	
FOUND SECTION CORNER	
LEGAL DESCRIPTION CORNER	
AREA TO BE REZONED FROM AG TO R	



TITLE

JARBIDGE ESTATES
TOWN HOME SUBDIVISION
ZONE CHANGE-AREA MAP

SHEET No.
Z1

PREPARED FOR

LEGION CONSTRUCTION & DEVELOPMENT, LLC
Spring Creek, NV 89815

DRAWING NO.
2002160

SCALE: AS SHOWN

PROJECT NO.: 2002160

DRAWING NAME: NORTH TOWN HOME SRD

REVISION

REVISED

DESIGNED

DRAWN

CHECKED

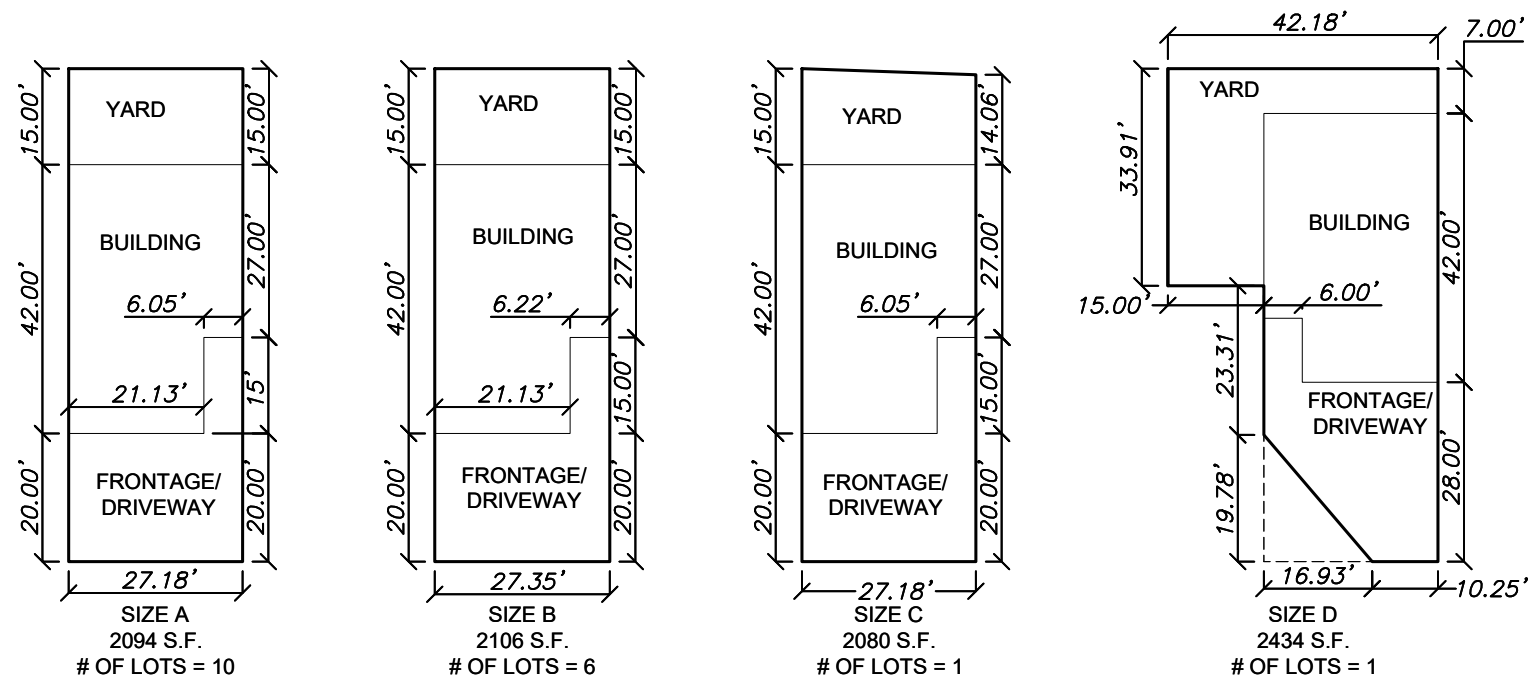
APPROVED

APPROVED

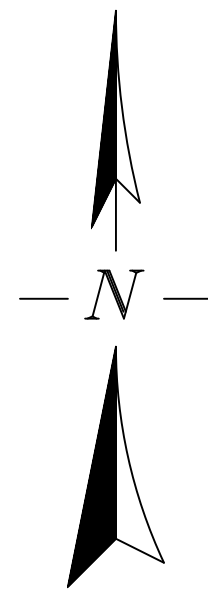
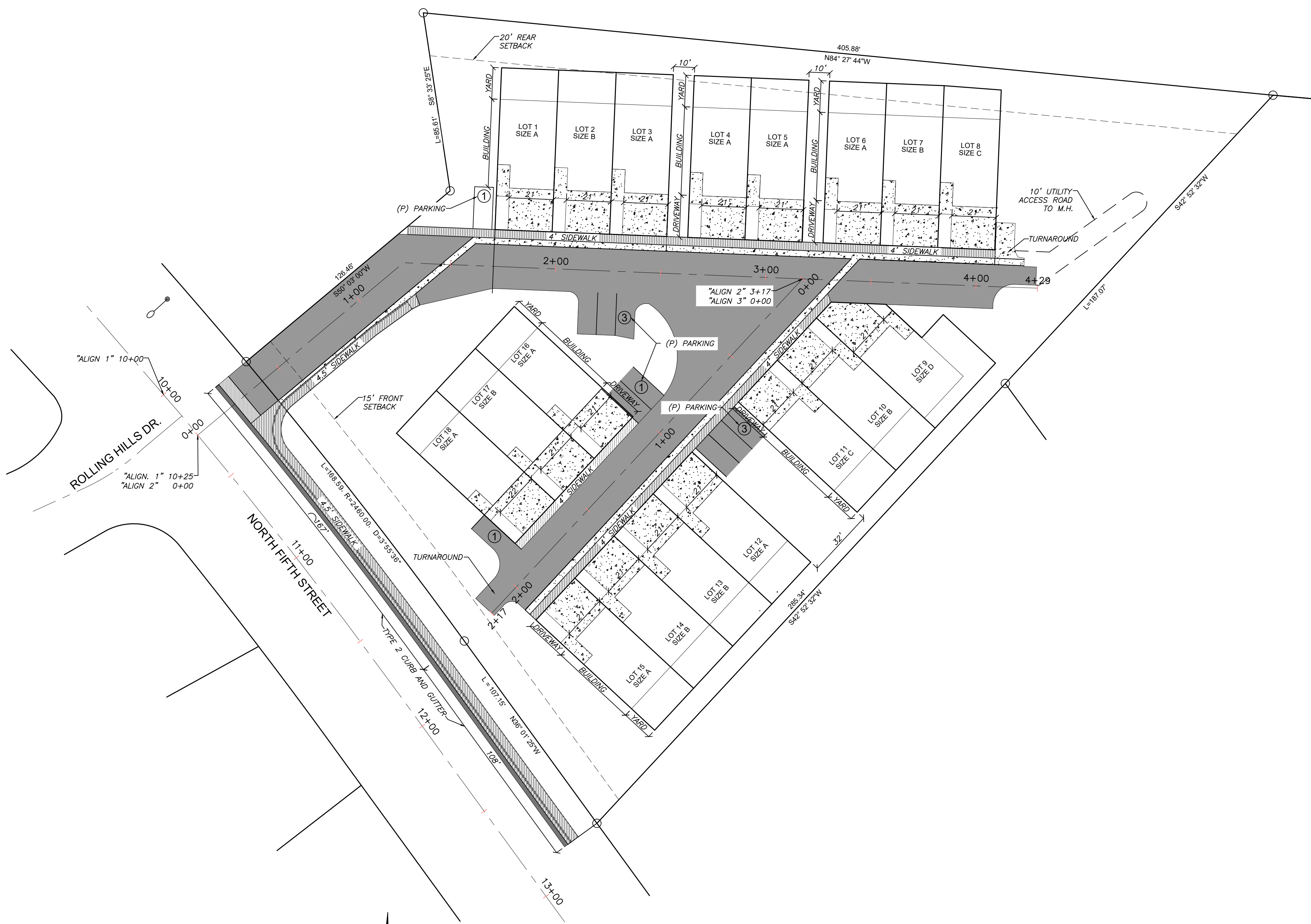
PREPARED BY:

Shanks Enterprises
982 WOLF CR. DR.
SPRING CREEK, NEVADA 89815
775-763-5100
shankseng@gmail.com

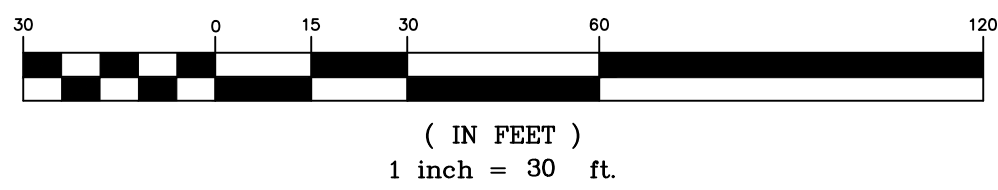
NO.	DESCRIPTION	BY	DATE
1	ISSUE FOR REVIEW	MES	8-11-20
2	ISSUE FOR REVIEW	KAS	8-17-20
3			
4			
5			
6			
7			
8			
9			
10			



LOT DIMENSIONS
SCALE: 1" = 30'



PLOT PLAN
SCALE: 1" = 30'
GRAPHIC SCALE



PREPARED BY: **Shanks Enterprises**
982 WOLF CR. DR.
SPRING CREEK, NEVADA 89815
775-763-5100
shankseng@gmail.com

NO.	DESCRIPTION	BY	DATE
1	ISSUE FOR REVIEW	MES	8-11-20
2	DESIGNED	MES	
3	DRAWN	KAS	
4	CHECKED	MES	
5	APPROVED	MES	

PREPARED FOR: LEGION CONSTRUCTION & DEVELOPMENT, LLC Spring Creek, NV 89815	DRAWING NO: 2002160 SCALE: AS SHOWN	PROJECT NO.: 2002160	DRAWING NAME: NORTH TOWN HOME SBD
REVISION		REVISION	
A			

TITLE: **JARBIDGE ESTATES
TOWN HOME SUBDIVISION
ZONE CHANGE - PLOT PLAN**

SHEET No. **72**

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 4-20, filed by Legion Construction and Development LLC., which would allow for a townhome development within a R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 1, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **Within the R- Residential Zoning District, townhouses are allowed with the approval of a Conditional Use Permit.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Conditional Use Permit 4-20 based on the facts, findings and conditions presented in Staff Report dated August 12, 2020**
9. Findings: **See staff report dated August 12, 2020**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Legion Construction and Development LLC
599 Shadybrook Drive
Spring Creek, NV 89815**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 9/1

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

Title: Conditional Use Permit No. 4-20

Applicant(s): Legion Construction + Development, LLC

Site Location: NE side of N 5th, across from Bolling Hills - APN 001-6610-093

Current Zoning: AG Date Received: 8/11/20 Date Public Notice: 8/18/20

COMMENT: This is to allow for a townhome development within
an R-Single-Family + Multiple-Family Zoning District.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 8/21/20

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 8/21/20

No comments/concerns.

cc

Initial



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

CITY OF ELKO STAFF REPORT

DATE:	August 12, 2020
PLANNING COMMISSION DATE:	September 1, 2020
APPLICATION NUMBER:	Conditional Use Permit 4-20
APPLICANT:	Legion Construction & Development LLC.
PROJECT DESCRIPTION:	Development of 18 Townhomes
RELATED APPLICATIONS:	TM 6-20, REZ 5-20

A Conditional Use Permit for the development of 18 townhomes within the R-Single Family Multiple Family Residential Zoning District as proposed with zone amendment application REZ 5-20.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-610-093

PROPERTY SIZE: 2.16 acres

EXISTING ZONING: AG- General Agriculture with a zone amendment application (REZ 5-20) proposing R- Single Family Multiple Family Residential with approval.

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

EXISTING LAND USE: Undeveloped

NEIGHBORHOOD CHARACTERISTICS:

-) The property is surrounded by:
 -) North: (AG)- Agriculture / Undeveloped
 -) West: (R) Residential / Developed
 -) South: (R) Residential / Developed
 -) East: (R) Residential / Partially developed, Church

PROPERTY CHARACTERISTICS:

-) The area is currently undeveloped.
-) The area has moderately sloping.
-) The area is accessed from North 5th Street.

MASTER PLAN AND CITY CODE SECTIONS:

-) City of Elko Master Plan-Land Use Component
-) City of Elko Master Plan-Transportation Component
-) City of Elko Redevelopment Plan
-) City of Elko Wellhead Protection Plan
-) City of Elko Code 3-2-3 General Provisions
-) City of Elko Code 3-2-4 Establishment of Zoning Districts
-) City of Elko Code 3-2-5 Residential Zoning Districts
-) City of Elko Code 3-2-17 Traffic, Access, Parking and Loading Regulations
-) City of Elko Code 3-2-18 Conditional Use Permits
-) City of Elko Code 3-8 Flood Plain Management

BACKGROUND INFORMATION

1. The property is owned by the applicant.
2. The rezone includes all of APN 001-610-093
3. The area fronts North 5th Street.
4. City water is located in the immediate vicinity. Sewer will need to be extended.
5. Other non-city utilities are located in the immediate area.

6. The application for Conditional Use Permit is running concurrent with an application for a zone amendment of the property and the Tentative Map 6-20 that was submitted for the Jarbidge Estates Subdivision.

MASTER PLAN

Land Use:

1. Land Use is shown as Medium Density Residential.
2. Supporting zone districts for Medium Density Residential are Single Family/Multi Family (R), Single Family (R1), Two Family (R2), Planned Unit Development (PUD), Residential Office (RO), Residential Business (RB), Mobile Home Subdivision (RMH-2), and Manufactured Home Subdivision (RMH-3).
3. Zone classification of the properties are required to conform to the Master Plan as per Elko City Code 3-3-5(A).
4. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
5. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

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

Transportation:

1. The area will be accessed from North 5th Street.
2. North 5th Street is classified in the Transportation Component as a Minor Arterial.
3. The property will be required to have sidewalk connectivity along North 5th Street.

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

ELKO REDEVELOPMENT PLAN:

The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

1. The property sits outside any capture zone for the City of Elko wells.

The proposed conditional use and resultant land use is in conformance with wellhead protection plan.

SECTION 3-2-3 GENERAL PROVISIONS

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

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

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

1. Section 3-2-3(C) states that certain specified uses designated as “conditional uses permitted” may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance specified in Chapter 3 or imposed by the Planning Commission or City Council.
2. 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 development is required to have an approval as a conditional use to be in conformance with this section of 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 development conforms to Section 3-2-4 of the City Code.

SECTION 3-2-5 RESIDENTIAL ZONING DISTRICTS

1. Section 3-2-5(E)(3)-Conditional Uses Permitted- Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse, or row house developments.

2. Section 3-2-5(B)(4) The minimum setback standards shall be the following.

-) Front Yard: A minimum of 15 feet, 20 feet to a garage.
-) Interior Side Yard: A minimum setback of zero feet (0') to five and one-half feet (5½') shall be required. For attached units, an interior side yard setback can be zero (0') feet.
-) Exterior Side Yard: A minimum setback of fifteen feet (15') shall be required
-) Rear Yard: A minimum setback of twenty feet (20') shall be required

The proposed development is required to conform to this section of city code. 3-2-5(E).

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

-) It would appear that each townhome has two off street parking stalls provided in a garage and additional parking on a parking pad outside their townhome. There are also 10 guest parking stalls provided.

Conformance with 3-2-17 is required as the property develops.

SECTION 3-2-18 CONDITIONAL USE PERMITS

General Regulations:

1. Certain uses of land within designated zoning districts shall be permitted as principal uses only upon issuance of a conditional use permit. Subject to the requirements of this chapter, other applicable chapters, and where applicable to additional standards established by the Planning Commission, or the City Council, a conditional use permit for such uses may be issued.
2. Every conditional use permit issued, including a permit for a mobile home park, shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which the permit was issued.
3. Every conditional use permit issued shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
4. Conditional use permits shall be reviewed from time to time by City personnel. Conditional use permits may be formally reviewed by the Planning Commission. In the event that any or all of the conditions of the permit or this chapter are not adhered to, the conditional use permit will be subject to revocation.

3-8 FLOOD PLAIN MANAGEMENT

The property is not located within a Special Flood Hazard Area.

FINDINGS

1. The proposed development is in conformance with the Land Use component of the Master Plan
2. The proposed development is in conformance with the existing transportation infrastructure and the Transportation component of the Master Plan
3. The site is suitable for the proposed use.
4. The proposed development is in conformance with the City Wellhead Protection Program.
5. The proposed use is consistent with surrounding land uses.
6. The proposed use is in conformance with City Code 3-2-5 (E) Residential Zoning District and meets the required setbacks.
7. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-2-18, and 3-8 of the Elko City Code.

STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of CUP 4-20 with the following conditions:

1. The CUP 4-20 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.
2. Landscaping shall be installed and not obstruct the view of oncoming traffic at the intersection with North 5th Street.
3. CUP 4-20 to be recorded with the Elko County Recorder within 90 days after commencement of work.
4. The permit shall be personal to the permittee, Legion Construction and Development, LLC and applicable only to the specific use of townhomes and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
5. Guest parking to be for guest vehicles only, no RV parking allowed on site.
6. There shall not be any placement of any mail gang boxes or kiosks in association with this complex placed in the city's right of way and shall remain internal to the complex
7. The exterior of the building shall be compatible with surrounding areas and shall be similar to what is presented in the application.
8. The common areas are to be landscaped and maintained in an acceptable manner at all times.

9. Zone Change 5-20 to be approved and in effect prior to any construction activity.
10. Jarbidge Estates Subdivision TM 6-20 be approved.



CITY OF ELKO

Planning Department

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

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

August 25, 2020

Legion Construction & Development, LLC
Attn: John Smales
599 Shadybrook Drive
Spring Creek, NV 89815
Via Email: johns.builder@gmail.com

Re: Tentative Map No. 6-20, Rezone No. 5-20, & Conditional Use Permit No. 4-20

Dear Applicant/Agent:


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

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

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone at **+1 (224) 501-3412**. The **Access Code** for this meeting is **472-220-037**. If you do not wish to use GoToMeeting you may call in at **(775)777-0590**.

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

Sincerely,


Shelby Archuleta
Planning Technician

Enclosures

CC: Shanks Engineering, Attn: Mike Shanks, 982 Wolf Creek Drive, Spring Creek, NV 89815
Via Email: shankseng@gmail.com

7/11/20

Rezone 5-20 + Conditional Use Permit 4-20 Legion Construction + Development, LLC

YPNO	assess_nam	address1	address2	mcity	mzip
00161A015	BECK DEREK & CYDNEY K	110 ROLLING HILLS DR		ELKO, NV	89801-8400
00161A021	BENZIE MICHAEL J & BELINDA A	3554 DESERT PLAINS AVE		ELKO, NV	89801-8420
00161I050	BINGHAM ROBERT JASON	193 BROOKWOOD RD		ELKO, NV	89801-2300
00161A025	BRANNEN CHARLES E & BERTHA D	100 SANDSTONE CT		ELKO, NV	89801-8420
00161A028*	CHAPPELL JOSEPHINE S	109 SANDSTONE CT		ELKO, NV	89801-8420
001610114	COPPER TRAILS LLC	PO BOX 8070		RENO, NV	89507-8070
00161A023*	EDWARDS STEPHEN RALPH TR	108 SANDSTONE CT		ELKO, NV	89801-8420
001610092	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610036	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610094	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001610103	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-3400
00161C004*	ELLEFSSEN DAVID J & PATRICIA KR	PO BOX 2050		ELKO, NV	89803-2050
00161A024	FINLAYSON SCOTT C & GWEN D TR	104 SANDSTONE CT		ELKO, NV	89801-8420
001610113	GRACE BAPTIST CHURCH	3030 5TH ST		ELKO, NV	89801-4470
001610112	GRACE BAPTIST CHURCH	3030 5TH ST		ELKO, NV	89801-4470
00161A014*	GRIESEL GERALD A & MICHELLE M	114 ROLLING HILLS DR		ELKO, NV	89801-8400
00161C001	HARRISON THOMAS DALE	468 QUAIL CIR		ELKO, NV	89801-8460
00161A019	KATSAR ADAM & ALICIA A	107 ROLLING HILLS DR		ELKO, NV	89801-8400
00161A022	LARRABEE BREANNA & DANIEL	3550 DESERT PLAINS AVE		ELKO, NV	89801-8420
001610093	LEGION CONSTRUCTION AND DEVELOPMENT LLC		599 SHADYBROOK DR	SPRING CREEK, NV	89815-
00161A018	MOSER NORMAN GUY	66 E MARS WAY		SANDY, UT	84070-1040
00161C005	MURRAY SHARON A		457 QUAIL CIRCLE	ELKO, NV	89801-
00161A027	MUTAMA KUDA R & PETRONELA N	105 SANDSTONE CT		ELKO, NV	89801-8420
00161A016	NAVARRO VICKIE A	106 ROLLING HILLS DR		ELKO, NV	89801-8400
00161I049	PENDLEY AARON J	195 BROOKWOOD DR		ELKO, NV	89801-
00161A020	ROYCE RODERICK A & CATHERINE M	3560 DESERT PLAINS AVE		ELKO, NV	89801-8420
00161C002	TEMPEL TRENT & KAREN TR	PO BOX 281727		LAMOILLE, NV	89828-1720
			50 E NORTH TEMPLE		
001610038	THE CHURCH OF JESUS CHRIST	TAX ADM DIV 536-4388	RM 2225	SALT LAKE CITY, UT	84150-0020
00161A017	VALLEY KEVIN & RUTH	102 ROLLING HILLS DR		ELKO, NV	89801-8400
00161C003	VANCE DANIEL W	460 QUAIL CIR		ELKO, NV	89801-8460
00161A026	VANCE JERID S & AMANDA K	101 SANDSTONE CT		ELKO, NV	89801-8420

Post Marked 8/21/20

* Properties outside the original 300ft radius to achieve 30 parcels

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NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, September 1, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: <https://global.gotomeeting.com/join/472220037>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone. **+1 (224) 501-3412** Access Code: **472-220-037**. Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

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

- Rezone No. 5-20, filed by Legion Construction and Development, LLC, for a change in zoning from AG (General Agriculture) to R(Single-Family and Multiple-Family) Zoning District, approximately 2.415 acres of property, specifically APN 001-610-093, located generally on the northeast side of N. 5th Street, across from Rolling Hills Drive, more particularly described as:

A parcel of land to be rezoned from A-Agriculture to R-Residential, defined as parcel # 1 file 415475 being a portion of Section 9, Township 34 North, Range 55 East, M.D.B.&M. and now known as parcel 1 on amended map file 530051 including the frontage along said parcel 1 to the centerline of N. 5th Street in Elko County, Nevada and more particularly described below:

Parcel No. 1 – APN 001-610-093

Commencing at the north east section corner of said section 9, a brass cap;
Thence, on a bearing of north 89°46'09" west for a distance of 5,000.27 feet to a point on the North 5th Street right of way line;

Thence along said right of way on a circular curve to the right from a tangent bearing S 54°40'12" east, with a radius of 11,140 feet, through an internal angle of 4°43'28" for an arc length of 918.58 feet;

Thence along said right-of-way on a bearing south 49°56'44" east, for a distance of 583.04 feet;

Thence along said right of way on a circular curve to the right with a radius of 2,460 feet, through an internal angle of 9°59'44", for an arc length of 429.16 feet to corner No 1, the north west corner of Parcel No. 1 and the true point of beginning;

Thence on a bearing north 50°03'00" east, for a distance of 126.46 feet to corner No. 2;

Thence on a bearing north 08°33'25" west, for a distance of 85.61 feet to corner No. 3;

Thence on a bearing south 84°27'44" east, for a distance of 405.88 feet to corner No. 4;

Thence on a bearing south 42°52'32" west, for a distance of 472.41 feet to corner No. 5, a point on the North 5th Street right of way line;

Thence along said right of way bearing north 36°01'25" west, for a distance of 107.15 feet to corner No. 6;

Thence along said right of way on a circular curve to the left, with a radius of 2,460 feet through an internal angle of 3°55'36", for an arc length of 168.58 feet to corner No 1; the point of beginning.

Said Parcel No. 1 contains 2.163 acres, more or less.

North 5th Street Frontage

Commencing at the northwest property corner of said Parcel No. 1 identified above as corner No. 1, a point on the North 5th Street right of way line and the true point of beginning;

Thence along said right of way of North 5th Street on a circular curve to the right from a tangent bearing S 39°57'01" east, with a radius of 2,460 feet, through and internal angle of 3°55'36" for an arc length of 168.58 feet to corner No. 6;

Thence along said right of way on a bearing south 36°01'25" east, for a distance of 107.15 feet to Corner No. 5;

Thence on a bearing south 53°58'35" west for a distance of 40.00 feet to corner No. 7, a point on the center line of North 5th Street;

Thence along the centerline of North 5th Street on bearing north 36°01'25" west for a distance of 107.15 feet to corner No. 8;

Thence along said centerline of North 5th Street on a circular curve to the left with a radius of 2,420 feet, through an internal angle of 3°55'36", for an arc length of 165.84' to corner No. 9;

Thence on a bearing north 50°02'59" east, for a distance of 40.00 feet to corner No. 1; the point of beginning.

Said frontage of North 5th Street contains 0.252 acres more or less.

The total gross area to be rezoned contains 2.415 acres more or less.

The intent of the zone change is to allow for a townhome development.

- Conditional Use Permit No. 4-20, filed by Legion Construction and Development, LLC, which would allow for a townhome development within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located on the northeast side of N. 5th Street, across from Rolling Hills Drive. (APN 001-610-093)
- Tentative Map No. 6-20, 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 residential development and common area lot within the R (Single-Family Residential) Zoning District, and matters related thereto. The subject property is located on the northeast side of N. 5th Street, across from Rolling Hills Drive. (APN 001-610-093)

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

APPLICANT(s): Legion Construction and Development LLC

(Applicant must be the owner or lessee of the **proposed** structure or use.)

MAILING ADDRESS: 599 Shadybrook Dr, Spring Creek, NV 89815

PHONE NO. (Home): 775-778-1539

(Business): Same

NAME OF PROPERTY OWNER (If different): Same

(Property owner's consent in writing must be provided.)

MAILING ADDRESS: N/A

LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):

ASSESSOR'S PARCEL NO.: 001-610-093

Address: N 5th Street

Lot(s), Block(s), & Subdivision:

Or Parcel(s) & File No.: Parcel 1 File 415475 as amended by Parcel 1 file 530051

FILING REQUIREMENTS

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

Fee: A \$750.00 non-refundable fee.

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

Elevation Plan: Elevation profiles including architectural finishes of all proposed structures or alterations in sufficient detail to explain the nature of the request.

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 ½" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

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

1. Current zoning of the property: **A-Agriculture**
2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:
3-2-5 (E)(3)

3. Explain in detail the type and nature of the use proposed on the property:

The property will be subdivided into 18 town homes. The town homes will be two story and contain approximately 1471 square feet with 466 sft two car garages. The units will be combined to form 2, 3, and 4 unit clusters. They will have approximately 15 foot rear yards and 20 foot deep driveways that will accommodate two on site parking spaces independent from the garages. The total project contains 2.16 acres. The individual town home lot sizes range from 2080-2434 square feet.

4. Explain how the use relates with other properties and uses in the immediate area:

The parcels on the same side (east) of North 5th Street are zoned residential to the south and agricultural to the north. The parcel to the north is undeveloped and the parcels to the south have been developed as either a church or multi family apartments. The parcels on the opposite side (west) of North 5th Street are zoned residential and are developed as single family homes.

5. Describe any unique features or characteristics, e.g. lot configuration, storm drainage, soil conditions, erosion susceptibility, or general topography, which may affect the use of the property:

Existing storm drainage is conveyed through a natural ditch through the middle of the lot which is not conducive agricultural use in its current state.
General topography of the lot is steep which is also not conducive to agriculture use.

6. Describe the general suitability and adequacy of the property to accommodate the proposed use:

The property already has a street access off of North 5th Street which will accommodate the traffic.
The surrounding properties are developed as either single family, multi-family, or a church and all are zoned residential.

7. Describe in detail the proposed development in terms of grading, excavation, terracing, drainage, etc.:

The site will be graded to adequately allow for 18 town homes. Some of the town homes will be terraced with landscape walls between them. In general, the front of the town homes will be drained to a proposed street with a valley gutter. Additionally the back of the lot and buildings will drain to a ditch near the property lines.

8. Describe the amounts and type of traffic likely to be generated by the proposed use:

Anticipated traffic will be approximately 10 trips per unit per day for estimated increase of 160 trips per day. Traffic from the development will enter onto a residential collector which should have adequate capacity. Traffic direction will likely be south to the intersection of Spruce and 5th Street.

9. Describe the means and adequacy of off-street parking, loading and unloading provided on the property:

Each townhome will have a two car garage as well as a driveway wide enough for two cars. In addition the development will provide 0.5 additional parking spaces per townhome.

10. Describe the type, dimensions and characteristics of any sign(s) being proposed:

Only traffic signs are anticipated on the site which will include a stop sign.

11. Identify any outside storage of goods, materials or equipment on the property:

N/A

12. Identify any accessory buildings or structures associated with the proposed use on the property:

N/A

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

By My Signature below:

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

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

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

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

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

Applicant / Agent Legion Construction and Development LLC
(Please print or type)

Mailing Address 599 Shadybrook Dr.
Street Address or P.O. Box

Spring Creek, NV 89815
City, State, Zip Code

Phone Number: 775-778-1539

Email address: johns.builder@gmail.com

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 4-20 Date Filed: 8/11/20 Fee Paid: \$750 CV# 240

SHEET INDEX	
SHEET	DESCRIPTION
C.U.P. 1	PLOT PLAN
C.U.P. 2	ELEVATIONS



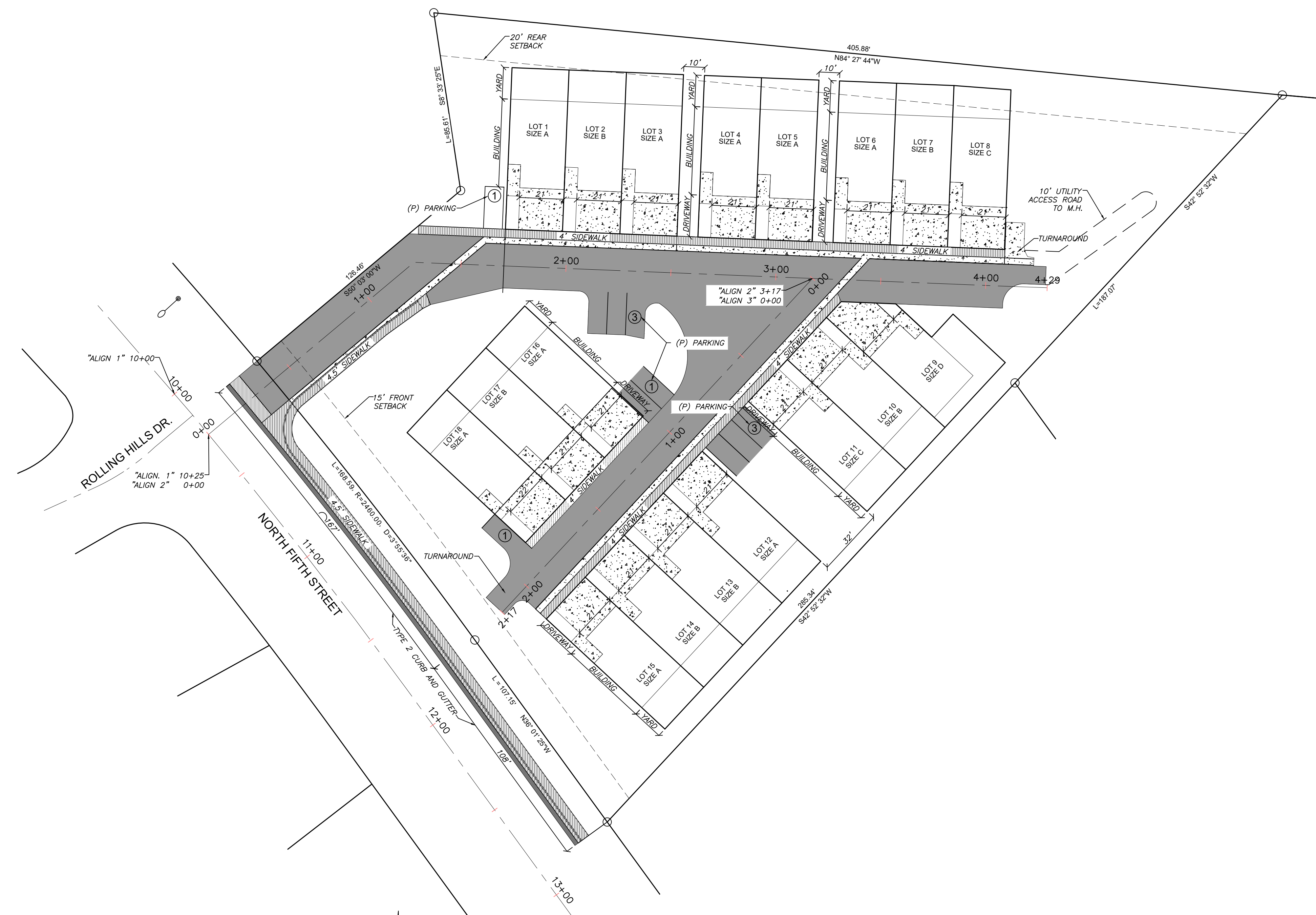
PREPARED BY:
Shanks Enterprises
982 WOLF CR. DR.
SPRING CREEK, NEVADA 89815
775-763-5100
shankseng@gmail.com

NO.	DESCRIPTION	BY	DATE
1	ISSUE FOR REVIEW	MES	8-11-20
REVISIONS			
	DESIGNED	MES	
	DRAWN	KAS	
	CHECKED	MES	
	APPROVED	MES	
	APPROVED	MES	

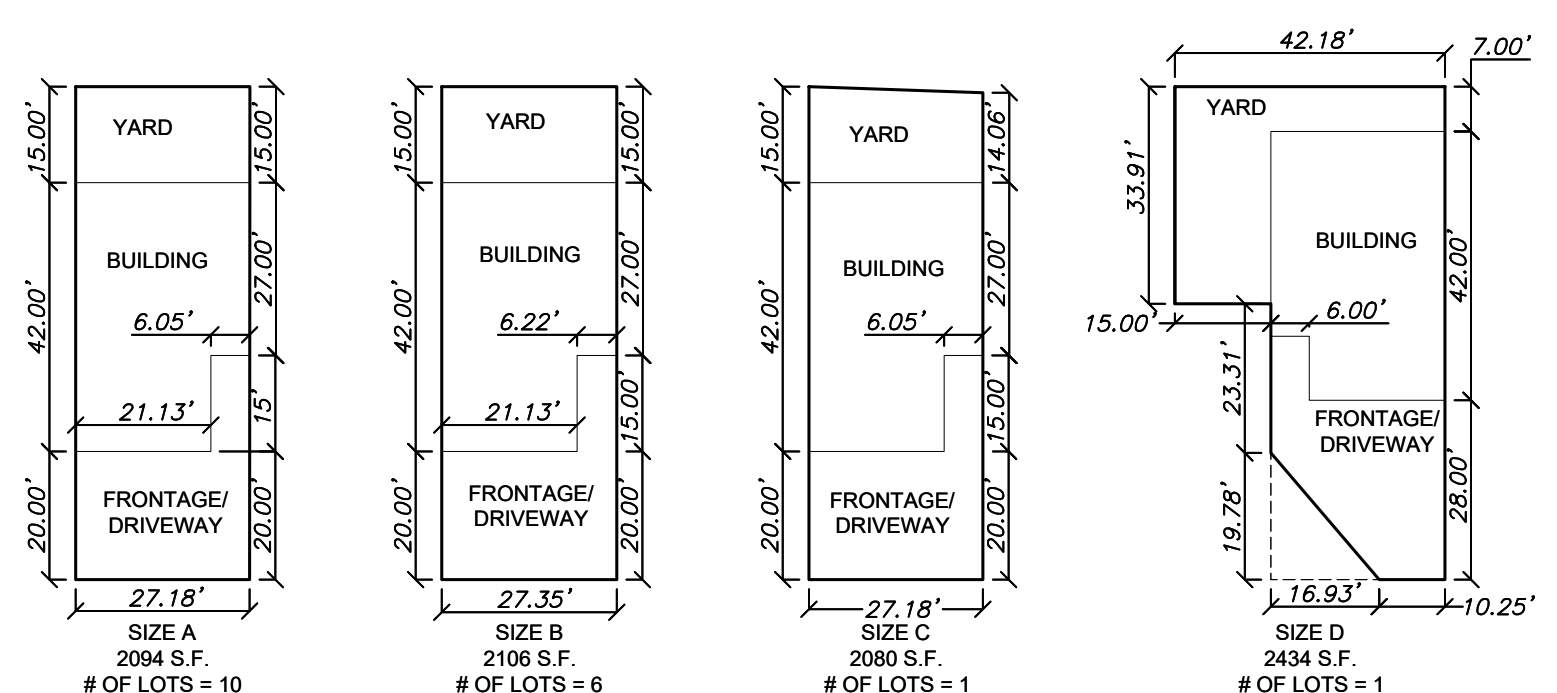
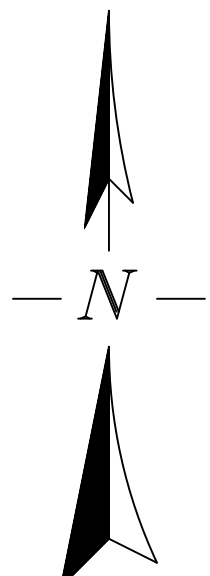
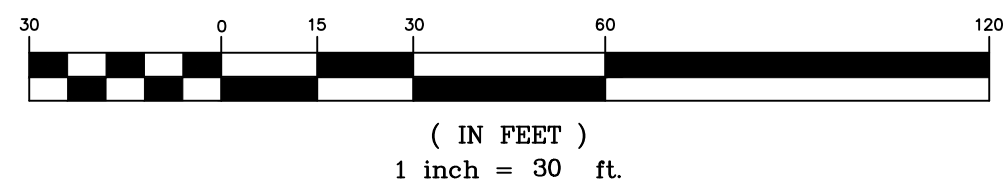
PREPARED FOR: LEGION CONSTRUCTION & DEVELOPMENT, LLC Spring Creek, NV 89815	DRAWING NO: 2002160 SCALE: AS SHOWN PROJECT NO.: 2002160 DRAWING NAME: NORTH TOWN HOME SBD
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TITLE:
**JARBIDGE ESTATES
TOWN HOME SUBDIVISION
C.U.P.-PLOT PLAN**

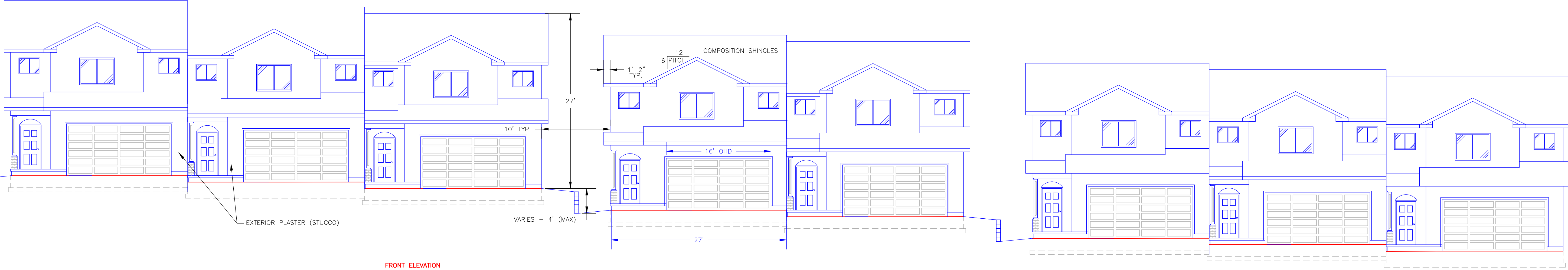
SHEET No.
C.U.P.1



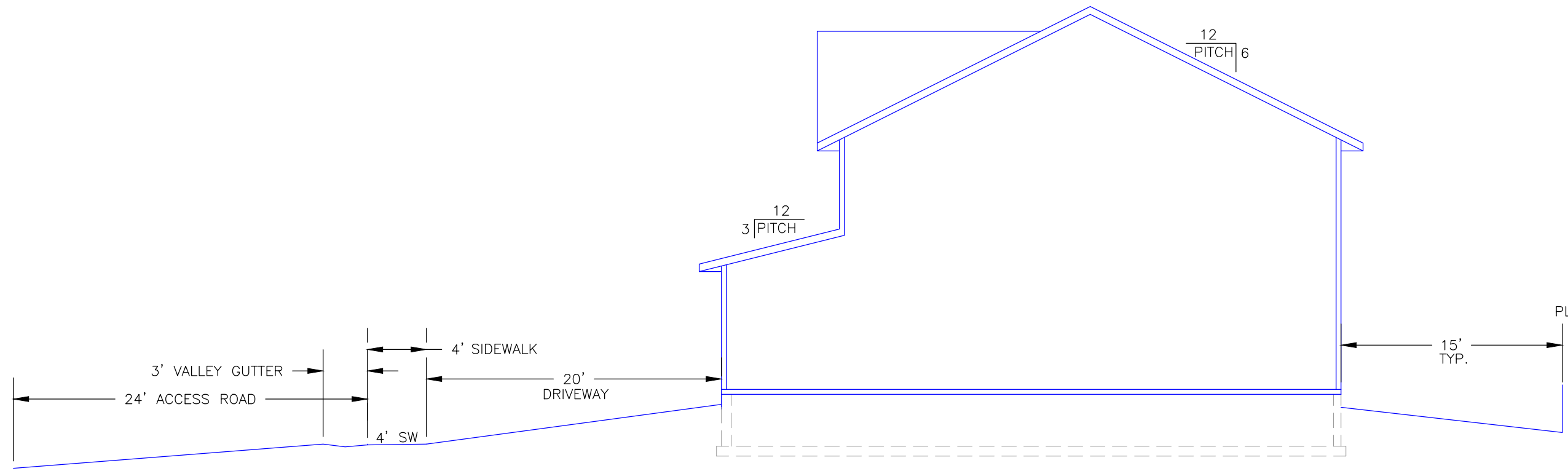
PLOT PLAN
SCALE: 1" = 30'
GRAPHIC SCALE



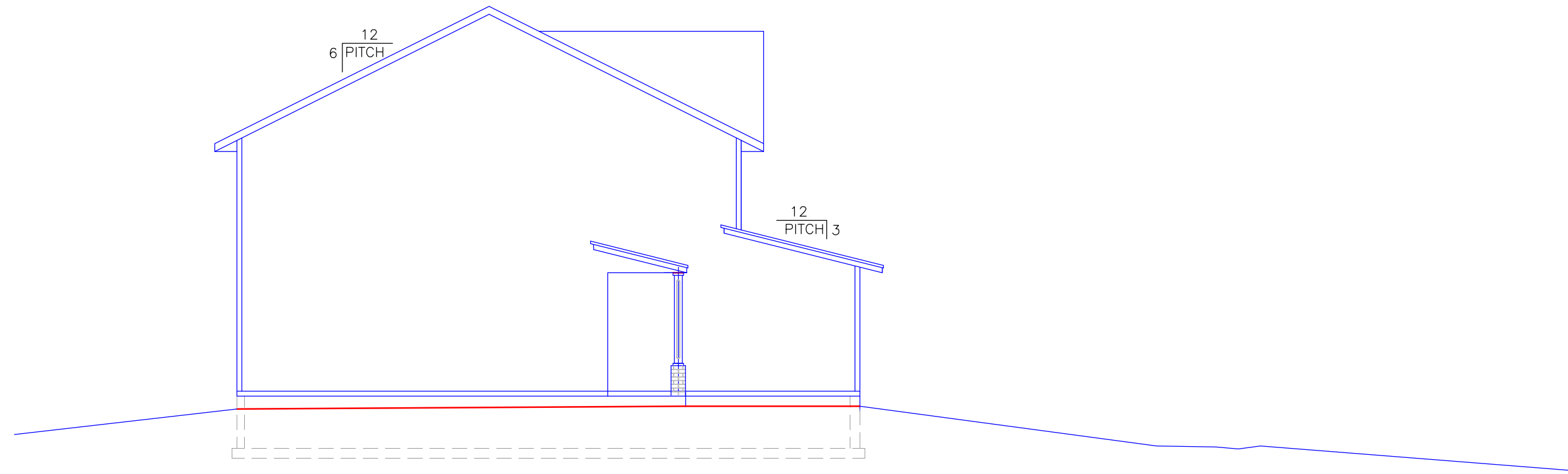
LOT DIMENSIONS
SCALE: 1" = 30'



FRONT ELEVATION



RIGHT ELEVATION



LEFT ELEVATION

TITLE		JOHN SMALES APN 001-610-093 NORTH 5TH TOWN HOME SUBDIVISION C.U.P. - ELEVATIONS		PREPARED FOR LEGION CONSTRUCTION & DEVELOPMENT LLC 1000 SHADY BROOK DR. SPRING CREEK, NV 89815		BY MES		DATE 8-11-20		PREPARED BY: Shanks Enterprises 982 WOLF CR. DR. SPRING CREEK, NEVADA 89815 775-753-5100 shankseng@gmail.com	
SHEET No. CUP-2		DRAWING NO. 2002160 SCALE: AS SHOWN PROJECT No.: 2002160 DRAWING NAME: NORTH TOWN HOME SBD		<div><div>A</div><div>REVISION</div></div>		No.		DESCRIPTION		DESIGNED	
						ISSUE FOR PHASE 1 DISCUSSION		DRAWN			
						REVISIONS		CHECKED			
								APPROVED			
								APPROVED			
		REFERENCE									

**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible recommendation to City Council for Rezone No. 1-20, filed by the City of Elko, for a change in zoning from C (General Commercial) to PQP (Public, Quasi-Public) Zoning District, approximately 26,061 square feet of property, to bring the zoning district into conformance with the use of the property, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 1, 2020**
3. Agenda Category: **PUBLIC HEARINGS,**
4. Time Required: **15 Minutes**
5. Background Information: **Planning Commission initiated this zone amendment at their July 7, 2020 meeting. This rezone would bring the zoning district into conformance with the use of the property.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 1-20 based on facts and findings as presented in Staff Report dated August 14, 2020.**
9. Findings: **See Staff Report dated August 14, 2020**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 9/1

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

Title: Rezone No. 1-20
Applicant(s): City of Elko
Site Location: 875 S. 5th Street - APN 001-472-014
Current Zoning: C Date Received: 7/8/20 Date Public Notice: 7/21/20
COMMENT: This is to rezone APN 001-472-014 from General Commercial to Public, Quasi-Public.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 8/21/20
Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 8/21/20
No comments/concerns.

LL

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE: August 14, 2020
PLANNING COMMISSION DATE: September 1, 2020
APPLICATION NUMBER: REZONE 1-20
APPLICANT: City of Elko
PROJECT DESCRIPTION:

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



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER:	APN 001-472-014
PARCEL SIZE:	13,125 Square feet
EXISTING ZONING:	C- General Commercial with application for zone amendment to PQP –Public, Quasi, Public
MASTER PLAN DESIGNATION:	Residential Medium Density with proposed change to Public with Master Plan Amendment 2-20 to be heard as a resolution by City Council on August 25, 2020
EXISTING LAND USE:	Developed as City of Elko Fire Station

NEIGHBORHOOD CHARACTERISTICS:

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

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Master Plan – Transportation Component
-) City of Elko Redevelopment Plan
-) City of Wellhead Protection Plan
-) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
-) City of Elko Zoning – Section 3-2-8 Public, Quasi-Public Zoning Districts
-) City of Elko Zoning – Section 3-2-21 Amendments
-) City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. The application for the variance was filed as required under City Code 3-2-8 (C).
2. The applicant has applied for a variance (VAR 4-20) and it will be heard concurrent with this application.
3. The property is not located in the Redevelopment Area.
4. The property is currently being served by City of Elko water and sewer and other non-city utilities.

MASTER PLAN

Land Use:

1. The Master Plan Land Use Atlas shows the area as Medium Density Residential at the time of application. The Planning Commission approved Resolution 2-20 for a Master Plan amendment land use designation as public. The City Council will consider the same Master Plan amendment at their meeting on August 25, 2020.
2. PQP-Public, Quasi-Public zoning district is listed as a corresponding zoning district for Public.
3. Master Plan states that Public land use designation is applied to community and public and quasi-public uses such as those associated with government, non-profit, and utilities. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies. The property is currently being used for government uses.

The approval of the zone amendment is in conformance with the Land Use Component of the Master Plan with the approval of the Master Plan Amendment 2-20.

Transportation:

1. The area will be accessed from South 5th Street and South 9th Street.
2. South 5th Street is classified in the Transportation Component as a major arterial.
3. South 9th Street is classified as a Commercial / Industrial Collector.
4. There currently is pedestrian access along both frontages.

The proposed zone district is compatible with the Transportation Component of the Master Plan and will be consistent with the future transportation infrastructure.

ELKO REDEVELOPMENT PLAN:

The property is not located within the redevelopment area and therefore the Redevelopment Plan was not considered for this application.

ELKO WELLHEAD PROTECTION PLAN:

1. The property sits outside the 30 year capture zone for the City of Elko wells.

The proposed zone district and proposed use for the property is in conformance with wellhead protection plan.

SECTION 3-2-4 Establishment of Zoning Districts:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
2. No building or other structure shall hereafter be erected or altered:
 - a. To exceed the heights required by the current City Airport Master Plan;
 - b. To accommodate or house a greater number of families than as permitted in this chapter;
 - c. To occupy a greater percentage of lot area; or
 - d. To have narrower or smaller rear yards, front yards, side yards or other open spaces,

than required in this title; or in any other manner contrary to the provisions of this chapter.

3. No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
4. 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 property meets the area requirements for the proposed zone district.

The proposed zone district is in conformance with Elko City Code Section 3-2-4(B) with the approval of variance 4-20.

SECTION 3-2-8 – PQP Public, Quasi-Public District

1. The property is developed and doesn't meet the street line setback for South 9th Street.

The proposed zone district is not in conformance with Elko City Code Section 3-2-8 and approval of Variance 4-20 will be required to be in conformance.

SECTION 3-2-21:

The application is in conformance with Elko City Code 3-2-21 with the filing of this application.

SECTION 3-8:

The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA).

FINDINGS:

1. The proposed zone district is in conformance with the Land Use Component of the Master Plan with the approval of Master Plan Amendment 2-20.
2. The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the future transportation infrastructure.
3. The property is not located within the Redevelopment Area.
4. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan.
5. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B) with the approval of variance 4-20.
6. The proposed zone district is not in conformance with Elko City Code Section 3-2-8 and requires approval of Variance 4-20 to be in conformance.
7. The application is in conformance with Elko City Code 3-2-21.
8. The proposed zone district is not located in a designated Special Flood Hazard Area

(SFHA).

9. Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

STAFF RECOMMENDATION:

Staff recommends this item be CONDITIONALLY APPROVED with the following conditions:

1. Master Plan amendment 2-20 is approved.
2. Variance 4-20 is approved for street line setback from South 9th Street.

Rezone 1-20 City of Elko - S 5th Fire Station

YPNO	assess_nam	address1	address2	mcity	mzip
001472008	ALLRED JESSE L	746 S 9TH ST		ELKO, NV	89801-4250
001485001	BENVENUTO FRANK	934 CLARKSON DR		ELKO, NV	89801-4300
001485002	BENVENUTO KRISTINE ANN	C/O JUDITH A SCHULTZ LIFE EST	934 CLARKSON DR	ELKO, NV	89801-4300
001492001	BOEHLER MAHLON	920 SOUTHSIDE DR		ELKO, NV	89801-4340
001491018*	BORDEN MICHAEL G & M MELINDA	977 SOUTHSIDE DR		ELKO, NV	89801-4340
001485004*	CARLOS VERENISE	962 CLARKSON DR		ELKO, NV	89801-4300
001492002	CERVANTES ANTONIO	934 SOUTHSIDE DR		ELKO, NV	89801-4340
001492003	CERVANTES RAMIRO & HILARIA	948 SOUTHSIDE DR		ELKO, NV	89801-4340
001491020	DELEON CONCEPCION	947 SOUTHSIDE DR		ELKO, NV	89801-4340
001472001	FLORES ANTONIO	250 S 1ST ST		ELKO, NV	89801-7600
001471008*	GOMEZ JUAN JOSE MARQUEZ	1175 SOUTHSIDE DR		ELKO, NV	89801-
001482012*	GONZALES ELVERA S	919 CLARKSON DR		ELKO, NV	89801-4300
001472016	GSR RENTALS NINTH ST SERIES ETA	1770 MOUNTAIN CITY HWY		ELKO, NV	89801-2410
001482010*	HERNANDEZ-HERNANDEZ DOMINGO ET	947 CLARKSON DR		ELKO, NV	89801-4300
001492004	HORTIN KIMBERLY	962 SOUTHSIDE DR		ELKO, NV	89801-4340
001473001	KOINONIA CONSTRUCTION INC	207 BROOKWOOD DR		ELKO, NV	89801-2300
001740010	KOINONIA CONSTRUCTION INC	207 BROOKWOOD DR		ELKO, NV	89801-2300
001472003	KUFELD ROB & TAWNI	4635 WESTMORELAND RD		WINNEMUCCA, NV	89445-8320
001482011*	LUNA JOSE M	PO BOX 2843		WEST WENDOVER, NV	89883-
001472015	M AND M TILE & GRANITE INC	1118 2ND ST		ELKO, NV	89801-
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001491022	PAPACH GERRY, L	735 S 9TH ST		ELKO, NV	89801-4260
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Variance 4-20 - City of Elko

001472002 URIBE ALFREDO
001463005* URIBE-QUINTERO SALVADOR TR ETA
001491019 VITALITY CENTER
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270 S 2ND ST
570 JUNEAU ST
3740 IDAHO ST
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ELKO, NV	89801-4090
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ELKO, NV	89801-4610
QUEEN CREEK, AZ	85142-3240

(35)

* = Property Owners outside
the original 300 ft radius
to Achieve 30 parcels

Postmarked 8/21/20

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, September 1, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: <https://global.gotomeeting.com/join/472220037>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone. **+1 (224) 501-3412** Access Code: **472-220-037**. Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

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

- Rezone No. 1-20, filed by the City of Elko, for a change in zoning from C (General Commercial) to PQP (Public, Quasi-Public) Zoning District, approximately 26,061 square feet of property, specifically APN 001-472-014, located generally on the west corner of the intersection of S. 5th Street and S. 9th Street, more particularly described as:
An area of land within the southwest quarter of Section 14, Township 34 North, Range 55 East, which is comprised of all of Lots 32 through 36 of Block A of the Second Ouderkirk Addition, File No. 51117, together with a portion of a public alley, a portion of South 9th Street, and a portion of South 5th Street.
Beginning at a point that bears North 52°31'00" West, a distance of 10.00 feet from the westerly most corner of Lot 32 of said Block A of the Second Ouderkirk Addition.;
Thence, along the centerline of a public alley, North 37°29'00" East, a distance of 165.00 feet, more or less, to the centerline of South 9th Street;
Thence, along said centerline of South 9th Street, South 52°31'00" East, a distance of 167.93 feet, more or less, to the centerline of South 5th Street;
Thence, along the centerline of South 5th Street, South 44°23'00" West, a distance of 147.19 feet;
Thence, continuing along the centerline of South 5th Street, on a tangent circular curve to the right, with a radius of 1,432.69 feet, an arc length of 19.03 feet, and a central angle of 0°45'39";
Thence, North 52°31'00" West, along the southwesterly line of said Lot 32 of said Block A of the Second Ouderkirk Addition, a distance of 147.84 feet, more or less, to the point of beginning.
This area of land contains a total of ±26,061 square feet.
The Basis of bearings for this description is the Map of Second Ouderkirk Addition to the City of Elko, Nevada, recorded in the office of the Elko County Recorder on December 8, 1931, as file no 51117.
The intent of the zone change is to bring the zoning district into conformance with the use.

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR ZONE CHANGE

APPLICANT(s): City of Elko

MAILING ADDRESS: 1751 College Ave

PHONE NO (Home) _____ (Business) (775) 777-7160

NAME OF PROPERTY OWNER (If different): _____

(Property owner's consent in writing must be provided.)

MAILING ADDRESS: _____

LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):

ASSESSOR'S PARCEL NO.: 001-472-014 Address 875 S. 5th Street

Lot(s), Block(s), & Subdivision Lots 32-36, Block A, Second Outer Kirk Addition

Or Parcel(s) & File No. File # 51117

FILING REQUIREMENTS:

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

Fee: A \$500.00 non-refundable filing fee.

Area Map: A map of the area proposed for this zone change must be provided.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

Legal Description: A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "x" to "x"; (LI to R, for example).

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Rezone Application.

RECEIVED

1. Identify the existing zoning classification of the property: General Commercial
2. Identify the zoning Classification being proposed/requested: Public, Quasi-Public
3. Explain in detail the type and nature of the use anticipated on the property: Property
Currently has a City of Elko Fire Station that will remain.
4. Explain how the proposed zoning classification relates with other zoning classifications in the area: Proposed zoning Classification would match with the use of the
property.
5. Identify any unique physical features or characteristics associated with the property: _____

(Use additional pages if necessary to address questions 3 through 5)

By My Signature below:

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

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

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

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

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

Applicant / Agent City of Elko
(Please print or type)

Mailing Address 1751 College Avenue
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: (775) 777-7160

Email address: _____

SIGNATURE: Cathy Lawrence

FOR OFFICE USE ONLY

File No.: 1-20 Date Filed: 7/8/20 Fee Paid: N/A



CITY OF ELKO

Planning Department

Website: www.elkocity.com

Email: planning@elkocitynv.gov

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


CITY OF ELKO PLANNING COMMISSION ACTION REPORT Regular Meeting of July 7, 2020

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on July 7, 2020 per City Code Sections 3-2-21:

Initiate an amendment to the City of Elko district boundaries, specifically APN 001-472-014, removing the C-General Commercial Zoning District and replacing with the PQP- Public, Quasi-Public District, and matters related thereto.

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

WHEREAS, the Planning Commission, upon review and consideration of the application and supporting data, public input and testimony, initiate an amendment to the City of Elko district boundaries, and direct staff to bring the item back as a public hearing.


Cathy Laughlin, City Planner

Attest:


Shelby Archuleta, Planning Technician

CC: Michele Rambo, Development Manager (via email)
Kelly Wooldridge, City Clerk

LEGAL DESCRIPTION TO ACCOMPANY A ZONE CHANGE

An area of land within the southwest quarter of Section 14, Township 34 North, Range 55 East, which is comprised of all of Lots 32 through 36 of Block A of the Second Ouderkirk Addition, file no. 51117, together with a portion of a public alley, a portion of South 9th Street, and a portion of South 5th street.

Beginning at a point that bears North 52°31'00" West, a distance of 10.00 feet from the westerly most corner of Lot 32 of said Block A of the Second Ouderkirk Addition;

Thence, along the centerline of a public alley, North 37°29'00" East, a distance of 165.00 feet, more or less, to the centerline of South 9th Street;

Thence, along said centerline of South 9th Street, South 52°31'00" East, a distance of 167.93 feet, more or less, to the centerline of South 5th Street;

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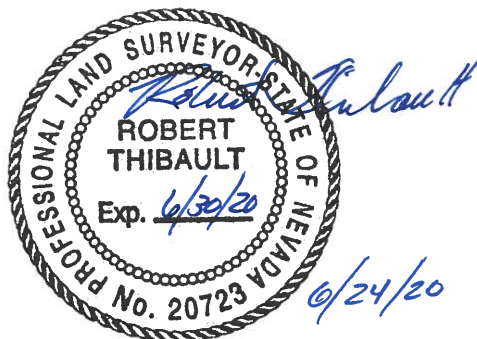
This area of land contains a total of ±26,061 square feet.

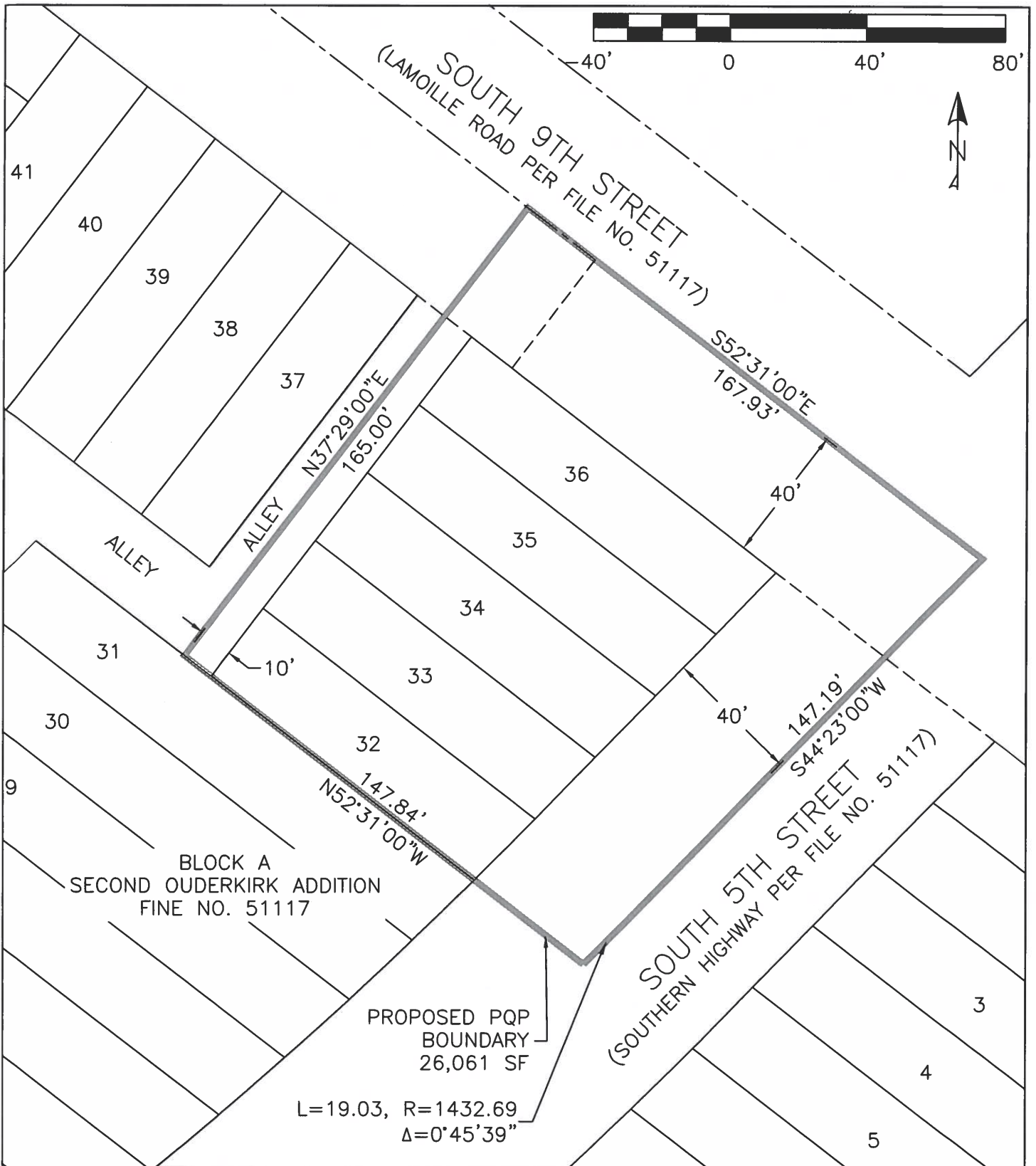
The Basis of bearings for this description is the Map of Second Ouderkirk Addition to the City of Elko, Nevada, recorded in the office of the Elko County Recorder on December 8, 1931, as file no. 51117.

Description prepared by:

Robert Thibault, PE, PLS

Civil Engineer for the City of Elko





CITY OF ELKO
1751 COLLEGE AVE
ELKO, NEVADA 89801
775-777-7210

DISPLAY MAP ZONE CHANGE TO PUBLIC, QUASI-PUBLIC

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on Variance No. 4-20, filed by City of Elko for a reduction of the required setback from any street line from 27' to 8.56', on the South 9th Street Line, within a PQP (Public, Quasi-public) Zoning District, and matters related thereto, FOR POSSIBLE ACTION**
2. Meeting Date: **September 1, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The property is currently a City of Elko Fire Station and the City of Elko has applied for a zone amendment to modify the zoning to be in conformance with the current use. The property, as developed, does not meet the street line setback requirement for South 9th Street.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Variance 4-20 based on the facts, findings and conditions presented in Staff Report dated August 13, 2020.**
9. Findings: **See Staff report dated August 13, 2020.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 9/1

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

Title: Variance No. 4-20

Applicant(s): City of Elko

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

Current Zoning: C Date Received: 8/11/20 Date Public Notice: 8/18/20

COMMENT: This is for a reduction of the required Setback from any
Street line from 27' to 8.56', on the South 9th Street Line.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 8/21/20

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 8/21/20

No comments/Concerns.

W

Initial



City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7219

CITY OF ELKO STAFF REPORT

REPORT DATE:	August 13, 2020
PLANNING COMMISSION DATE:	September 1, 2020
APPLICATION NUMBER:	Variance 4-20
APPLICANT:	City of Elko
PROJECT DESCRIPTION:	Existing Fire Station
RELATED APPLICATIONS:	REZ 1-20

A variance request from provisions under Section 3-2-8, requiring minimum setbacks from any street line in a Public, Quasi-Public District. The minimum setback requirements from any street line within the PQP District are 1 ½ times the building height for the principal building.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: APN 001-472-014

PARCEL SIZE: 13,125 Square feet

EXISTING ZONING: C- General Commercial with application for zone amendment to PQP –Public, Quasi, Public

MASTER PLAN DESIGNATION: Residential Medium Density with proposed change to Public with Master Plan Amendment 2-20 to be heard as a resolution by City Council on August 25, 2020

EXISTING LAND USE: Developed as City of Elko Fire Station

BACKGROUND:

1. The application for the variance was filed as required under City Code 3-2-8 (C).
2. The applicant has applied for a zone amendment (REZ 1-20) and it will be heard concurrent with this application.
3. The property is not located in the Redevelopment Area.
4. The property is currently being served by City of Elko water and sewer and other non-city utilities.

NEIGHBORHOOD CHARACTERISTICS:

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

APPLICABLE MASTER PLAN SECTIONS AND CITY CODE SECTIONS:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Redevelopment Plan
-) City of Elko Zoning – Section 3-2-8 Public, Quasi-Public Districts
-) City of Elko Zoning – Section 3-2-22 Variances

MASTER PLAN - Land Use:

1. The Master Plan Land Use Atlas shows the area as Medium Density Residential at the time of application. The Planning Commission approved Resolution 2-20 for a Master Plan amendment land use designation as public. The City Council will consider the same Master Plan amendment at their meeting on August 25, 2020.
2. PQP-Public, Quasi-Public zoning district is listed as a corresponding zoning district for Public.
3. Master Plan states that Public land use designation is applied to community and public and quasi-public uses such as those associated with government, non-profit, and utilities.

Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies. The property is currently being used for government uses.

The approval of the variance from the setback requirements stipulated for the PQP zoning district is in conformance with the Land Use Component of the Master Plan with the approval of the Master Plan Amendment 2-20.

ELKO REDEVELOPMENT PLAN:

The property is not located within the redevelopment area and therefore the Redevelopment Plan was not considered for this application.

SECTION 3-2-8 PUBLIC, QUASI-PUBLIC DISTRICT:

1. The Minimum Setback From Any Street Line: Not less than one and one-half ($1\frac{1}{2}$) times the height of the principal building. Elko County School District is submitting a parcel map for the consolidation of the two parcels, the setbacks would not have any interior side yard or rear setback requirements as the new consolidated parcel will have street frontage along all four sides.
 - a. The following setbacks are required, all horizontal measurements for setback requirements are for the principal building on this parcel:
 - i. Street line setback requirements
 1. Max. Building height is 18' high.
 2. 27' distance required to any street line
 3. 39.30' to South 5th Street property line
 4. 8.56' setback provided to 9th Street property line and therefore the request for a variance would be for the reduction of the street line setback requirement to 9th Street.
2. Maximum Lot Coverage: The total ground floor area of the building shall not exceed thirty five percent (35%) of the net site area
 - a. The building is approximately 3,874 sq. ft. with lot area of 13,153 sq. ft. which would be 29.45%.

Approval of Variance 4-20 is required to be in conformance with Section 3-2-8 of City Code.

SECTION 3-2-22 VARIANCES:

B. Procedure: Any person requesting a variance by the planning commission shall include:

Application Requirements

1. There are special circumstances or features, i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions applying to the property under consideration.
2. The special circumstance or extraordinary situation or condition results in exceptional practical difficulties or exceptional undue hardships, and where the strict application of the provision or requirement constitutes an abridgment of property right and deprives the property owner of reasonable use of property.
3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.

4. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.
 5. The granting of the variance will not substantially impair the intent or purpose of the zoning ordinance or effect a change of land use or zoning classification.
 6. The granting of the variance will not substantially impair affected natural resources.
- J The property has been existing as a City of Elko Fire Station for numerous years and therefore the zoning did not reflect the current use. The zone amendment and master plan amendment address the zoning to match the existing land use. If the property was to be approved for a PQP zoning district, the property has to meet the development standards for that zoning district or be approved a variance from the development standards.

FINDINGS

1. The proposed variance approval is in conformance with the Land Use Component of the Master Plan.
2. The property is not located within the redevelopment area.
3. The property as developed, does not exceed the thirty five percent of the net site area lot coverage.
4. Approval of Variance 4-20 will bring the existing property into conformance with Section 3-2-8 of City Code.
5. The special circumstance is directly related to the property as it is developed as a City of Elko Fire Station.
6. The special circumstance of a fully developed property not meeting the street line setback for 9th Street with the proposed zone amendment to PQP. This circumstance does not generally apply to other properties in the district.
7. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.
7. The granting of the variance is directly related to the zoning of the property and will not impair the intent or purpose of the zoning and will not change the use of the land or zoning classification.
8. The granting of the variance will not impair natural resources.

STAFF RECOMMENDATION:

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

1. Approval of Rezone 1-20.

4/1 PC

Rezone 1-20 City of Elko - S 5th Fire Station

YPNO	assess_nam	address1	address2	mcity	mzip
001472008	ALLRED JESSE L	746 S 9TH ST		ELKO, NV	89801-4250
001485001	BENVENUTO FRANK	934 CLARKSON DR		ELKO, NV	89801-4300
001485002	BENVENUTO KRISTINE ANN	C/O JUDITH A SCHULTZ LIFE EST	934 CLARKSON DR	ELKO, NV	89801-4300
001492001	BOEHLER MAHLON	920 SOUTHSIDE DR		ELKO, NV	89801-4340
001491018*	BORDEN MICHAEL G & M MELINDA	977 SOUTHSIDE DR		ELKO, NV	89801-4340
001485004*	CARLOS VERENISE	962 CLARKSON DR		ELKO, NV	89801-4300
001492002	CERVANTES ANTONIO	934 SOUTHSIDE DR		ELKO, NV	89801-4340
001492003	CERVANTES RAMIRO & HILARIA	948 SOUTHSIDE DR		ELKO, NV	89801-4340
001491020	DELEON CONCEPCION	947 SOUTHSIDE DR		ELKO, NV	89801-4340
001472001	FLORES ANTONIO	250 S 1ST ST		ELKO, NV	89801-7600
001471008*	GOMEZ JUAN JOSE MARQUEZ	1175 SOUTHSIDE DR		ELKO, NV	89801-
001482012*	GONZALES ELVERA S	919 CLARKSON DR		ELKO, NV	89801-4300
001472016	GSR RENTALS NINTH ST SERIES ETA	1770 MOUNTAIN CITY HWY		ELKO, NV	89801-2410
001482010*	HERNANDEZ-HERNANDEZ DOMINGO ET	947 CLARKSON DR		ELKO, NV	89801-4300
001492004	HORTIN KIMBERLY	962 SOUTHSIDE DR		ELKO, NV	89801-4340
001473001	KOINONIA CONSTRUCTION INC	207 BROOKWOOD DR		ELKO, NV	89801-2300
001740010	KOINONIA CONSTRUCTION INC	207 BROOKWOOD DR		ELKO, NV	89801-2300
001472003	KUFELD ROB & TAWNI	4635 WESTMORELAND RD		WINNEMUCCA, NV	89445-8320
001482011*	LUNA JOSE M	PO BOX 2843		WEST WENDOVER, NV	89883-
001472015	M AND M TILE & GRANITE INC	1118 2ND ST		ELKO, NV	89801-
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Variance 4-20 - City of Elko

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001491019 VITALITY CENTER
001740011 WARNER MICHAEL R

270 S 2ND ST
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3740 IDAHO ST
24435 S 195TH ST

ELKO, NV	89801-4090
ELKO, NV	89801-4130
ELKO, NV	89801-4610
QUEEN CREEK, AZ	85142-3240

(35)

* = Property Owners outside
the original 300 ft radius
to Achieve 30 parcels

Postmarked 8/21/20

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The Basis of bearings for this description is the Map of Second Ouderkirk Addition to the City of Elko, Nevada, recorded in the office of the Elko County Recorder on December 8, 1931, as file no 51117.
The intent of the zone change is to bring the zoning district into conformance with the use.

- Variance No. 4-20, filed by the City of Elko, for a reduction of the required setback from any street line from 27' to 8.56' for the S. 9th Street setback from street line within the PQP (Public, Quasi-Public) Zoning District, and matters related thereto. The subject property is located generally on the west corner of the intersection of S. 5th Street and S. 9th Street. (875 S. 5th Street - APN 001-427-014)

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR VARIANCE

APPLICANT(s): City of Elko
MAILING ADDRESS: 1751 College Ave
PHONE NO (Home) _____ (Business) 775-777-7160
NAME OF PROPERTY OWNER (If different): _____
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: _____
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-472-04 Address 875 S. 5th Street
Lot(s), Block(s), & Subdivision _____
Or Parcel(s) & File No. _____

FILING REQUIREMENTS:

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

Fee: A \$500.00 non-refundable fee must be paid. If in conjunction with a Rezone Application a \$250.00 non-refundable fee must be paid.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, parking and loading areas, driveways and other pertinent information must be provided.

Elevation Plan: Elevation profile of all proposed buildings or alterations in sufficient detail to explain the nature of the request must be provided.

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

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

The APPLICANT requests the following variance from the following section of the zoning ordinance:

3-28(C)(1) - Set back from Street line shall be 1 1/2 times the building height, which would be 27'. Only 8.56' provided on the S. 9th Street side.

1. The existing zoning classification of the property C-General Commercial - Proposed Change to POP - Public, Quasi-Public
2. The applicant shall present **adequate** evidence demonstrating the following criteria which are necessary for the Planning Commission to grant a variance:

- a) Identify any special circumstances, features or conditions applying to the property under consideration. i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions

Existing building on property

- b) Identify how such circumstances, features or conditions result in practical difficulty or undue hardship and deprive the property owner of reasonable use of property.

Existing building in which zoning of property should be POP.

- c) Indicate how the granting of the variance is necessary for the applicant or owner to make reasonable use of the property.

With the change in zoning proposed to POP, the variance is required to be in conformance with that zoning district

- d) Identify how such circumstances, features or conditions do not apply generally to other properties in the same Land Use District.

n/a

- e) Indicate how the granting of the variance will not result in material damage or prejudice to other properties in the vicinity nor be detrimental to the public health, safety and general welfare.

- f) Indicate how the variance will not be in conflict with the purpose or intent of the Code.

The property meets all requirements for the
proposed zoning district with the exception of
the one street setback

- g) Indicate how the granting of the variance will not result in a change of land use or zoning classification.

Zone change application to be processed in conjunction
with Variance application to properly match the
use of the building with the zoning Classification.

- h) Indicate how granting of the variance will not substantially impair affected natural resources.

No changes to the existing building or property
is proposed.

3. Describe your ability (i.e. sufficient funds or a loan pre-approval letter on hand) and intent to construct within one year as all variance approvals **must** commence construction within one year and complete construction within 18 months per City Code Section 3-2-22 F.1.: Building

is existing

(Use additional pages if necessary to address questions 2a through h)

This area intentionally left blank

By My Signature below:

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

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

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

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

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

Applicant / Agent City of Elko /
(Please print or type)

Mailing Address 1751 College Avenue
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

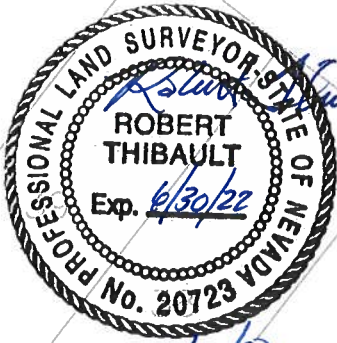
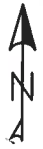
Phone Number: 775-777-7160

Email address: _____

SIGNATURE: Cathy Laughlin, City Planner

FOR OFFICE USE ONLY

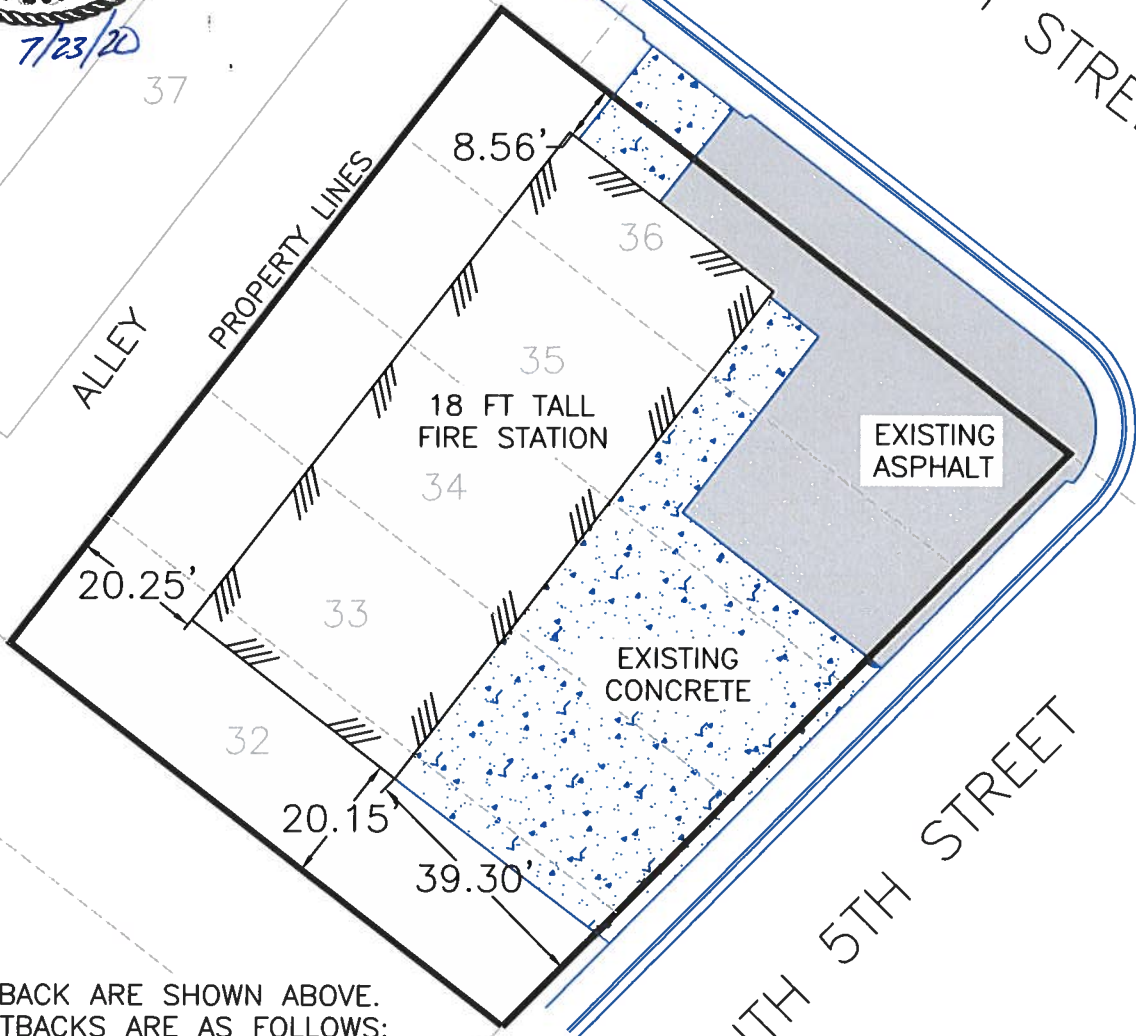
File No.: 4-20 **Date Filed:** 8/11/20 **Fee Paid:** N/A



7/23/20

SOUTH 9TH STREET

SOUTH 5TH STREET



EXISTING SETBACK ARE SHOWN ABOVE.
REQUIRED SETBACKS ARE AS FOLLOWS;

- 1.5 TIMES THE BUILDING HEIGHT
FROM ANY STREET LINE = 27 FT
- EQUAL TO THE BUILDING HEIGHT
FROM INTERIOR SIDE OR REAR
LINES = 18 FT



CITY OF ELKO
1751 COLLEGE AVE
ELKO, NEVADA 89801
775-777-7210

DISPLAY MAP
TO ACCOMPANY
A VARIANCE APPLICATION

**Elko City Planning Commission
Agenda Action Sheet**

1. **Review, consideration and possible recommendation to City Council for Rezone No. 4-20, filed by the City of Elko, for a change in zoning from PQP (Public, Quasi-Public) to LI (Light Industrial) Zoning District, approximately 2,800 square feet of property, to bring the zoning district into conformance with the proposed use of the property, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 1, 2020**
3. Agenda Category: **PUBLIC HEARINGS,**
4. Time Required: **15 Minutes**
5. Background Information: **City Council initiated this zone amendment at their August 25, 2020 meeting. This rezone would bring the zoning district into conformance with the proposed use of the property.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 4-20 based on facts and findings as presented in Staff Report dated August 18, 2020.**
9. Findings: **See Staff Report dated August 18, 2020**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 9/1

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

Title: Rezone No. 4-20
Applicant(s): City of Elko
Site Location: Portion of APN 001-01R-001 - Terminus of Front St. Adj. to S. 5th St.
Current Zoning: PQP Date Received: 8/13/20 Date Public Notice: 8/18/20
COMMENT: This is to rezone a portion of APN 001-01R-001 from Public, Quasi-Public to Light Industrial

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 8/21/20
Recommend approval as presented by
Staff

SAW

Initial

City Manager: Date: 8/21/20
No comments/concerns.

CC

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE: August 18, 2020
PLANNING COMMISSION DATE: September 1, 2020
APPLICATION NUMBER: REZONE 4-20
APPLICANT: City of Elko
PROJECT DESCRIPTION:

A rezone from (PQP) Public, Quasi-Public to (LI) Light Industrial. Initiated by the City Council.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-01R-001

PARCEL SIZE: 2,800 sq. ft. proposed to be amended

EXISTING ZONING: PQP- Public, Quasi-Public

MASTER PLAN DESIGNATION: Public

EXISTING LAND USE: Undeveloped

NEIGHBORHOOD CHARACTERISTICS:

-) The property is surrounded by:
 -) North: PQP / Undeveloped
 -) West: PQP / Undeveloped
 -) South: General Industrial (GI) / Developed
 -) East: PQP / Undeveloped

PROPERTY CHARACTERISTICS:

-) The area is currently undeveloped.
-) The area is part of a very large parcel adjacent to the Humboldt River and HARP trail.
-) The area is accessed from Front Street.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Master Plan – Transportation Component
-) City of Elko Redevelopment Plan
-) City of Wellhead Protection Plan
-) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
-) City of Elko Zoning – Section 3-2-8 Public, Quasi-Public Zoning Districts
-) City of Elko Zoning – Section 3-2-21 Amendments
-) City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. Safelink, now referred to as Anthem Broadband of Nevada, LLC, requested the City of Elko sell the 2,800 sq. ft. portion of the larger parcel to them for development of their services throughout the community.
2. City Council initiated this zone amendment at their August 25, 2020 meeting.
3. The City of Elko will be conducting a public hearing on the fair market value of the property at their meeting August 25, 2020 and will determine if it is in the best interest of the City of Elko to sell the parcel.
4. City of Elko will be required to record a parcel map to create the parcel prior to the sale of the land. The zone amendment legal description and display site plan are based

on the information shown on the parcel map.

MASTER PLAN:

Land use:

1. Land Use is shown as Public.
2. LI is not a supporting zoning district for public.
3. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The proposed zone district is not in conformance with the Land Use Component of the Master Plan. A future Master Plan Amendment will be required to bring the property into conformance.

Transportation:

1. The area will be accessed Front Street.

The proposed zone district is compatible with the Transportation Component of the Master Plan.

ELKO REDEVELOPMENT PLAN:

The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

1. The property sits outside any capture zone for the City of Elko wells.

The proposed zone district is in conformance with wellhead protection plan.

SECTION 3-2-4 Establishment of Zoning Districts:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
2. No building or other structure shall hereafter be erected or altered:
 - a. To exceed the heights required by the current City Airport Master Plan;
 - b. To accommodate or house a greater number of families than as permitted in this chapter;
 - c. To occupy a greater percentage of lot area; or
 - d. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title; or in any other manner contrary to the provisions of this chapter.
3. No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
4. 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 property meets the area requirements for the proposed zone district.

The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).

SECTION 3-2-12 – LI, GI Industrial Districts

As the property develops, it will be required to be in conformance with Elko City Code Section 3-2-12.

SECTION 3-2-21:

The application is in conformance with Elko City Code 3-2-21 with the filing of this application.

SECTION 3-8:

A small portion of the proposed zone district is located in a designated Special Flood Hazard Area (SFHA). Compliance with ECC 3-8 will be required as the property develops.

FINDINGS:

1. The proposed zone district is not in conformance with the Land Use Component of the Master Plan.
2. The proposed zone district is compatible with the Transportation Component of the Master Plan.
3. The property is not located within the Redevelopment Area.
4. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan.
5. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).
6. The proposed zone district is in conformance with Elko City Code Section 3-2-12.
7. The application is in conformance with Elko City Code 3-2-21.
8. The proposed zone district is located in a designated Special Flood Hazard Area (SFHA).
9. Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

STAFF RECOMMENDATION:

1. Parcel map to create the 2,800 sq. ft. parcel and easements as needed.

9/17C

Rezone 4-20 City of ELKO - Front Street

YPNO	assess_nam	address1	address2	mcity	mzip
001402001	3L LLC	517 IDAHO ST		ELKO, NV	89801-3750
001423001	AGUIRRE NOEL P	2111 HONDO LANE		ELKO, NV	89801-
001690002	ARMSTRONG JANICE F	687 6TH ST STE 1		ELKO, NV	89801-3580
001680003	ARMSTRONG JANICE F	687 6TH ST STE 1		ELKO, NV	89801-3580
001432013	AZCUE PROCORO		973 LYONE AVE	ELKO, NV	89801-
001630004	BACKHERMS STEPHEN TROY ET AL	954 ALPINE DR		SPRING CREEK, NV	89815-
001422012	BARKER DWANA M & KELLY S	447 MARTIN AVE #13		SPRING CREEK, NV	89815-
001710027	BENNETT PROPERTIES SERIES LLC	2049 RUBY VIEW DR		ELKO, NV	89801-
001424002	BONER JASPER C & MARY M TR	PO BOX 425		WELLS, NV	89835-
001423015	BONETTI WILLIAM J TR	438 ELBURZ RD UNIT 12		ELKO, NV	89801-9400
001380004	BYINGTON DANNY KAY TR	PO BOX 388		ELKO, NV	89803-0380
001710016	CAL-PACIFIC UTILITIES	C/O FRONTIER COMMUNICATIONS	111 W FRONT ST	ELKO, NV	89801-4160
001398011	CITY LAUNDRY & VOGUE CLEANERS L	175 5TH ST		ELKO, NV	89801-3700
001398001	CITY LAUNDRY & VOGUE CLEANERS L	175 5TH ST		ELKO, NV	89801-3700
001710029	CP NATIONAL TELEPHONECORP	C/O FRONTIER COMMUNICATIONS	111 W FRONT ST	ELKO, NV	89801-4160
001424014	DTK PROPERTIES LLC	C/O PRECISION MANAGEMENT	3124 S QUINN AVE	GILBERT, AZ	85295-1200
001431005	EAVES DANNIE L & PORTIA R	1559 BOYNTON AVE		OROVILLE, CA	95966-5000
001677001	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001710060	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001710061	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001710023	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001690001	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001411004	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001710044	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001380006	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001630021	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001412003	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001412001	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001411006	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
001710024	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-
00101R001	ELKO CITY OF	1755 COLLEGE AVE		ELKO, NV	89801-3400
001398003	ELKO CO TREASURERS TRUST		571 IDAHO ST RM 101	ELKO, NV	89801-

} 1pc

} 1pc

NO PC

001694003	ELKO COUNTY OF	571 IDAHO ST		ELKO, NV	89801-3710
001690022	ELKO COUNTY OF	C/O COUNTY JAIL	540 COURT ST	ELKO, NV	89801-3510
001422002	ELLISON PROPERTIES 404 SO 5TH S	PO BOX 683		ELKO, NV	89803-0680
001422013	ELLISON PROPERTIES 4351/2 SO 4	PO BOX 683		ELKO, NV	89803-0680
001422003	ELLISON PROPERTIES LLC	PO BOX 683		ELKO, NV	89803-0680
001423004	ESTRADA BENEDITO & MARIA	161 KITTRIDGE CYN UNIT 2		ELKO, NV	89801-4630
001424001	FAGOAGA ERNEST REVOCABLE TRUST	741 RAHAS RD		ELKO, NV	89801-3030
001424016	FAGOAGA ERNEST TR	741 RAHAS RD		ELKO, NV	89801-3030
001431024	FIRST ASSEMBLY OF GOD PASTOR	PO BOX 1326		ELKO, NV	89803-1320
001431025	FIRST ASSEMBLY OF GOD INC	PO BOX 1326		ELKO, NV	89803-1320
001423019	FLORES JONATAN ALEJANDRO	562 FRONT ST		ELKO, NV	89801-4220
001423020	FLORES MOISES	474 S 7TH ST		ELKO, NV	89801-4210
001431011	FLYNN JAMES	448 S 9TH ST		ELKO, NV	89801-4260
001433002	FOLKMIRE LEE	924 LYON AVE		ELKO, NV	89801-4230
001710071	FRANZOIA ANACABE FAMILY LIMITED	2000 RUBY VIEW DR		ELKO, NV	89801-
001710070	FRANZOIA ANACABE FAMILY LIMITED	2000 RUBY VIEW DR		ELKO, NV	89801-
001710056	GASSIOT LLC	3710 CLOVER WAY		RENO, NV	89509-8210
001694008	GEO THERMAL INDUSTRIAL PARK OF E	421 COURT ST		ELKO, NV	89801-3520
001676011	GEO THERMAL INDUSTRIAL PARK OF E	421 COURT ST		ELKO, NV	89801-3520
001694009	GEO THERMAL INDUSTRIAL PARK OF E	421 COURT ST		ELKO, NV	89801-3520
001710059	GLOBAL MINING PRODUCTS INC	400 FRONT ST		ELKO, NV	89801-4850
001393006	GOMEZ-AGUILA BARTOLA	701 LAST CHANCE RD UNIT 16		ELKO, NV	89801-
001397006	GONZALES ELVERA S	308 DOUGLAS ST		ELKO, NV	89801-3640
001431004	GONZALEZ BENJAMIN & ANTONIA J	PO BOX 2285		ELKO, NV	89803-2280
001710057	GREGORY JAMES L & MARY A TR	PO BOX 2688		ELKO, NV	89803-2680
001390005	HARKER & HARKER LLC	1401 W 4TH ST		RENO, NV	89503-5000
001710012	HARP STEVEN P & CHERYLL L	109 W DOUGLAS ST		ELKO, NV	89801-3670
001432007	HEARON MCNAIR R	955 LYON AVE		ELKO, NV	89801-4230
001431009	HERNANDEZ KAREN	1730 CELTIC WAY		ELKO, NV	89801-4710
001431008	HERNANDEZ KAREN A	1730 CELTIC WAY		ELKO, NV	89801-4710
001401002	HOUGHT PERRY E & JANET A TR	667 ROCKIN CHAIR RD UNIT 16		SPRING CREEK, NV	89815-8730
001710046	HUERTA JOSE	431 S A ST		ELKO, NV	89801-7620
001710065	IRURUETA MIGUEL & GRACIELA	C/O ADAM JOHNSTON	195 W FRONT ST	ELKO, NV	89801-4160
001710064	IRURUETA MIGUEL & GRACIELA	C/O ADAM JOHNSTON	195 W FRONT ST	ELKO, NV	89801-4160

001431019	JJJ ELLISON 7TH STREET PROPERTY	438 ELBURZ UNIT 10	ELKO, NV	89801-9400
001431007	KIMBER JOANN V	207 MOUNTAIN CITY HWY UNIT 3	ELKO, NV	89801-9510
001432004	KONCHER VERN L & DONNA	915 LYON AVE } 1pc	ELKO, NV	89801-4230
001432003	KONCHER VERN L & DONNA J	915 LYON AVE	ELKO, NV	89801-4230
001710062	LESPADE RICHARD L TR	461 LAMOILLE CANYON RD UNIT 13	SPRING CREEK, NV	89815-9720
001402002	LIPPARELLI BARRY W TR	517 IDAHO ST	ELKO, NV	89801-3750
001710040	MARIN SALVADOR & OLGA	430 S A ST	ELKO, NV	89801-7620
001394005	MARTIN SCOTT F & SHARON M	262 S 3RD ST	ELKO, NV	89801-3620
001398004	MARTINEZ JOSE	2655 SHADOW RIDGE DR	ELKO, NV	89801-7920
001383001	MCGILL EILEEN RUTH TR	C/O BUTTERFIELD VLLG, INC	2240 MAJESTIC CIR MONTROSE, CO	81401-5890
001433003	MENDOZA JOSE JUAREZ TR	1355 PARKVIEW DR	ELKO, NV	89801-2530
001423003	MEYER EDWARD A JR & PATRICIA	440 S 6TH ST	ELKO, NV	89801-4200
001710058	MEYER RONALD W & JOAN D TR	1806 SEWELL DR	ELKO, NV	89801-2860
001390003	MILLER & GLENN	C/O MICHAEL GLENN	12550 OAK GLEN DR RENO, NV	89511-
001390002	MILLER & GLENN	C/O MICHAEL GLENN	12550 OAK GLEN DR RENO, NV	89511-
001390004	MILLER & GLENN	C/O MICHAEL GLENN	12550 OAK GLEN DR RENO, NV	89511-
001424003	MINSON CRYSTIE TR	424 S 7TH ST	ELKO, NV	89801-4210
001397005	MONTES DE OCA ALFRED	PO BOX 878 } 1pc	CARLIN, NV	89822-0870
001394007	MONTES DE OCA ALFRED	PO BOX 878	CARLIN, NV	89822-0870
001411003	MONTES DE OCA ALFRED	PO BOX 3261 } 1pc	WINNEMUCCA, NV	89446-3260
001411005	MONTES DE OCA ALFRED	PO BOX 3261	WINNEMUCCA, NV	89446-3260
001394008	MONTES DE OCA ALFRED	PO BOX 3261	WINNEMUCCA, NV	89446-3260
001422001	MORRISON CALVIN R & JEAN M	405 FRONT ST SPC 1	ELKO, NV	89801-7620
001394009	NUNEZ CARLOS & ESTELA	3330 BEVERLY CIR	ELKO, NV	89801-4780
001710039	PJ RENTALS 2 LLC	C/O PATRICK & JOANN LICKLY	526 POPLAR DR	89801-2440
001433001	RIOS-MARTINEZ JESUS ANTONIO ET	328 MAPLE ST	ELKO, NV	89801-3140
001431010	ROBB LARRY J & LORI J	399 SPRING CREEK VW	SPRING CREEK, NV	89815-6000
001431012	ROMERO-SANDOVAL ESTEBAN		5615 GUNPOWDER DR	89801-
001397008	SANDOVAL JOSE A & CARMEN	339 WATER ST	ELKO, NV	89801-3660
001397007	SANDOVAL JOSE A & CARMEN	261 S 3RD ST	ELKO, NV	89801-3620

001421006 SCHNEIDER CHARLOTTE E	648 BULLION RD	ELKO, NV	89801-4120
001710067 SCHNEIDER JOHN E & KAY L	435 S 3RD ST	ELKO, NV	89801-4170
001431006 SCHULZ LENORA	852 FRONT ST	ELKO, NV	89801-4230
001433006 SEAL REBEL ANN	459 S 9TH ST	ELKO, NV	89801-4260
001710043 SHARP STEVEN P & C L	DBA: SHARP CONCRETE CO	109 W DOUGLAS ST	ELKO, NV
001710031 SHARP STEVEN P & CHERYLL L	109 W DOUGLAS ST	ELKO, NV	89801-3670
001710018 SHARP STEVEN P & CHERYLL L	109 W DOUGLAS ST	ELKO, NV	89801-3670
001401003 SLLL PROPERTIES LLC	525 WATER ST	ELKO, NV	89801-3740
001394006 TELLERIA JOSE A	220 RIVER ST	ELKO, NV	89801-3640
001710011 TG SHEPPARD 1995 FAMILY LIMITED	PO BOX 69	WINNEMUCCA, NV	89446-0060
001431003 THOMPSON DAN		211 PALMERS CT	ELKO, NV
001431002 THOMPSON DAN		211 PALMERS CT	ELKO, NV
001630018 TOP LLC	PO BOX 10066	EUGENE, OR	97440-2060
001422014 TORRES ROGER J SR	720 RIVER RNCH UNIT 5	ELKO, NV	89801-9300
001397003 URIBE ALFREDO	270 S 2ND ST	ELKO, NV	89801-3610
001397002 URIBE ALFREDO Q	270 S 2ND ST	ELKO, NV	89801-3610
001432006 URIBE ALFREDO & JOSE & IRAMA	270 S 2ND ST	ELKO, NV	89801-3610
001432005 URIBE ALFREDO & JOSE & IRMA	270 S 2ND ST	ELKO, NV	89801-3610
001393005 URIBE FREDDIE	270 S 2ND ST	ELKO, NV	89801-4090
001397009 URIBE SALVADOR	570 JUNEAU ST	ELKO, NV	89801-
001710068 URIBE SALVADOR		849 DRY CREEK TRAIL	ELKO, NV
001397010 URIBE-QUINTERO SALVADOR TR ETA	570 JUNEAU ST	ELKO, NV	89801-4130
001414005 VASQUEZ BEVERLY J TR	553 S 4TH ST	ELKO, NV	89801-4100
001421007 VILLALOBOS JOSEPH	725 LINCOLN AVE	ELKO, NV	89801-4230
001424012 VILLEGAS MICHAEL A	430 S 7TH ST	ELKO, NV	89801-4210
001423018 WILLIAMS DANIEL J & SHEILA M	554 FRONT ST	ELKO, NV	89801-4220
001398012 WILSON EDDIE WAYNE	336 RUSTIC DR	SPRING CREEK, NV	89815-6200
001398013 WILSON EDDIE WAYNE	336 RUSTIC DR	SPRING CREEK, NV	89815-6200
001710049 WRIGHT HOWARD R TR	PO BOX 908	CARLIN, NV	89822-0900
001398002 YEPEZ ARNULFO & LUCINA	448 DOUGLAS ST	ELKO, NV	89801-3730



Postmarked 8/21/20

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, September 1, 2020 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: <https://global.gotomeeting.com/join/472220037>

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: <https://global.gotomeeting.com/join/472220037>. You can also dial in using your phone. **+1 (224) 501-3412** Access Code: **472-220-037**. Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

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

- Rezone No. 4-20, filed by the City of Elko, for a change in zoning from PQP (Public, Quasi-Public) to LI (Light Industrial) Zoning District, approximately 2,800 square feet of property, specifically a portion of APN 001-01R-001, located generally at the terminus of Front Street south of 5th Street, more particularly described as:

An area of land within the southeast quarter of Section 15, Township 34 North, Range 55 East, which is a portion of the parcel owned by the City of Elko, known as APN: 001-01R-001, and includes the HARP Trail along the Humboldt River. Said area of land is more particularly described as follows:

Beginning at the northerly most corner of Parcel C, as shown on sheet 5 of the Record of Survey for the City of Elko Railroad Relocation Project, recorded as file no. 237417 of Elko County records, which bears North 25°08'55" East, a distance of 490.99 feet from the centerline monument at the intersection of Front Street and 3rd Street;

Thence, along the northeasterly boundary of said Parcel C, South 48°02'26" East, a distance of 70.00 feet;

Thence, North 41°57'34" East, a distance of 40.00 feet;

Thence, North 48°02'26" West, a distance of 70.00 feet;

Thence, South 41°57'34" West, a distance of 40.00 feet, more or less, to the point of beginning.

This area of land contains a total of ±2,800 square feet.

The Basis of bearings for this description is the Record of Survey for the City of Elko Railroad Relocation Project, recorded as file no. 237417 of the Elko County records, on October 6, 1987.

The intent of the zone change is to prepare for sale of the property to utility company for development of fiber communication equipment and support.

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR ZONE CHANGE

APPLICANT(s): City of Elko
MAILING ADDRESS: 1751 College Ave, Elko, NV 89801
PHONE NO (Home) _____ (Business) 775-777-7160
NAME OF PROPERTY OWNER (If different): _____
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: _____
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: Portion of 001-018-001 Address Front Street
Lot(s), Block(s), & Subdivision _____
Or Parcel(s) & File No. _____

FILING REQUIREMENTS:

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

Fee: A \$500.00 non-refundable filing fee.

Area Map: A map of the area proposed for this zone change must be provided.

Plot Plan: A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

Legal Description: A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "x" to "x"; (LI to R, for example).

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 ½" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Rezone Application.

RECEIVED

1. Identify the existing zoning classification of the property: PQP
2. Identify the zoning Classification being proposed/requested: L1
3. Explain in detail the type and nature of the use anticipated on the property: Property to be sold to Anthem Broadband of Nevada for the use of their fiber communications equipment.
4. Explain how the proposed zoning classification relates with other zoning classifications in the area: Adjacent property to the Southwest is zoned G1, other adjacent and nearby parcels are zoned C and PQP.
5. Identify any unique physical features or characteristics associated with the property: None

(Use additional pages if necessary to address questions 3 through 5)

By My Signature below:

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

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

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

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

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

Applicant / Agent City of Elko
(Please print or type)

Mailing Address 1751 College Avenue
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: 775-777-7160

Email address: _____

SIGNATURE: Cathy Laughlin

FOR OFFICE USE ONLY

File No.: 4-20 **Date Filed:** 8/13/20 **Fee Paid:** No Charge

LEGAL DESCRIPTION TO ACCOMPANY A ZONE CHANGE FROM PQP TO LI

An area of land within the southeast quarter of Section 15, Township 34 North, Range 55 East, which is a portion of the parcel owned by the City of Elko, known as APN: 001-01R-001, and includes the HARP trail along the Humboldt River. Said area of land is more particularly described as follows:

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Thence, South 41°57'34" West, a distance of 40.00 feet, more or less, to the point of beginning.

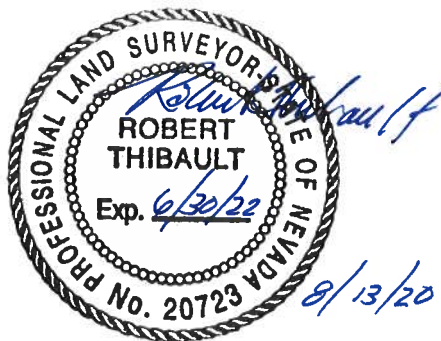
This area of land contains a total of $\pm 2,800$ square feet.

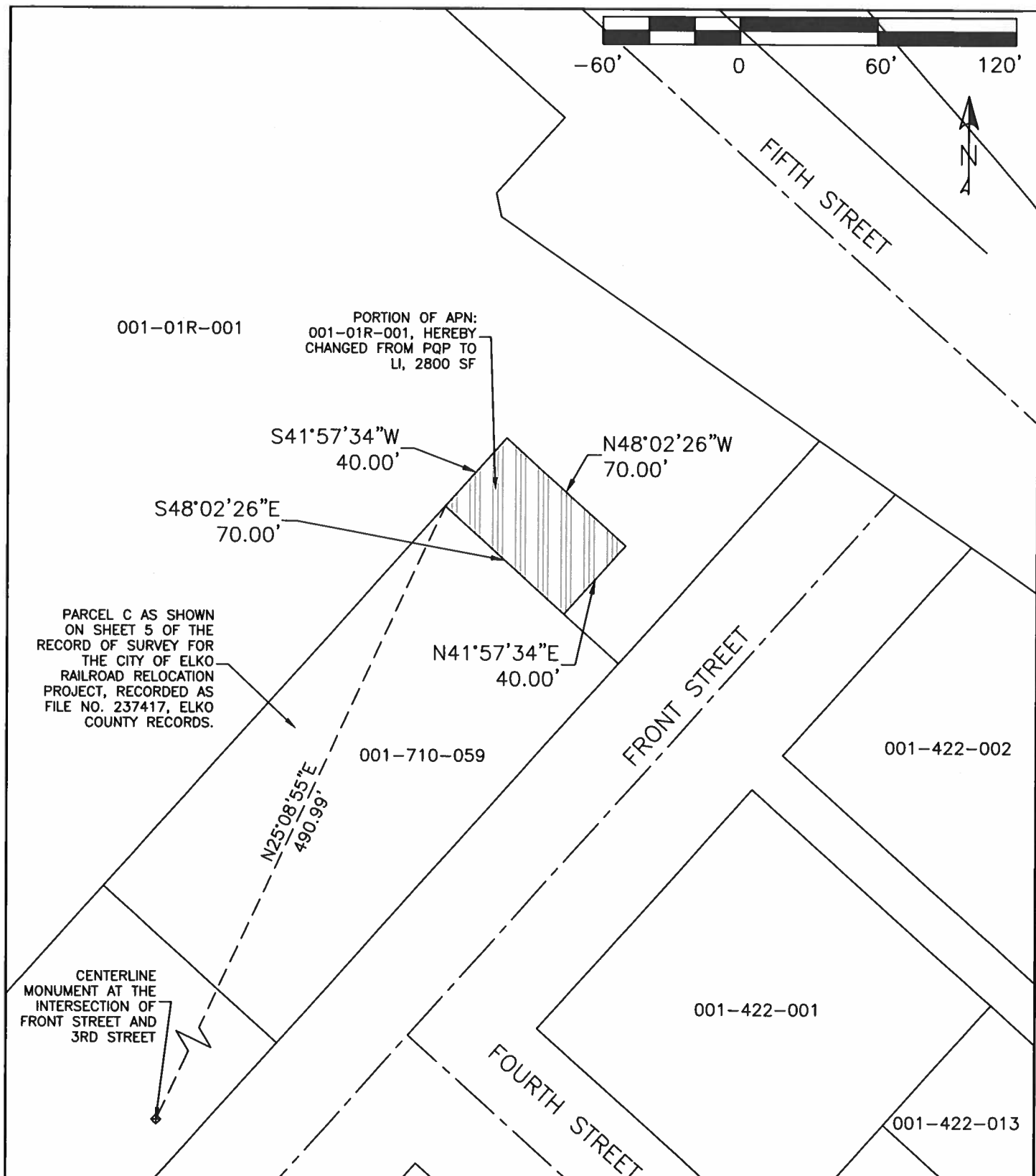
The Basis of bearings for this description is the Record of Survey for the City of Elko Railroad Relocation Project, recorded as file no. 237417 of Elko County records, on October 6, 1987.

Description prepared by:

Robert Thibault, PE, PLS

Civil Engineer for the City of Elko





CITY OF ELKO
1751 COLLEGE AVE
ELKO, NEVADA 89801
775-777-7210

DISPLAY MAP TO ACCOMPANY A ZONE CHANGE APPLICATION

Zoning Bulletin

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Taking

After city revokes CUP, motel operator files suit alleging Takings Clause violation

Citation: *Akshar Global Investments Corp. v. City of Los Angeles*, 2020 WL 2787712 (9th Cir. 2020)

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

Amitkumar Shah owned and served as the director of Akshar Global Investments Corp. (AGI), which owned and operated the 108 Motel Inn in Los Angeles, California.

AGI alleged that in 2018 the City of Los Angeles unlawfully revoked its conditional use permit (CUP) that allowed the motel to operate and filed suit alleging civil rights and Fair Housing Act violations.

The lower court dismissed the case, and AGI appealed.

DECISION: Reversed in part.

Only a claim alleging a Fourth Amendment constitutional violation for search and seizure could proceed.

SECTION 1983 CLAIM

To bring a valid section 1983 claim, AGI and Shah had to show that they “were deprived of a federally protected right and . . . the injury resulted from an expressly adopted official policy, a long-standing practice or custom, or the decision of a ‘final policymaker,’” the Ninth U.S. Circuit Court of Appeals ruled.

TAKINGS CLAUSE

The complaint didn’t “plausibly suggest” that the “Fifth Amendment right to be free from unconstitutional takings was violated.”

The Ninth Circuit had previously identified several theories for takings claims, including:

- when there was a physical invasion of property;
- a regulation completely deprived an individual “of all economically beneficial use of property”; and
- a land-use exaction.

Here, the lawsuit “lack[ed] facts that support a takings claim under [the applicable] theories,” the court wrote. “[T]o the extent the [c]ity’s decision to revoke the CUP was based on concerns about nuisance caused by [the motel], the Takings Clause [wa]s not implicated because a locality [could] act in response to criminal activity,” the court ruled.

A CLOSER LOOK

The city also had to defend claims alleging Fourteenth (due process) and Fourth Amendment (search and seizure) violations. The court rejected one of those claims but allowed the other to proceed.

Due process—Shah and AGI “had the opportunity (and took advantage of the opportunity) to appear at the initial revocation hearing before the Zoning Administrator,” the court explained. “To the extent that [they] contend[ed] that they did not receive sufficient actual notice of the subsequent City Council hearings on their appeal of the revocation,” they didn’t “adequately allege that any such deficiency was caused by an official policy, custom, or practice.”

Search and seizure—Shah claimed his Fourth Amendment rights were violated based on the Los Angeles Police Department (LAPD)’s unlawful entrance into his personal

residence. AGI claimed its rights were violated based on LAPD’s unlawful entrance and trespass onto the motel and by its unlawful search of AGI’s guest registration records.

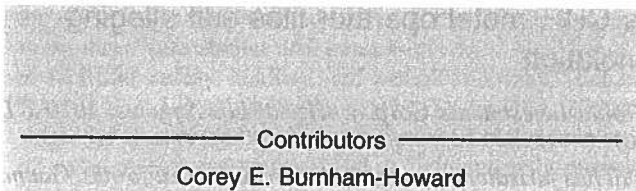
“Even assuming that the alleged officer conduct described . . . violated the Fourth Amendment, [they] failed, after multiple opportunities, to adequately allege that such violations were caused by a [c]ity ‘policy, regulation, custom, or usage.’”

“The failure to allege facts suggesting a causal relationship between any policy described in the [ir complaint] and the Fourth Amendment deprivations . . . [wa]s fatal because the City ‘is only liable when it c[ould] be fairly said that the [C]ity itself [wa]s the wrongdoer.’”

But, ultimately, the court decided that Shah and AGI should have the opportunity to “amend their complaint to supplement the allegations related to the City’s alleged search of the [m]otel’s registration records.”

Practically Speaking:

Neither Shah nor AGI pleaded a proper violations of their rights under the Fifth Amendment’s Takings Clause.



Contributors

Corey E. Burnham-Howard

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Comprehensive Plan Updates

County’s CPU challenged before growth management hearing board

Citation: *Harless v. Kitsap County, Central Puget Sound Growth Management Hearings Board, 2020 WL 2516307 (2020)*

Jerry Harless challenged Kitsap County, Washington’s 2016 comprehensive plan update (Ordinance 534-2016). He contended that the county created an oversized urban growth area (UGA), in violation of the Growth Management Act (GMA).

Harless also claimed that that calculating land capacity to establish the UGA using a net density formula while development regulations required density calculations to be measured in terms of gross land area amounted to the oversized UGA, and therefore, the GMA violation occurred.

The Central Puget Sound Growth Management Hearings Board dismissed the issue, but following an appeal, the state court of appeals sent the case back for further analysis.

DECISION: Oversized UGA did not occur.

The development regulations that Ordinance 534-2016 amended pertained to the Central Kitsap UGA and were consistent with and implement the Kitsap County Comprehensive Plan and Harless didn’t meet his burden for showing “an external inconsistency between the comprehensive plan and [the county’s] zoning code.”

The ordinance “was guided by the GMA planning goal” set forth in the state code “to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner,” the board found.

The board also found that the ordinance “was guided by the GMA planning goal in [the state code] to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.”

A CLOSER LOOK

State law dictated that a “comprehensive plan ‘shall be an internally consistent document,’ meaning that different parts of the comprehensive plan must fit together so that no one feature precludes achievement of any other.”

Regarding UGA sizing, the board found that Harless hadn’t met “his burden to show that Kitsap County’s Central Kitsap UGA, as implemented by the zoning code, exceeds the amount of land necessary to accommodate the urban growth projected by [the Office of Financial Management], plus a reasonable market supply factor.”

Also, the ordinance complied with GMA requirements “to review and revise the UGA boundaries, and the densities permitted therein, to accommodate the urban growth projected to occur in the county for the succeeding twenty-year planning period.”

The bottom line: Harless made conclusory arguments that speculated that “the application of a zoning code calculating allowed density for a particular project on gross acreage would result in an UGA that was much larger than the UGA approved in the Comprehensive Plan and land use map.” He contended this difference “created ‘a zoning code that [wa]s inconsistent with and d[id] not implement the comprehensive plan’ in violation of various GMA provisions.”

His proposition wasn’t proven, though, so he didn’t meet his burden of proof.

DENSITY

Harless alleged that the county had to “calculate assumed densities on achieved net acreage in those *urban* zones where the code allows *maximum* density to be determined by gross acreage.” He asserted that any other calculation would result in an oversized UGA, in violation of state law. The board disagreed.

“Although the GMA does not define the components of a land capacity analysis” in a previously decided case a court had “stressed that the formula used by a county should not result in an oversized UGA.” Therefore, the county had to “review achieved densities and determine an appropriate density multiplier that reflect[ed] the collective effect of the [c]ounty’s regulations, including the number of dwelling units/acre allowed and the enacted reasonable measures.”

Set Back

City disputes being barred from challenging property owner’s construction of a deck, which violated set-back requirement

Citation: *City of Hammond v. Rostankovski*, 2020 WL 2745454 (Ind. Ct. App. 2020)

John Rostankovski owned a residential rental property located at 436 Spruce Street in Hammond, Indiana. In October 2017, the city filed a complaint alleging that the property was in violation of the local zoning ordinance.

Specifically, the city alleged that the deck of the house violated the side-yard restrictions under the city’s zoning code—Ordinance 8514—which stated that neither side yard on the property could have a width of less than three feet.

Rostankovski didn’t dispute that his property fell within the three-foot setback requirement, but he filed a request to dismiss the city’s complaint nonetheless.

The city court granted Rostankovski’s request for dismissal. It found that while the deck violated the side-yard setback requirement, the city was barred from enforcing the setback requirement against Rostankovski due to the doctrine of laches, that is, it had unreasonably delayed in bringing the action against him.

The city argued no evidence of laches had been presented and that laches wasn’t a defense to a municipality’s action to enforce its zoning ordinances. The city court denied the city’s renewed request to resurrect its claim against Rostankovski, so it sought review by a state court.

The state court affirmed, and on the issue went before the Court of Appeals of Indiana. The main issue for the court to be decided was whether the lower court erred in affirming the city court’s ruling because the city court’s dismissal of the claim had been based on the affirmative defense of laches, which Rostankovski had not raised.

DECISION: Reversed; case sent back for further proceedings.

The lower court erred in applying laches.

The city contended that Rostankovski had the duty to raise laches as an affirmative defense, and that he waived the issue of laches “because he never specifically pleaded the defense in his motion to dismiss,” the appeals court explained. In the city’s view, the lower court “actually raised the issue of laches sua sponte,” that is, on its own.

Laches was “an equitable defense that [could] be raised to stop a person from asserting a claim she would normally be entitled to assert.” Laches was “neglect for an unreasonable length of time, under circumstances permitting diligence, to do what in law should have been done,” the court added.

“However, it is well established that laches is not a defense to a municipality’s action to enforce its zoning ordinances,” the court wrote.

Here, the city had filed suit against Rostankovski for violating the city’s zoning ordinance and he filed a request for dismissal. “[N]owhere in the motion did Rostankovski specifically plead the affirmative defense of laches,” the court explained.

The bottom line: “The law is clear that laches cannot be a defense to municipality’s action to enforce its zoning ordinances, which was the basis of the [c]ity’s complaint,” the court ruled.

Rezoning

Town council's procedures for rezoning challenged in Virginia's highest court

Citation: *Rowland v. Town Council of Warrenton*, 2020 WL 2763785 (Va. 2020)

In 2016, 10 property owners filed an application with the Warrenton, Virginia Planning Commission (the planning commission) to rezone about 31 acres of land within the town from industrial to industrial planned unit development (I-PUD), a type of mixed use development allowing for limited residential and commercial properties in the zone along with industrial uses. The plan for what became known as "The Walker Drive Project" was to construct restaurants, offices, retail shops, a theater and bowling alley, as well as apartments and condominiums.

Neighbors in the area of the proposed project challenged the town council's approval. They argued that the approval:

- modified or reduced the applicable zoning district requirements, in violation of local land-use law; and
- violated the town's zoning ordinance since the town council had approved modifications and waivers for the project without first getting planning commission recommendations on those issues and because the project's master plan didn't show that the development was an integrated, cohesive entity, which the ordinance required.

The lower court entered an order of final judgment in the town council's and project developers' favor. The neighbors appealed.

DECISION: Affirmed.

The town council's decision to rezone for mixed-use development stood.

A CLOSER LOOK

"If a party challenging a rezoning decision present[ed] evidence of its unreasonableness, the locality [had to] present sufficient evidence to show the decision was 'fairly debatable' . . . to have the decision upheld in court," the court wrote. An issue [wa]s said to be fairly debatable when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions."

Here, the issue before the lower court was "whether the town council's acceptance of the proffer reducing the maximum industrial use of the rezoned property in the Walker Drive Project was 'fairly debatable' in relation to the public health, safety, morals, or general welfare, [whether it] was . . . unreasonable or arbitrary, and . . . a permissible use of conditional zoning," the court explained.

Here, the issue before the lower court was "whether the town council's acceptance of the proffer reducing the maximum industrial

use of the rezoned property in the Walker Drive Project was 'fairly debatable' in relation to the public health, safety, morals, or general welfare."

The reality was that "the proffer d[id] not appear to be inconsistent with the intended mixed-use development of an I-PUD," the court ruled. For instance:

- the proffer reduced the minimum industrial use for the property from 50% to approximately 40% and spread the 10% difference between the commercial and residential uses, which "result[ed] only in a de minimis increase in the maximum residential use and a commercial use that was within the allowed range for the I-PUD"; and
- while the neighbors alleged that the "downward departure from the minimum industrial use of the I-PUD would be detrimental to the neighboring properties because it would increase the burden of traffic on Walker Road," the application "also included proffers for improvements to the traffic flow through and around the project and the record show[ed] that the developers worked with the town to address issues of traffic and other burdens which were among the concerns raised when the matter was before the planning commission."

"On balance, we cannot say that the residents' expressed concerns would have been sufficient to overcome the presumption of legislative correctness on an issue that was fairly debatable," the court wrote, affirming the lower court's ruling.

Conditional Use

Neighbors challenge building permit granted for 'future addition' approved years earlier

Citation: *In Re Smith*, 2020 WL 2109519 (Pa. Commw. Ct. 2020)

In June 1996, JMA Properties Inc. (JMA) entered into an agreement to buy land, which included a three-story brick building commonly known as the Barclay Building, as well as an accessory building. The property was located in the "NC-1, Block Class B, Neighborhood Conservation" zoning district and was in the "Professional Office Overlay District."

JMA submitted a subdivision and land development application, including nine sheets of plans, to the Borough of West Chester to divide the parcel into two lots. The borough approved the application in 1997, and subsequently the "Plan of Subdivision for the Barclay Building, Sheet 2, and the Plan of Land Development for the Barclay Building, Sheet 3" were recorded as Plan 14109 in the Chester County Recorder of Deeds.

The plan described lot 1 as the Barclay Building and a gross floor area of 21,000 square feet and a building footprint of 7,428 square feet. A “Future Addition Building Envelope” (the future addition) had a gross floor area of 18,150 square feet and a building footprint of 6,050 square feet and a parking calculation based on a professional office use for the Barclay Building and the future addition.

After obtaining approval, JMA started to alter the Barclay Building and obtained several building permits, including for the construction of an accessory building and a 700-square-foot addition to the second floor of the Barclay Building. After the 700-square-foot addition was built, the borough issued a certificate of occupancy for the Barclay Building.

No application for, or approval of, a conditional use to permit the use of the Barclay Building as professional offices has been found.

In 2013, JMA sold the parcel to another, referred to as the applicant, and the applicant sought a building permit for the future addition.

In 2017, the borough issued the building permit, and Joanne Smith and Robert Whetston (collectively, the neighbors) appealed that issuance.

The zoning board denied the neighbors appeal. It found that while there wasn’t evidence that “a conditional use was applied for at the time the Barclay Building was converted to professional offices, [the neighbors] did not challenge the legality of the 1998 conversion to professional offices, so that the current professional office use of [the] Barclay Building [was] a legally permitted use.”

The board also noted that the zoning ordinance didn’t bar an addition to a legally permitted professional office in the NC-1 overlay district. And, it concluded that the “conversion” of a building included structural changes and enlargements.

The neighbors appealed the board’s findings. The lower court affirmed the board’s decision, so they appealed again.

DECISION: Affirmed.

The applicant had the right to construct the addition for use as professional offices as the building permit had been properly issued.

The zoning ordinance provided that conditional uses included the “[c]onversion of an existing building to a professional office in a designated Professional Office Overlay District.” Under the local code, the zoning hearing board had “exclusive jurisdiction to hear and render final adjudications.”

The zoning ordinance provided that conditional uses included the “[c]onversion of an existing building to a professional office in a designated Professional Office Overlay District.”

Here, during the relevant time period concerning the ap-

plication and approval of the 1997 plan, the borough’s Subdivision and Land Development Ordinance (SALDO) stated that “[n]o plan of subdivision or land development shall be approved which would result in lots or land use which would in any way be inconsistent with Chapter 112, Zoning of the Code of the Borough West Chester then in effect for the zoning district in which the land to be developed or subdivided is located.”

While the neighbors argued that the future addition was not consistent with the zoning ordinance and wasn’t permitted in the NC-1 zoning district, the 1997 plan had been approved and no appeals were filed concerning that approval.

The bottom line:

- the 1997 plan showed the existing building and the future addition; and
- the approved plan described the gross square footage of the proposed use for the future addition, as well as parking expansion for the future addition.

“Thus, it is apparent from the approved 1997 Plan that the Future Addition was part of what was approved in 1997 and that the proposed use of the buildings depicted in the approved 1997 Plan was for professional offices,” the court ruled.

The stated use of the future addition wasn’t inconsistent with the zoning ordinance. Also, the borough could have “imposed a condition requiring zoning approval, but it did not.” The neighbors contended that there wasn’t a zoning approval and that neither they nor any “other potentially aggrieved property owners could have appealed here.” But, “significantly, an appeal could have been taken from the approval of the 1997 Plan,” the court wrote.

“[I]t [was] the terms of the municipality’s SALDO that prescribe[d] the timing of the ‘dual tracks’ for approval,” the court noted. “Where zoning approvals still [had] to be obtained during the subdivision and land development process, the proper course [was] for the governing body to condition the approval on the developer obtaining such approvals. As such, a remedy exist[ed] if one believe[d] the governing body ha[d] improperly waived zoning requirements,” the court added.

This was the reason it rejected the neighbors’ argument. Therefore, it found the building permit had not been issued in error.

Preemption

Did town overstep by enacting amendment to zoning regulation barring Sunday auto racing?

Citation: *Lime Rock Park, LLC v. Planning and Zoning Commission of Town of Salisbury*, 2020 WL 2642798 (Conn. 2020)

The Town of Salisbury’s Planning and Zoning Commission (the commission) adopted amendments to the town’s zoning regulations restricting motor vehicle racing activities on property Lime Rock Park LLC (Lime Rock) owned.

Lime Rock appealed the commission's decision to a state court. Then, Lime Rock Citizens Council, LLC (the council) filed a request to intervene in the appeal.

The court allowed the council to intervene. Then, it affirmed in part and dismissed in part the appeal. The court indicated that a town couldn't regulate auto racing since a state law permitted auto racing.

All three parties appealed the lower court's ruling. The key issue for the Supreme Court of Connecticut to decide was whether the state law permitting auto racing precluded municipalities from regulating auto racing within their boundaries.

DECISION: Reversed in part.

The town could regulate auto racing within its border.

Here, a large part of the dispute concerned the town's decision to ban racing on Sundays. The town had enacted zoning regulation amendments in 2015 to codify racing activity restrictions.

Lime Rock contended that the adoption of those amendments constituted an abuse of discretion and an illegal, arbitrary, and capricious move because the requirement violated state law specifying procedural requirements concerning zoning regulations. It also argued that it was an attempt to engage in "illegal spot zoning."

Here, a large part of the dispute concerned the town's decision to ban racing on Sundays. The town had enacted zoning regulation amendments in 2015 to codify racing activity restrictions.

The state law at issue (section 14-164(a)) stated that "[n]o person shall operate a motor vehicle in any race, contest or demonstration of speed or skill with a motor vehicle as a public exhibition except in accordance with the provisions of [section 14-164(a)]." "Such race or exhibition may be conducted at any reasonable hour of any weekday or after twelve o'clock noon on any Sunday," the law stated. "The legislative body of the city, borough or town in which the race or exhibition will be held may issue a permit allowing a start time prior to twelve o'clock noon on any Sunday, provided no such race or exhibition shall take place contrary to the provisions of any city, borough or town ordinances," it added.

Ultimately, the state's highest court ruled that the lower court's judgment should be reversed "insofar" as it had found that section 14-164(a) preempted the regulation barring racing activities on Sundays.

Practically Speaking:

Because the court ruled that the town wasn't preempted from issuing the no-Sunday racing regulation, it directed the lower court on remand to render a judgment dismissing Lime Rock's appeal with respect to that claim.

Zoning News from Around The Nation

Florida

Charlotte County considers proposal to make residential estate-1 zoning change

The Charlotte County, Florida's Advisor Planning and Zoning Board, by unanimous vote, recommended that county commissions should adopt a proposed residential estates-1 zoning change that would permit the construction of five homes in the Oyster Creek area of Murdock, YourSun.com reported recently. Some residents expressed concern over the proposal because they believed that granting the proposal would mean that the federal government's Department of Housing and Urban Development might decide to build low-income housing on the property, the news outlet explained.

But, the attorney for the landowner seeking approval to build said the homes would sit on lots of four acres or more and that some of the 19 acres aren't developable due to headwaters and wetlands, the news outlet added.

The news outlet reported that the land-use change will be voted on in June 2020. Any change ultimately will require state approval, it added.

Source: yoursun.com

Georgia

Board of Commissioners denies requests to lower square footage of lots along with rezoning and conditional use requests

Bryan County Georgia's Board of County Commissioners (BCC) recently denied requests to reduce square footage of lots in Richmond Hill's Buckhead East neighborhood (the Lenox request) and for rezoning and conditional use permits on the Toni Branch Road in Buckhead East, *Savannah Now* reported recently.

The Buckhead East lots had been approved at 7,600 square feet, and the Lenox request sought to reduce the lot size to 7,200 square feet. The news outlet reported that the changes would not have increased the number of lots and that the petitioner claimed it the reduction was necessary due to conflicting language in the planned unit development agreement.

The rezoning and conditional use requests concerned 25 acres on Toni Brand Road and sought to convert an A-R zone to an A-5 zoning designation, which would permit the petitioner to establish a recreational vehicle park. The vote to deny these requests was unanimous, the news outlet reported. The zoning and planning commission asserted that the proposed project didn't comply with the future land use component of the county's land-use plan.

For more on the county's land use plan, visit bryancountyga.org/home/showdocument?id=4092, which includes land use element discussion concerning wetlands/flood plan maps, character areas, and a future land use map (see page 103).

And, in unrelated news out of the Peach State, officials for the City of South Fulton have asked residents to com-

plete a survey so they can evaluate their thoughts about local parks, zoning, and transportation, the *City of South Fulton Observer* reported recently.

A consultant the city hired to manage the survey told the news outlet that South Fulton's master plan seeks to identify what the community wants and needs out of parks and recreation and that this survey provides residents with a chance to voice their opinions on the state of current facilities, what the city could do to better meet their needs, and how they would like to see it prioritize its investment in parks and arts, the news outlet explained.

The survey was expected to close in May. And, then the city was planning to give residents the opportunity to discuss the master plan parks process during a virtual meeting ahead of the final master plan report being released later this year.

For more information on the survey, visit surveymonkey.com/r/SouthFultonParks.

The city is also seeking residents' feedback on transportation types and funding priorities through a survey available at menti.com/fx2g2cdtmc. For more on South Fulton's Comprehensive Transportation Plan, visit southernfultonct.org.

Finally, the city is in the process of rewriting a zoning resolution to "develop a clear and user-friendly Zoning Ordinance that is consistent with adopted plans and policies, and reflects the changing environment. Emphasis will be placed on providing a more predictable set of land use regulations and improving the efficiency of the land development process," its website stated.

To garner public input, the city's website noted that a specific "project email" address had been set up so that residents could provide contact information to be added to the project's communications database.

The website also explained that residents were invited to attend a virtual open house in May 2020. The website included downloadable open house meeting materials, such as the city's zoning map, principal use as well as accessory and temporary use tables for residential and non-residential districts, overlay district maps, and overlay district color palettes. More information can be found at cityofsouthfulto.nga.gov/2658/Zoning-Ordinance-Rewrite.

Sources: cosfobserver.com; cityofsouthfultonga.gov/2658/Zoning-Ordinance-Rewrite; savannahnow.com; bryancountyga.org

Kentucky

Mayor of Erlanger Mayor relaxes zoning regulations to permit outdoor seating amid COVID-19 crisis

It's about finding creative solutions, Erlanger, Kentucky's mayor told *Spectrum News*, who got the idea to relax zoning regulations temporarily so that restaurants can have outdoor seating and begin to operate amid the COVID-19 pandemic from Cold Spring, Kentucky. As of print time, Gov. Andy Beshear had explained that restaurants could operate at 33% capacity while adhering to Kentucky Restaurant Association guidelines, the news outlet reported.

Erlanger's mayor, Jessica Fette, told the news outlet that

it was easier to look at what Cold Springs was doing with respect to the parameters she would put into motion concerning the reopening of restaurants than to reinvent the wheel.

One local restaurant owner told *Spectrum News* that the temporary zoning regulation amendment will allow his business to add 12 or more customers via outdoor dining.

Other cities in Kentucky are also taking action. The news outlet reported that Fort Mitchell has also addressed the issue of temporary outdoor seating at its restaurants.

Source: spectrumnews1.com

New York

Mayor of Endicott says recent vote doesn't impact whether controversial battery recycling facility can operate there

Recently, the Board of Trustees for the Village of Endicott, New York approved a zoning law change that clarifies and adds restrictions to ensure protection for current and future recycling facilities operating in Endicott's industrial zone, *WBNG.com* reported recently.

The vote came following controversy over whether to allow a battery recycling facility to operate in the village. But, the facility was granted a building permit, and the mayor said the board's approval won't impact the battery facility, which the Department of Environmental Conservation gave a green light on in early 2020.

And, in unrelated news out of the Empire State, a judge has overturned Webster, New York's approval of CEA Farm's request to build a 2-million square foot commercial hydroponic lettuce greenhouse and packaging center, the *Rochester Democrat and Chronicle* reported recently.

In November 2019, the town's planning board had stated the complex would be allowed on the proposed farm-land site, but some local residents complained that the use didn't fit within the property's zoning.

The town refused the residents' request to hear their appeal, and after the planning board granted CEA Farms' right to proceed with the project, the Webster Citizens for Appropriate Land Use (WCALU) filed suit.

In May 2020, the court ruled that the town erred in not hearing the residents' appeal and ordered the rescinding of the planning board's approval. Now, the Webster Zoning Board of Appeals will need to set a date to hear the residents' appeal.

For more about WCALU, visit websterlanduse.com/.

Sources: wbng.com; democratandchronicle.com

Pennsylvania

Northampton Township to decide whether supermarket can be built

The Northampton, Pennsylvania Township will decide whether Metro Commercial will be permitted to build a Giant supermarket at Richboro Plaza, which is located on 2nd Street Pike, *Bucks Local News* reported recently. The proposal comes after an independent store owner successfully blocked a plan to build a Giant store close by at Addisville Common, it added.

If the plan is approved, Metro intends to erect a 12,376

structure that would add on to a former grocery store that was on the site.

The news outlet explained that Metro will require zoning variances, specifically for “impervious surface ratio” and “a double-faced” freestanding sign.

Originally, the township was supposed to hear Metro’s appeal in March, but that was delayed due to the COVID-19 pandemic.

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

Utah

Washington City Council approves request for additional housing units to aid domestic and sexual violence victims

The Erin Kimball Foundation (EKF) was established to serve homeless domestic violence and sexual abuse survivors. According to Southern Utah Cares, it has provided more than 210,000 safe nights in apartment-style living for more than 165 survivors and 365 children. According to, the website for the DOVE Center at Erin’s House, the collective mission of the EKF and the DOVE Center is to provide “safe shelter and trauma-informed services . . . to facilitate safety, healing, and assault recovery,” engage “children and youth to understand safe, healthy relationships and mutual respect, to break cycles of violence in families and in the community,” and to “[r]elentlessly pursu[e] community education to increase bystander awareness and shift culture norms.”

Recently, Washington City Utah’s city council approved a \$173,000 grant to convert space at Erin’s House into additional housing units, *St. George News* reported recently.

The city council also approved a request for a zoning change so that a developer in the Washington Fields area can build storage units, the news outlet also reported. Residents expressed concern over the proposed zoning change who claimed allowing the developer to proceed with erecting the structures on a 3.5-acre parcel of land would change and destroy the character of their residential neighborhood, it explained.

Opponents urged the city council to hold off on deciding the storage units’ fate until the results of a study on the design standards and layout of the Washington Field area can be completed. Washington City’s city manager, how-

ever, said that study doesn’t necessarily have a zoning focus. Specifically, the study, which is being conducted by EPG, is meant to examine the characteristics of Washington Fields so that decisions as to architecture, design, and layout can be considered in land-use options, he told the news outlet.

Sources: southernutahcares.com; dovecenter.org; stgeorgeutah.com

Virginia

Fate of Vienna’s MAC zoning guidelines uncertain

The Maple Avenue Commercial (MAC) zone, which the Vienna Town Council adopted in 2014, is designed to “reinforce” the street’s “role as the [town’s] Main Street,” Vienna’s website explained. The MAC, “a voluntary zoning designation that encourages redevelopment of older properties along Maple Avenue and creation of pedestrian-friendly, mixed-use projects that include retail, office, and residential uses,” is “specifically designed to maintain and promote [Vienna’s] 21st century small-town character and, by focusing mixed-use development in the commercial corridor, to protect [its] single-family neighborhoods. It encourages a higher quality hometown experience for residents, visitors, and businesses by implementing a balanced, community-oriented, collaborative approach,” the website explains.

However, according to a recent article by *Tysons Reporter*, the MAC zoning guidelines “are ‘dead.’ ” That’s because in 2018, the town council voted to suspend MAC and the suspension has remained in effect ever since. So, the question now is what will town officials do with MAC?

Well, in May 2020, Vienna’s planning commission held public hearings on whether to extend the suspension to June 2022 or repeal the MAC zone, the news outlet explained.

The commissioners were split on what to do following the hearings, so they were expected to each write a summary explaining which option they preferred and why. Then, those comments will be reviewed by the Town Council, which is set to revisit the issue in June, the news outlet noted.

Source: tysonsreporter.com

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Variances

Court's decision to grant variance for cell tower comes under scrutiny

Citation: *Township v. Fairview Township Zoning Hearing Board, 2020 WL 2844227 (Pa. Commw. Ct. 2020)*

Fairview Township, Pennsylvania (the township), appealed a lower court's order, which granted Up State Tower Co. LLC's (Up State) requests for use, height, and dimensional variances concerning two properties.

Up State was in the business of acquiring real estate and then building cellular towers that provided space for cellular carriers to collocate antennas on those cellular towers. When necessary, it would apply for zoning variances if a desired parcel of property was not zoned to allow for telecommunications facilities.

Blue Wireless operated a facilities-based cellular telephone network and was a federal licensee of commercial mobile radio services. It also operated stores where consumers could purchase cell phones for voice and data service. And, to operate a cell phone network and provide voice and data services, Blue Wireless would require placement of radio equipment at certain heights in order for radio equipment to communicate properly.

The township's zoning ordinance allowed the construction and operation of wireless telecommunications towers in I-1 Light Industrial, I-2 Industrial Park, and I-3 Heavy Industrial Districts, which collectively comprised about 8% of the township.

UP STATE'S VARIANCE APPLICATIONS

Up State filed two applications for variances with the township's zoning hearing board (ZHB). It proposed to construct 50-foot by 50-foot wireless telecommunications facilities with a height of 160 feet on two separate parcels of property:

- 7463 West Ridge Road, Fairview, Pennsylvania (the Dutch Road property), which was located in the township's A-1 Rural District; and
- 7475 West Ridge Road, Fairview, Pennsylvania (the Water Street property), which was located in its R-1 Village District.

Fairview Evergreen Nurseries Inc. (Evergreen) owned both of these properties, and neither zoning district permitted utility, communications, electric, or gas operations as of right. The zoning ordinance also required a telecommunications tower constructed in any of the "I" industrially zoned districts with a height of 160 feet to have a minimum setback of 208 feet.

Up State sought variances from the township's zoning ordinance with respect to use, height, and setback (dimensional) for each property. The board granted its variance requests with respect to each property.

Then, the township appealed that decision to a lower court, and Up State intervened. Ultimately the lower court held a “de novo” hearing before granting the variance requests.

The court found that with respect to the Dutch Road property that Up State had met all the elements entitling it to a variance under the Pennsylvania Municipalities Planning Code (MPC), as well as those required under the township’s ordinance. Regarding the Water Street property, the court found that Up State had failed to satisfy three of the five elements required for a variance under the MPC, but it granted the requested variance, nonetheless. The court found that the Telecommunications Act of 1996 (TCA) barred a denial of the variances for cellular communications towers under these circumstances.

The township appealed. The issues it raised on appeal were whether:

- Up State had satisfied the hardship components under the MPC to establish entitlement to use, height, and dimensional variances for the Dutch Road Property;
- the TCA “trump[ed] the MPC with respect to the placement of wireless communication towers as proposed”; and
- “the ‘one provider’ rule—[under which] a provider [had to] establish that the area the new facility w[ould] serve [wa]s not already served by another provider . . . should ‘remain the law of the Commonwealth’ despite [a] Federal Communication Commission . . . (FCC) 2009 Declaratory Ruling.”

DECISION: Reversed.

The lower court erred in finding that the variances had to be granted just because there was a gap in Blue Wireless’ coverage.

There was a difference between “mandating the granting of an application for a cell tower simply because a provider ha[d] a significant gap in coverage and ha[d] proposed the least intrusive means to remedy it . . . and prohibiting the denial of an application solely on the basis that another provider [wa]s covering an area. The two [we]re not the same.”

“[T]his application of the TCA completely ignore[d] the FCC’s mandate that where a *bona fide* local zoning concern drives the decision, it is unaffected by the FCC’s ruling,” the court wrote.

There was a difference between “mandating the granting of an application for a cell tower simply because a provider ha[d] a significant gap in coverage and ha[d] proposed the least intrusive means to remedy it . . . and prohibiting the denial of an application solely on the basis that another provider [wa]s covering an area. The two [we]re not the same.”

THE BOTTOM LINE

Under the lower court’s rationale “a provider could place a tower wherever it please[d] so long as it establishe[d] a significant gap in its coverage (or a desire to densify, expand, or otherwise improve its network) and ha[d] proposed the least intrusive means to remedy it.”

Also, under the lower court’s interpretation, “authorizing a cell tower simply because a provider ha[d] a gap in coverage, or need[ed] to expand, densify or otherwise improve its coverage, effectively mean[t] that the insufficiency in coverage [wa]s a hardship entitling the provider to a variance.”

Such a “ ‘hardship’ [wa]s an economic hardship,” the court found. “The hardship must be to the property, not the person,” it added.

Contributors

Corey E. Burnham-Howard

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Practically Speaking:

"The subject denials were not based solely upon another provider's ability to provide coverage in the gap or based upon Blue Wireless' existing coverage, but, rather, were based upon a lack of hardship," the court wrote.

Easement

Dispute erupts over parking spaces needed to convert parcel to office space

Citation: *Ballantyne Village Parking, LLC v. City of Charlotte*, 2020 WL 3265007 (4th Cir. 2020)

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

Ballantyne Village Parking, LLC (BVP) owned a parking lot (parcel 3) and a parking deck (parcel 4), which were adjacent to a shopping center (parcel 1), which ASVRF SP Ballantyne Village JV LLC (ASVRF) owned.

ASVRF had fewer parking spaces on parcel 1 than required by the city's zoning code, so it obtained an easement from BVP to use the parking spaces on parcel 4 in an amount at least equal to the minimum number needed for ASVRF to comply with the city's zoning requirements.

In 2017, ASVRF wanted to convert part of parcel 1 into office space, which would expand the square footage of the shopping center. Under the city's code, the expansion would require parcel 1 to gain access to an additional 83 parking spaces. ASVRF's construction of the office space was contingent on receipt of a building permit from BVP, and the permit was conditioned on parcel 1 having access to the requisite additional parking spaces.

ASVRF believed the 2015 easement it had previously obtained from BVP automatically entitled it to use 83 additional spaces on parcel 4. But BVP maintained that for ASVRF to acquire access to the additional parking spaces, further consideration was required from ASVRF.

THE EASEMENT AGREEMENT

The easement agreement outlined a two-step process for resolving the dispute:

- an initial determination by an ombudsman; and
- arbitration.

The ombudsman decision would not be binding and final if the dispute was appealed to an arbitrator.

In this case, ASVRF and BVP submitted their easement dispute to the ombudsman in July 2018. In September 2018, the ombudsman found in ASVRF's favor regarding the additional parking. Its attorney notified BVP of the finding. The next week, the city of Charlotte, North Carolina issued a permit to ASVRF. It, however, reserved the right to revoke the permit if it later determined that parcel 1 lacked access to the adequate number of parking spaces.

BVP appealed the ombudsman's decision to an arbitrator, which rendered the ombudsman's decision nonbinding and nonfinal.

Following arbitration, the arbitrator issued a decision, which BVP asserted did not fully resolve the dispute over the easement.

THE LAWSUIT

BVP claimed the city had wrongfully deprived it of due process of law in the issuing of the building permit associated with the shopping center. The lower court, relying on the decision in *Burford v. Sun Oil Company*, found that the case should be dismissed. BVP appealed.

DECISION: Vacated; case sent back for further proceedings.

The lower court's order "citing *Burford* abstention" was made in error, but the case still wasn't "fit for judicial decision" at this time.

Under the Supreme Court's decision in *Burford*, "federal courts [could], in their discretion, abstain from exercising jurisdiction over certain cases involving state and local issues 'when the availability of an alternative, federal forum threaten[s] to frustrate the purpose of a state's complex administrative system,'" the Fourth U.S. Circuit Court of Appeals explained.

At this stage, both of BVP's ongoing disputes—"the easement dispute and the zoning dispute—preclude[d] resolution of [the] third dispute, the instant federal case," the court wrote.

"[A] legal determination that the easement entitle[d] ASVRF to the contested parking spaces [wa]s bound to affect the viability of [BVP's] constitutional claims at issue here—that is, [its] claimed right of access to the permitting process hinge[d] on the existence of a legal interest in the disputed 83 spaces," the court added. "If the easement decision [wa]s that ASVRF instead rightfully could claim those parking spaces, [BVP] would have been adjudged to lack the property interest it claims was harmed by [the city's] actions. Therefore, without knowing whether [BVP] did in fact possess a right to the contested parking spaces, we are being asked to answer the hypothetical question of whether there was a due process violation *if in fact [it] had a right to the spaces it claims*," the court explained.

At this stage, both of BVP's ongoing disputes—"the easement dispute and the zoning dispute—preclude[d] resolution of [the] third dispute, the instant federal case," the court wrote.

The bottom line: "The arbitration's outcome with regard to the claimed easement—which ha[d] yet to be confirmed in state court, and which could be contested—threaten[ed] to substantially undermine [BVP's] claimed property interest and therefore its claimed right of access to the permitting process purportedly affecting that interest."

For this reason, the issues before the court weren't "purely legal" since "the ownership of the contested spaces" was still in dispute. Therefore, the case wasn't "fit for judicial decision at this time because the ongoing easement dispute prevents[ed] [the court] from knowing whether [BVP] [wa]s entitled to the property interest it claims."

Case Note:

This case involved three distinct, but related, legal disputes: "(1) an arbitration proceeding over a contested easement agreement; (2) this federal suit alleging violations of constitutional guarantees of due process; and (3) the appeal of a building permit obtained through city administrative processes," the Fourth Circuit explained.

The case cited is Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943).

Special Permit

Cellular carrier claims local ZBA violated TCA when denying special permit and regulatory agreement

Citation: *T-Mobile Northeast LLC v. Town of Barnstable*, 2020 WL 3270878 (D. Mass. 2020)

T-Mobile Northeast Inc. (T-Mobile) filed suit against the Town of Barnstable, Massachusetts, its zoning board of appeals (ZBA), its planning board, and individual ZBA and planning board members (collectively, the defendants). The cellular service provider claimed the defendants had unlawfully denied a special permit and regulatory agreement permitting it to install and operate wireless antennas and equipment in a church steeple located in Barnstable, in violation of the federal Telecommunications Act (the TCA).

In T-Mobile's view:

- the denials were not based on substantial evidence;
- they effectively barred it from providing personal wireless services; and
- they were impermissibly based on claims regarding the environmental effects of radio frequency emissions, which violated the TCA.

T-Mobile initially asked a federal court in Massachusetts for declaratory and injunctive relief. Then, it asked the court for judgment without a trial on all of the claims.

DECISION: Granted in part; denied in part.

T-Mobile was entitled to judgment on its claims that the denials were not based on substantial evidence and that the town's decision had effectively barred it from providing personal wireless services only.

Under the TCA, "state and local governments and instrumentalities [could] regulate the placement of wireless service facilities, provided they (1) act[ed] on requests to authorize the placement, construction, or modification of such facilities within a reasonable time, (2) d[id] not give

consideration to any environmental effects of radio frequency emissions that comply with FCC regulations, (3) d[id] not unreasonably discriminate among providers of functionally equivalent services, (4) ma[d]e all decisions in writing and support those decisions with substantial evidence contained in a written record, and (5) d[id] not make decisions that prohibit[ed] or ha[d] the effect of prohibiting the provision of personal wireless services." Also, the TCA's provisions preempted state and local laws if they conflicted.

"Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, taking into account contradictory evidence in the record,' " the court noted. Also, to ensure TCA compliance, the reasons for denying an application didn't have to "be elaborate or even sophisticated, but rather . . . simply clear enough to enable judicial review."

T-Mobile was entitled to judgment on its claims that the denials were not based on substantial evidence and that the town's decision had effectively barred it from providing personal wireless services only.

In addition, the written denial had to "contain a sufficient explanation of the reasons for the denial to allow a reviewing court to evaluate the evidence in the record supporting those reasons." Also, in evaluating whether substantial evidence in support of a decision existed, the court had to consider the whole written—administrative—record. "[I]f the evidence permit[ed] inconsistent conclusions, the court w[ould] defer to the decision of the local authority, provided the local board pick[ed] between reasonable inferences from the record before it."

In a case like this, the burden was on T-Mobile to show that a violation of the TCA's "effective prohibition clause" had occurred. The court noted that this clause could be violated "even if substantial evidence exist[ed] to support the denial of an individual permit under the terms of the town's ordinances." "In deciding whether there ha[d] been an effective prohibition, the First Circuit [where this case took place] ha[d] required courts to first determine whether there was a 'significant gap in coverage,' determined by reviewing the physical size of the gap, the area of the gap, the number of users affected, whether all users [we]re similarly affected by the gap and data about the level of inadequate service during calls in the gap area."

Therefore, the court had to "determine whether there [we]re feasible alternatives to the carrier's proposed solution that would remedy the gap." "To demonstrate an effective-prohibition claim based on the denial of a particular proposal, the proponent of the tower ha[d] the burden to show that further reasonable efforts are so likely to be fruitless that it [wa]s a waste of time to even try," the court explained.

The carrier had the burden to show it had conducted a systematic study of alternative sites and demonstrated that

no feasible alternatives existed. Then, the local board had to show that its “evidence was factually insufficient or come forward with evidence of its own to demonstrate a genuine dispute of fact.”

THE BOTTOM LINE

Regulatory agreement denial—The planning board’s denial wasn’t supported by substantial evidence and barred T-Mobile from providing wireless service, in violation of the TCA, the court found. The Barnstable Code allowed the town manager to enter into a regulatory agreement with a qualified applicant only after an “affirmative, majority vote by the Planning Board and the Town Council.” The code also delineated permitted uses for properties located within a [District of Critical Planning Concern] and stated that “[o]ther uses of an appropriate scale and function [could] also be considered subject to a regulatory agreement.”

The planning board didn’t recommend that the town manager should enter into a regulatory agreement with T-Mobile based on its determinations that “(i) the alterations proposed in the application for regulatory agreement would ‘impact the historic integrity’ of the Proposed Site such that the proposed use [wa]s ‘not of an appropriate scale and function’; (ii) the in-building residential signal levels [we]re adequate and in-building commercial coverage [wa]s not necessary to provide adequate coverage given the unique character of the area, land use, and structures’; (iii) despite T-Mobile’s representations that the Water Tower was outside the search ring, ‘no evidence was submitted to the record identifying the level of coverage that would result’ from installing the facility at the Water Tower; and (iv) T-Mobile did not offer sufficient ‘factual basis or evidence’ that other potential locations were inadequate.”

In reviewing the record, the planning board’s reasons for denying T-Mobile’s application for regulatory agreement were not supported by substantial evidence. That’s because:

- **The planning board’s denial focused on installing cables on the outside of the proposed site** in “finding that the wireless facility would ‘impact the historic integrity’ of the [p]roposed [s]ite” and that reasoning didn’t “consider the fact that wire covering had not been completed because ‘T-Mobile stopped work before completion at the behest of [Barnstable]’ ”;
- **photos submitted to the planning board showed the proposed site would not result in any aesthetic changes** to the structure “and there [wa]s no contrary evidence in the record to suggest otherwise”; and
- **the Massachusetts Historical Commission had found that “the wireless facility . . . would ‘have no adverse effect on significant historic or archaeological properties.’ ”**

Therefore, the court couldn’t find that the planning board’s denial of the application for regulatory agreement based on aesthetic impacts was based on substantial evidence.

The denial of the application wasn’t based on substantial evidence for another reason, too, the court found. That is,

the planning board had “misinterpreted the evidence regarding the area in which T-Mobile ha[d] identified a coverage gap.”

In reviewing the record, the planning board’s reasons for denying T-Mobile’s application for regulatory agreement were not supported by substantial evidence.

The planning board “conflate[d] the ‘problem area’ with the ‘search ring’ outlined on maps of the area showing coverage,” the court wrote. “The ‘search ring,’ however, only indicate[d] a smaller portion of the overall coverage gap area within which engineers determined that the wireless facility must be located to adequately remedy the larger coverage gap.” “The coverage maps indicate that there [wa]s currently a gap in coverage at the 2100 MHz band, limiting coverage to only in-car service. . . . The gap shown on the maps was corroborated by testimony from T-Mobile’s engineers and data from ‘drive tests’ that tested the quality of coverage throughout the area.”

There also was documentation, provided from an independent consultant the town had hired, that “confirmed that ‘indoor levels [we]re spotty’ across all frequencies and that, regarding [a] 2100 MHz band, which [the consultant] noted ‘[wa]s important for T-Mobile’s service,’ coverage ‘[wa]s limited to in-vehicle in most places and outdoor only in some areas.’ ”

That consultant found that T-Mobile had shown a new site in the search ring was necessary and justified. “The Planning Board’s error in conflating the search ring with the coverage gap area, considered alongside the evidence submitted by both T-Mobile and CityScape, lead to the conclusion that the Planning Board’s denial based on adequate in-building residential coverage was not supported by substantial evidence,” the court found.

ZBA’S DENIAL

The court found that T-Mobile had also shown “a significant gap in its provision of wireless services around the Proposed Site and that it considered and rejected alternative sites, concluding that the Proposed Site was the only viable location for the installation of the wireless facilities.” Therefore, its request for judgment on this claim was also warranted.

ONE CLAIM NOT ENTITLED TO JUDGMENT

The court rejected T-Mobile’s claim that the planning board’s and ZBA’s denials had been impermissibly based on the environmental effects of radio frequency emissions. “Here, the Planning Board, in its denial, noted that it had received ‘a significant amount of written and oral public comment in opposition to the application . . . [that] cited health-related concerns’ but acknowledged that it was not permitted to base its denial on environmental concerns.” The board discussed its reason for denial, “which did not

include the environmental concerns raised by the public. The ZBA did not mention environmental concerns or public opposition in its denial, relying solely on its determination that it lacked jurisdiction to issue a special permit for the wireless facility,” the court added. “Without more, this [c]ourt [could not] conclude that the denials issued by the Planning Board and the ZBA were improperly based upon environmental concerns, either directly or indirectly.”

Short-term Rentals

Property owner challenges fines over short-term rentals, claims local ordinance violated due process rights

Citation: *Thinh Tran v. Department of Planning for County of Maui*, 2020 WL 3146584 (D. Haw. 2020)

Thinh Tran bought property within the Kaanapali Golf Estates (KGE). He contended he did so after reviewing the Declaration of Covenants, Conditions and Restrictions for KGE (CC&R). In his view, the uses of the property were consistent with the Maui County (Hawaii) Code (MCC).

Specifically, Section 27 of the CC&R authorized owners to lease their units for an initial term of not less than 30 days, unless the board of directors shortens the term. At the inception of KGE, short-term/transient rentals were for terms of less than 30 days under the MCC. Since then, the CC&R and MCC had permitted KGE owners to rent their units for a minimum of 30 days, up to 12 times per year.

In 2013, however, the developer of KGE handed control of the Kaanapali Golf Estates Community Association, Inc. (KGECA) to the homeowners there. Some of the homeowners sought to enforce a 180-day restriction and urged the county and Department of Planning (DP) not to issue short-term rental permits to KGE owners, misrepresenting that the CC&R did not allow rentals of less than 180 days.

Then, those owners took to amend the CC&R to bar any rentals of less than 180 days. Tran argued that the owners were interfering with any owner seeking a permit for short-term transient rentals.

Tran alleged that the DP issued violation notices to him and other short-term rental property owners and imposed excessive fines. He claimed that his constitutional rights, including the right to due process, had been violated.

The county asked the court to dismiss the constitutional, as well as state-based, claims against it. One of the main issues for the court to address was whether the applicable ordinance “and/or its enforcement against [Tran] result[ed] in an unconstitutional taking of his property.”

DECISION: Request for dismissal granted in part.

The federal constitutional claims were stayed until a state court could rule on Tran’s claims related to the legality of the ordinance itself as this was a matter to be decided by a state court.

The Ninth Circuit, which had jurisdiction over Hawaii where this case took place, had previously ruled that “land-use planning questions ‘touch[ed] a sensitive area of social

policy’ into which the federal courts should not lightly intrude.” In addition, “the short-term rental issue ha[d] been and continues to be a hot-button topic and a sensitive issue of social policy throughout the State,” the court in this case noted.

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There was a significant local interest and important public policy issue present in this case. Also, resolving “the state/municipal issues here [could] avoid or narrow the adjudication of the federal constitutional issues,” the court found. For instance, Tran “admitted that if his property rights [we]re grandfathered and/or KGE [wa]s not subject to [the o]rdinance, his constitutional claims would no longer be at issue and this case would end.”

The bottom line: Tran had “mis-characterized all of his claims as federal . . . to avoid the application of . . . abstention,” the court found. And, even if his “characterizations were accurate, the federal claims turn[ed] on underlying questions of state law, the resolution of which could obviate the need for a determination of federal constitutional questions.”

Finally, this case involved a question of whether the ordinance’s “grandfathering” provision violated the state’s Zoning Enabling Act. The court couldn’t “predict with any confidence how Hawaii’s courts would decide [Tran’s] state law challenges to [the o]rdinance.” And, since “the applicable land use regulatory scheme [wa]s complicated, and the state law issues [we]re novel,” they should be addressed by a state court, it ruled.

Enforcement

Recovery center, resident challenge zoning enforcement order and lower court’s denial of preliminary injunction

Citation: *SoCal Recovery, LLC v. City of Costa Mesa*, 808 Fed. Appx. 531 (9th Cir. 2020)

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

SoCal Recovery LLC (SoCal), a sober-living facility, and one of its residents, Roger Lawson, sought a preliminary injunction to block the City of Costa Mesa, California, from enforcing a zoning ordinance against SoCal.

The lower court denied SoCal and Lawson’s request for a preliminary injunction, and they appealed that decision to the Ninth U.S. Circuit Court of Appeals.

DECISION: Affirmed.

The plaintiffs didn't meet their burden for warranting the issuance of a preliminary injunction.

"To warrant a preliminary injunction, a plaintiff must demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest,'" the court explained. Also, in the Ninth Circuit, the courts had "adopted 'a sliding scale approach,' whereby a stronger showing of one element may offset a weaker showing of another." Therefore, "when the balance of hardships tip[ped] sharply in the plaintiff's favor, the plaintiff need demonstrate only 'serious questions going to the merits.'"

In reviewing the lower court's decision, the court concluded it hadn't abused its discretion in denying the request for a preliminary injunction. For instance, the court:

- "acknowledged the potential hardships confronting SoCal and Lawson absent injunctive relief, and it recognized their individual interests in the continued operation of the sober living facility, as well as 'the public interest in vindicating fair housing rights and promoting the recovery of alcoholics and addicts' "; and
- still "found significant countervailing interests that weighed against a grant of relief to the plaintiffs, including the interests of the [c]ity in enforcing its ordinances and of the residents of sober living homes and the public at large in preserving the benefits the [c]ity ordinances conferred," the court found.

The bottom line: The lower court had "noted the [c]ity's concerns that non-enforcement would 'contribute to the overconcentration of these types of facilities in this residential neighborhood,' clash with 'the scale and intensity of surrounding properties,' and 'fundamentally alter' the neighborhood's character." Therefore, it had "reasonably concluded there were 'public interests on both sides,' and that the balance of hardships did not tip sharply in the plaintiffs' favor, such that they could not avail themselves of . . . [a] more malleable 'sliding scale' approach to the test for preliminary injunctive relief."

FHA CLAIM FAILS, TOO

The lower court also didn't err in finding that neither Lawson nor SoCal would succeed on the merits of a reasonable accommodation claim brought under the Fair Housing Act (FHA). They "never submitted a written request for a general departure from the 650-foot separation requirement—although that procedure was mandated by the [c]ity's zoning ordinances, brought to SoCal's attention by [c]ity officials, and specifically solicited from SoCal by the [c]ity. And when the[y] ultimately did submit a written request for the accommodation of using [a] 'walk-off' metric rather than [a] 'bird's eye' metric for distance calculations, they failed to respond to the [c]ity's reasonable solicitation of additional, more reliable information pertaining to the distance measurements [they had] relied on," the Ninth Circuit explained.

"At no point do the[y] explain why they failed to comply

with the [c]ity's procedures (which SoCal had followed, without incident, with respect to a different one of its sober living residences) or the [c]ity's information request, even after those deficiencies were brought to their attention by the [c]ity with sufficient time to cure them." Therefore, the lower court didn't abuse its discretion in finding that they failed to show a likelihood of success on the merits of their claim that their reasonable accommodation request was wrongfully denied in violation of the FHA.

Zoning News from Around The Nation

California

Appeal likely after court finds zoning code barring church services in ground-level space didn't violate religious freedom

A federal court has ruled that the City of Salinas, California didn't violate religious freedom by denying the New Harvest Christian Fellowship's (NHCF) request to conduct church services on the ground level of a property located on Main Street in the municipality's Oldtown District, *Monte-rey County Weekly* reported recently.

NHCF, which purchased the property in question without checking to ensure that its requested use was permitted under the local zoning law, filed suit against the city asserting that the ordinance's bar on holding services on the first floor was unlawful.

NHCF argued that entertainment venues in the area had been permitted to host activities on the ground level of their respective buildings, so that was evidence that it had been treated unfairly. The judge disagreed after the city pointed out that those other venues were open to the public and served as a strong foundation for the area's commercial activities, the news outlet noted.

A religious freedoms attorney has filed an appeal with the Ninth U.S. Circuit Court of Appeals, the news outlet also noted.

In other news out of the Golden State, the City of San Diego has unveiled its new Zoning and Parcel Information Portal (ZAPP), the city stated in a press release. San Diego's Development Services Department (DSD) launched ZAPP to make it easier to research zoning data from mobile devices and computers 24/7.

"Using a City of San Diego property address, the new interactive portal allows customers to research more than 60 layers of information needed to plan and design development of a property. Those layers of information include assessor parcel numbers, zoning maps, City Council districts, school districts, historic districts, fire risks, earthquake fault buffers and various regulatory areas," the press release noted.

"Accelerating the use of technology during the COVID-19 pandemic has been a top priority for everyone at the City to better serve our customers," said San Diego's mayor, Kevin Faulconer.

The portal is the latest in a series of "innovations and

process changes in response to the COVID-19 pandemic and is part of Mayor Faulconer's push to leverage data and technology effectively to help improve transparency and performance," his office stated.

For more on ZAPP, visit sandiego.gov/development-services/zoning.

Sources: montereycountyweekly.com; sdnews.com

Massachusetts

Microunit housing announced to combat homelessness in one Bay State city

The Worcester Housing Authority (WHA) recently received funding from the Massachusetts Department of Housing and Community Development to proceed with building the first modular microunit housing project in the state, the *Worcester Telegram & Gazette* reported. The WHA's executive director told the news outlet that the goal is to provide housing to two dozen homeless individuals and that if the endeavor is successful, it could serve as an affordable housing model to combat homelessness.

The proposed building will be three stories in height and house 24 studio apartments of up to 400 square feet each the news outlet reported. A case manager will have a dedicated office space on site, too, to help residents obtain physical and mental health services if needed.

The idea for modular construction, which runs \$100,000 to \$120,000 per unit, was born out of recommendations made by the city's Task Force for Sustaining Housing First Solutions.

Source: telegram.com

Texas

Industrial business park gets green light thanks to zoning change approval

Recently, a public hearing took place on the issue of

whether a change from agricultural to planned development (industrial) zoning should be permitted so that an industrial business park can be constructed in Mesquite, Texas, *Star Local News* reported.

Following that hearing, Mesquite's city council granted the application for a change to the local zoning ordinance, which BGE Inc. filed on behalf of Wynn/Jackson Inc., the news outlet reported.

Property owners did not express any opposition to the application, the news outlet reported.

Source: starlocalmedia.com

Virginia

Conditional use permit application to erect flagpole to fly Confederate battle flag withdrawn

The Virginia Flaggers recently filed an application for a conditional use permit seeking permission to erect a 100-foot-plus flagpole to display the Confederate battle flag on agriculturally zoned land, the *Chesterfield Observer* reported recently. However, right before the Chesterfield Planning Commission could hold a public hearing on the matter, the group withdrew its application.

The news outlet reported that the planning department had recommended denying the application originally because the height of the flagpole and the flag's size did not conform to local zoning requirements. In addition, the news outlet reported that the local ordinance at issue barred a flagpole from being the primary use of agriculturally zoned land.

Source: chesterfieldobserver.com