



# CITY OF ELKO

## Planning Department

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### PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a special session on Thursday, September 6, 2018 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.D.S.T.

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

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

Date/Time Posted: August 31, 2018 2:10 p.m.

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

Date/Time Posted: August 31, 2018 2:05 p.m.

ELKO POLICE DEPARTMENT– 1448 Silver Street, Elko NV 89801

Date/Time Posted: August 31, 2018 2:15 p.m.

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

Date/Time Posted: August 31, 2018 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](mailto:sarchuleta@elkocitynv.gov) to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV.

Dated this 31<sup>st</sup> day of August, 2018.

### NOTICE TO PERSONS WITH DISABILITIES

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

Cathy Laughlin  
Cathy Laughlin, City Planner

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**SPECIAL MEETING AGENDA**  
**5:30 P.M., P.D.S.T., THURSDAY, SEPTEMBER 6, 2018**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**

**CALL TO ORDER**

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

**ROLL CALL**

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

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

**APPROVAL OF MINUTES**

August 7, 2018 – Regular Meeting **FOR POSSIBLE ACTION**

**I. NEW BUSINESS**

**A. PUBLIC HEARING**

1. Review, consideration, and possible action on Variance No. 9-18, filed by Moises Luna for a reduction of the required interior side yard setback from 5 1/2' to 0' and the required rear yard setback from 10' to 0' for an accessory building 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 north side of Benti Way, approximately 257' east of Spruce Road. (927 Benti Way - APN 001-621-015)

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

1. Review, consideration and possible action on a transfer of Conditional Use Permit No. 4-86 to new property owner, filed by Cristina Giammalva on behalf of Kathern L. Stringfield, which would allow for a child care center and a preschool within a R (Single-Family and Multi-Family) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The location of said property is generally on the northwest corner of the intersection of 2<sup>nd</sup> Street and Sewell Drive. (1737 Sewell Drive – APN 001-640-035).

2. Review, consideration, and possible action and possible approval of Final Plat No. 11-18, filed by Parrado Partners, LP, for the development of a subdivision entitled Great Basin Estates Phase 3 involving the proposed division of approximately 9.65 acres divided into 38 lots for residential development within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally at the extension of Village Parkway and Opal Drive. (001-633-030).

## **II. REPORTS**

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

## **COMMENTS BY THE GENERAL PUBLIC**

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

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

## **ADJOURNMENT**

Respectfully submitted,



Cathy Laughlin  
City Planner

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**REGULAR MEETING MINUTES**  
**5:30 P.M., P.D.S.T., TUESDAY, AUGUST 7, 2018**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**

**CALL TO ORDER**

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

**ROLL CALL**

**Present:** David Freistroffer  
Evi Buell  
Ian Montgomery  
Jeff Dailing  
John Anderson  
Stefan Beck  
Tera Hooiman

**City Staff:** Curtis Calder, City Manager  
Scott Wilkinson, Assistant City Manager  
Cathy Laughlin, City Planner  
Bob Thibault, Civil Engineer  
John Holmes, Fire Marshal  
Dave Stanton, City Attorney  
Shelby Archuleta, Planning Technician

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

Burt Gurr, 554 S 5<sup>th</sup> St, asked if the public would have time to comment on things that were on the agenda before the items were opened.

Chairman David Freistroffer explained the procedure to Mr. Gurr.

**APPROVAL OF MINUTES**

June 5, 2018 – Regular Meeting **FOR POSSIBLE ACTION**

**\*\*\*Motion: Approve the minutes from June 5, 2018.**

**Moved by Jeff Dailing, Seconded by Stefan Beck.**

*\*Motion passed. (4-0, Commissioners Buell, Hooiman, and Montgomery abstained)*



July 9, 2018 – Special Meeting **FOR POSSIBLE ACTION**

**\*\*\*Motion: Approve the July 9, 2018 Minutes.**

**Moved by Jeff Dalling, Seconded by Evi Buell.**

*\*Motion passed. (4-0, Commissioners Montgomery, Beck, and Anderson abstained)*

## **I. UNFINISHED BUSINESS**

### **A. PUBLIC HEARING**

1. Review, consideration, and possible action on Variance No. 7-18, filed by HCPI/UTAH, LLC for a reduction of the required setback from any interior lot line, from 27' to 0' on the Northwest, 29' to 5.1' on the Northeast, 27' to 10.3' on the Southeast, 29' to 9.7' on the Southwest, and increase the maximum lot coverage from 35% to 73%, within a PQP (Public, Quasi-Public) Zoning District, in conjunction with a zone change application, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the west side of Golf Course Drive, approximately 205' south of Cedar Street. (855 Golf Course Drive - APN 001-200-005)

Bob Morley, 640 Idaho Street, explained that this item was tabled from the July meeting, because it was advertised incorrectly. There were three rezone requests, three variance requests, and a revocable permit that were associated with the VFW, the Clinic building, and the Surgical Center building. In the process of the VFW asking for some improvements, staff discovered that the zoning was residential for all three properties. Staff suggested that those properties be rezoned to PQP, which would match the zoning of the properties to the uses. The rezone applications were approved at the July meeting, along with the two variance applications for the VFW and the Clinic. The variance applications were required because the setback requirements for the PQP zoning district are quite onerous. In order to get the buildings, as they exist, in compliance with code the three variance applications were submitted to reduce the setbacks.

Cathy Laughlin, City Planner explained that this application was in conjunction with a rezone, which was approved by the Planning Commission and the City Council. Ms. Laughlin went over the City of Elko Staff Report Dated June 25, 2018. Staff recommended approval subject to the facts, findings, and conditions in the staff report. Parcel Map 3-18 was needed because when they surveyed the property in order to provide applications for the rezone and the variance, there were some errors found in the previous mapping of the property. Mr. Morley has done a parcel map to modify the boundary of the surgical center parcel to accommodate the errors that were found. The Parcel Map has been approved, but has not been recorded yet.

Bob Thibault, Civil Engineer recommended approval as noted by staff.

John Holmes, Fire Marshal, recommended approval.

Curtis Calder, City Manager, recommended approval.

**\*\*\*Motion: Conditionally approve Variance No. 7-18 subject to the conditions in the City of Elko Staff Report dated June 25, 2018, listed as follows:**

- 1. Approval of Rezone 5-18.**
- 2. Parcel map 3-18 is to be approved, recorded and all conditions satisfied.**

Commissioner Buell's findings to support her recommendation was the proposed variance approval is in conformance with the Land Use Component of the Master Plan. The property is not located within the Redevelopment Area and consideration of the plan is not required. The property is a lot with interior property lines on all sides, and no common property line that is considered a part of a street line. Interior setback requirements for the PQP Zoning District cannot be met. The property as developed, exceeds the thirty five percent of the net site area lot coverage. Approval of Variance 7-18 in conjunction with approval of Rezone 5-18 will bring the property into conformance with Section 3-2-8 of City Code. The special circumstance is directly related to the property being improperly zoned for the developed use of the property. The exceptional practical difficulty is directly related to the fact that the property is improperly zoned for the existing use of the property and the variance is required to legally rezone the property and address the required setbacks stipulated in the proposed zone. The special circumstance of a fully developed property with several legal non-conforming issues, including the use of the property as a Public/Quasi-Public use is limited in extent in the district. The circumstance does not generally apply to other properties in the district. The identified issue is restricted to a small number of properties within the civic center area of the community. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity. The applicant is seeking the variance to address a fully developed property with several legal non-conforming issues including the use of the property as a Public/Quasi-Public use. The applicant is not seeking the variance to develop or expand the use of the property. The granting of the variance is directly related to an improperly zoned property and will not impair the intent or purpose of the zoning and will not change the use of the land or zoning classification. The property is fully developed with several legal non-conforming issues including the use of the property as a Public/Quasi-Public use and the granting of the variance will not impair natural resources.

Moved by Evi Buell, Seconded by Jeff Dalling.

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

## **II. NEW BUSINESS**

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

1. Review, consideration, and possible initiation to amend Title 3, Chapter 3, of the Elko City Code entitled "Subdivisions", with the repeal and replacement of the chapter, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Laughlin explained that this item was an initiation of a repeal and replace of The Title 3, Chapter 3, which is currently titled Subdivisions. Keep in mind that this is initiation and that in the past initiations have been brought to the Planning Commission many times before they were sent to City Council. It does not mean this item will be set for a public hearing. The 5<sup>th</sup> Street District was brought back to the Planning Commission five or six times for initiation before it was set for a public hearing. Developers, Engineers, and Contractors, staff would like you to understand that with this full title replacement and repeal that it is important that we start somewhere and we had to get something in writing. It was most important to have legal review done on the current code and bring the current code revisions into conformance with the NRS. Staff started with the revisions and then they went through legal counsel. This is not set in ink. We are here to make revisions, but we had to start with something, so that we could get input. It is important for us to bring this draft to you after we've had legal review. We need to bring the Code into conformance with the NRS. Mr. Stanton has proposed revisions that not only bring the Code into conformance with the NRS, but to also eliminate the ambiguity of the code, and try to streamline the process. Much of the Code revisions were just a housekeeping policy, cleaning up the Code. There has not been a full code revision of this section of code, so it is important that we take our time, and initiate this as many times as needed to make sure the process is right. Ms. Laughlin reiterated that this was a housekeeping process and that the changes that are proposed are not radical changes. In the packet are a series of documents. This first document is a track changes document, which has all the staff and legal recommended changes. It is very difficult to read. All of that information was put into the Draft Ordinance. The draft Ordinance is what we send to City Council, once approved by Planning Commission. We started with the draft Ordinance to make it easier to read. In the draft Ordinance what is bold and struck through is the existing Code, and what is bold and underlined are the proposed Code changes. Because there were so many changes it was easier to repeal and replace, rather than to try to go through the Ordinance and strike out, underline, and bold all the changes. Usually we go over the entire code and show word for word the changes, but we won't be doing that. We will point out areas that we feel are important and then Mr. Stanton will go over his changes. Ms. Laughlin wanted to give a refresher on the Subdivision Process. First is Stage 1, the Pre-application Stage, which is the meeting with all the Departments and the Planning Commission Chairman. It is a very important stage in the process, because staff tries to work with Developers on what they need to do to bring it back as a Tentative Map. Stage 2 will now be called the Tentative Map, and used to be called the Preliminary Plat. There are several stages within the Tentative Map process. It gets brought to the Planning Commission for consideration, as well as City Council. Once the Preliminary Plat is approved the final stage is the Final Plat. At the same time as the Final Plat the Civil Improvement Plans, or Construction Documents, are considered. There is also a Performance Agreement and a Performance Guarantee. This is all in the Code as it is. Ms. Laughlin then showed a slide of the proposed changes to the Subdivision Process. Previously, staff only had 21 days prior to Planning Commission meeting to review the applications. NRS allows up to 60 days prior to the Planning Commissioner. Staff is proposing 45 days for review prior to the Planning Commission Meeting. Fourteen days prior to the Planning Commission Meeting Preliminary Plat legal notifications have to go out to the newspaper, so that does not allow staff enough time to review the Plat and get changes if needed, which is why staff is asking to extended that out to 45 days. That will give staff enough time to review the application to

make sure the application is complete and the Map has everything that is needed for the Planning Commission's review. Another proposed change is for the same section for the Final Plat, to extend from 21 days to 45 days prior to the Planning Commission Meeting. A change in the title is also proposed. She then wanted to go over the changes to the Table of Contents. On the left is what is proposed and on the right is what is existing. The numbering has changed. The previous Subdivision Code skipped some numbers, so now it will be in chronological and numerical order. The title has been changed to 'Divisions of Land', which matches the NRS. She then went over the proposed changes to the Table of Contents, included as Exhibit A. There has been some misconception on a part of the performance guarantee. The next slide showed, on the left, the Performance Guarantee as it is in the Code currently, and on the right, is what is proposed. She then explained the differences between the two. There is a lot of talk that there isn't a Performance Guarantee in the Code, and there is. Many of the Developers are also requesting a Workshop, which will be a joint effort between City Council and Planning Commission. They would like that to be held before the next Planning Commission meeting, if this is going to get initiated again next month. The Commissioners may want to consider that in their motion, to hold the workshop prior to the next initiation.

Dave Stanton, City Attorney, stated that he was looking forward to getting everyone's input. This is a long part of the Code, an important part of the Code, and it is fairly complex. It ties in with a complex part of the Nevada Revised Statutes. He thought it would be beneficial for everyone to be involved and engaged in provided a lot of input. The draft that it is in the packet is a work in progress. It is not intended to be a final document. He mentioned that he had been working on it today, putting in new language, and made some modifications to bring some things in line with the NRS, which are not in the draft that was in the packet. It's a place to start and it is far enough along to start discussion. He wanted to make a comment on the old Code, it is something that is pervasive throughout statutes, administrative codes, regulations, and City Codes, and they sort of evolve in response to specific issues. If you look at the old code you'll see when the old ordinances were enacted, which was back in the 70's. Specific issues would come up and they resulted in a code change. As codes change like that over a long period of time, in reactions to things, they get unwieldy, they don't always jive, and you find ambiguities and inconsistencies. When that starts happening it's time to redo it. The way a code like this is supposed to work, it is supposed to be a guidebook for someone who wants to divide land. Someone should be able to take a look at this code and start at the beginning, go all the way to the end, and say "That's how the process works and this is what I need to do". It should be clear, concise, and predictable. Mr. Stanton didn't think the draft they had now was. There are still some things that needed clarification. He thought it was a lot better than the old code. One of the things that they really worked hard to do, was to clarify meanings of things. When you get into special areas, such as subdivisions or Building Codes, there are terms of art, very specific terminology that people in the industry, or people who work in those departments, are familiar with but they are not familiar to everyone else. They are trying to beef up the definition section and get some clear and consistent definitions. That was one of the main areas of focus when all the changes started to be made. Another area was incorporating corresponding provisions in the NRS, Chapter 278. Mr. Stanton was still working on that. That was one of the focuses, to go through this carefully and make sure that if it's not consistent with NRS we make it consistent or take it out, so that the NRS provision applies by default. Some terms are outdated, so those have been taken out and updated with the new terms. The text of the code was reorganized to try to make it chronological. He noticed that the grammar in the old code was not that great, so they tried to make it grammatically correct. There are some issues that there will hopefully be some



discussion about that have to do with the practicality of going through the Subdivision Process. Hopefully we hear from people who are going to be affected by this code. Hopefully we hear some of the practical difficulties of the encounters, and come up with some resolutions and ways to make it work for everyone. Mr. Stanton stated that his role was to make sure the changes were clear, concise, consistent with the NRS, legal, and enforceable. Mr. Wilkinson and Ms. Laughlin will be good resources in terms of the practical side of things from the staff's point of view. One key area that Mr. Stanton thought would be talked about more than other areas was the issue of Performance Agreements and Performance Guarantees, and maybe Maintenance Guarantees. Performance Guarantees are not required by law. The NRS does not require the City to have a Performance Guarantee for improvements. If there is an Agreement to install improvements, then we may require a guarantee for the improvements. The term may means you can do it, but you don't have to. From the legal perspective there are some options. If you have a Performance Agreement you are requiring improvements in connection with a subdivision and you don't require a performance guarantee. That leaves a few options in order to make sure those subdivision improvements are done right. There are a few things Mr. Stanton thought the City could do, hold up the process until the improvements are approved by the City. Mr. Stanton thought there were practical difficulties with doing that. He thought it would create a potentially contention situation at the end of the process, he didn't recommend that. The other option, a major option, would be, since it's an agreement and it's a binding contract, you can just sue them and take them to court for not installing improvements to the City's standards, he didn't recommend that option either. That would be lengthy, time consuming, expensive, and unpredictable process. Having a Performance Guarantee in place eliminates a lot of those issues. He thought that seemed like the best fit and that's the way the City had been doing it. As sort of a middle of the road way to deal with some situations we've been running into, where improvements had already installed, but the bonds were still in place for the full amount of the agreement, it could be put into an agreement. He thought that would be discussed. There were probably some ways to fine tune the process, and stream line it.

Chairman David Freistroffer announced that there would be a three minute time limit, per person, for public comments.

Burt Gurr, 554 S. 5<sup>th</sup> Street, stated that he had been looking at this off and on for two months. He'd been told it had been in process for six or seven. They just handed them what appeared to be a fire hose full of water for them to drink in four days. When they say they rewrote the code, they rewrote the code that didn't get to you guys. They abandoned the old code. They had a redlined code that was in there. Mr. Gurr stated that he read it three or four times and couldn't make heads or tails of what they were trying to do. Simplify, clean-up, he agreed that there were some issues. The bonding thing is going to be a big item, on how you handle it and where you go with it, especially if it's not required under NRS. There are a lot of Cities in this state that don't require it, there are some that do, and they have different methods of handling it. The biggest issue is this community and the housing side wasn't contacted. They've had no input in this. There is a regulation sitting there that is being revised every day. He thought the best way to go with this was to table it, or move for initiation in another month and have a task force appointed between the Council, the Planning Commission, and the development community. The task force could sit down and go over the issues, so that everyone speaks the same language and know what is being done. Once it's cleaned up, and everyone understands where it's going, then there wouldn't need to be a five hour meeting. When this comes to a meeting, not for initiation, everyone has three to fifty minutes in their mind. They really wanted to have a task force



appointed. He thought it should be the full members of each board and have agendas, so that everyone understands the process. And so that the Planning Commission and City Staff understand what goes into developing in Elko, and understand why Elko is just about the hardest place to do a development in Nevada. Staff is correct, they gave up to 60 days for Counties under 700,000. Mr. Gurr stated that he tried to tie NRS Chapter 278 into this document. Chapter 278 has definitions and they pulled most of those. Chapter 278, in the quotes that Mr. Gurr found, included the whole Chapter 278. They would really appreciate either tabling the item tonight, so that everyone understands what is going on, and/or even if it is tabled they want to have the task force meeting. They want to have it after the holidays, and after September 1st.

Jim Winer, 700 Idaho Street, stated that he was representing the end product, which is houses for sale and the clients that they represent. Just so the Planning Commission understands the process they are about to start, the decisions they are about make, the recommendations and how they are going to affect the community for years, as Mr. Stanton said the last time it was looked at was in the 70's. The National Association of Realtors says that a good healthy real estate market will have an appreciation of 3 to 5% a year. The statistics right now, from the Elko County Association of Realtors, state that the average sales price in Elko from January to August 3<sup>rd</sup> are up 14.2%. That is not healthy. The reason Mr. Winer pointed that out was because Elko is in a housing shortage, that he hopes doesn't get worse. Nationally the prices of lumber are through the roof, because Canada did tariffs, because Trump did tariffs. We are in a labor shortage of construction in Elko, and so is everywhere in the United States of America. There are only a fist full of builders and developers that choose develop in this community. It is tough to get people in from surrounding communities, because Reno is on fire, the Wasatch, Vegas, and Boise. That is usually where trades are drawn from. There are changes in the regulations that are going to make it more cumbersome, red tape equals cost. There are some things that directly equal cost, and the cost of the land means the final product is higher. It will be a trickledown effect. They already have an issue in the community with affordable housing. There is already an issue with supply. You can see what the numbers are doing, and it's not going to get better in the near future. Housing affects the community in so many different ways, all the way down to employment. The decisions the Planning Commission is going to make, and the recommendations they will forward, will affect the community in so many ways. Mr. Winer hoped the Planning Commission appreciated the levity of what they were about to do. He also thought a workshop was a good idea.

Sheri Eklund-Brown, 1925 Antler Road, stated as a former elected official, the thing that has bothered her the worst was the lack of desire to involve the public. She couldn't understand why, when there were formal requests for a workshop, there wasn't one. There were builders upset with the Building Department at times, and there were workshops with them. There were workshops held with anyone that wanted a workshop. It was great to have public involvement. When you have all these stakeholders in the room, and they are this upset, she thought it could all be resolved with good communication, good working relationships, and listening to the public. She didn't think that was happening, and that is very disturbing. Her advice to the Planning Commission, as a former elected official, was to listen to the public and let them be involved. She highly suggested that a workshop be in order and be very organized and go through things as they should be. She didn't think it was good government.

Dusty Shipp, 959 Montrose Lane, wanted to run through the numbers with the Planning Commission, in regards to the Performance Agreement. Right now the idea is that they are going

to do an Engineer's Estimate base on prevailing wage, and based on that they are going to put up cash or put up a bond on that. He has a subdivision he's working on, it is 26 lots, and the Engineer's Estimate is \$2.3 Million. If you divide that by 26 lots that is \$91,000 per lot. The lot value is probably about \$90,000 in today's market, and that doesn't include the land costs, bond costs, interest on money, selling, or insurance. It is really about double what it should be. The way the Agreement is going to work is he will put up the cash, or bond, and he will be paying on that twice, because it needs to be half what that is. This specific subdivision is not tied to another subdivision, it is a loop. If he decides to never do it, or not finish, Mr. Shipp didn't see a lot of impact on the City if he didn't follow through. The idea of being able to pay for the development as he goes, out of his pocket and not have to put up the bond, would make it more doable. If there was going to be a Workshop he thought it was going to need to be more than just a half day meeting. It's going to need to be several meetings, extended, and lots of conversation and ideas to make this work.

Marcey Logsden, 625 W. Birch Street, said the changes to the Subdivision Code have come to a surprise to many of us here. She stated that she was not a developer, a contractor, or a builder, but when she had the chance to read through this, it didn't make a lot of sense to her, so she reached out to some City Officials, Developers, Architects, and Real Estate Agents. All were pretty surprised about what was happening in this ordinance change. She understood the need to get the ball rolling, that this is something that needs to get started so we can get organized, but she believed that the future of the development of Elko was at stake. She talked to the key players in the game. This ordinance input was done without any information from the people that have actually been putting millions of dollars into this community. That was very concerning to her as a private citizen. Input was taken, per Mr. Wilkinson, from developers in Reno and out of State. She asked Mr. Wilkinson why he didn't bother to talk to the developers that actually produce for Elko, and she didn't get a clear answer. That was also disturbing to her. She appreciated Ms. Laughlin's phone call, which cleared up a bunch of things for Ms. Logsden. Ms. Logsden wanted to say that although this Code is dated there has been no catastrophic impact of the current code to the City, or the people that reside here. There is no urgency here. There are no current public safety hazards that will devastate Elko. They have the opportunity to utilize the professional input of developers, builders, architects, real estate agents, and any other key players that significantly contribute to Elko, build homes, and create the future that Elko and its citizens desperately need. She wanted the Planning Commission to consider that this doesn't just impact these guys, there are effects on everyone, so please table the item.

Robert Capps, Capps Homes, 1706 Flagstone Drive, stated that he was in the middle of all of this, currently developing lots and building homes. Since he's heard about this, he has been taking it very seriously, because it is a big deal that doesn't only affect the development community, but the community as a whole. As he studied this quite a bit, he appreciated Dave Stanton's comments about some of the language in the current code. Some of it is not clear, and could be clarified, so everyone could have a better understanding. Also, being a land owner, he appreciated any City's concern about taking ownership of property. Once a Final Map is recorded the City is taking possession of improvements, so you want to be 100% sure you're not getting stuck with something. There can be some things clarified in code that will help with that. The Performance bond is a big deal. As proposed it is a very expensive undertaking, which is only going to make the cost of supplying lots and homes even more expensive. There is no way to get around interest and bond expense. Other Cities are doing performance bonds, generally speaking, and he had studied this extensively. Reno, for example, Performance Bonds are

common there, but because the developers want to do them because they have huge phases and they want to be selling lots at the beginning of the phase, before they get to the end of the phase. This is a different situation here. He also studied NRS, Chapter 278, Section 380 and 371. They both clearly state that developers have the option of either completing the improvements prior to the final map being recorded, or some type of performance guarantee to do that if they are not complete. He thought it was good that the code is being looked at, and that it can be clarified. Another thing that is very important is consistency. They want to be sure everything is being applied consistently. He asked that there be a workshop. He thought this was a big deal and that it should be further vetted before any action was taken.

Ms. Laughlin wanted to address some of the public comments. She wanted everyone to understand that the word initiation, is exactly what that is, it's initiation. Recall how long it took to get through the zoning ordinance for 5<sup>th</sup> Street. It took five or six months of workshop Planning Commission meetings. It was continuously worked on and developed, until it got to a point where it could go to a Public Hearing. Staff is not rushing anything through. She didn't want it to be perceived that anything was being rushed through. Staff just had to get something on paper for a place to start. Staff has not engaged the developers, because that is the next step in the process. It is expected that the Planning Commission will take staff's and the public's recommendations to schedule a workshop with everyone to start the process of getting public input. We are not trying to not include them in this Code revision. There is no sense in tabling the item, because if it is tabled it will come back as unfinished business exactly how you see it today. Staff agrees with the consistency and clarification, which is why it was started with legal counsel doing so much work in this code, so he could clarify issues and to make it consistent. The part about the Performance Guarantee, it is in Code right now. Because it has not been enforced at some points, staff apologizes for that. If there was nothing done to the Code, the Performance Guarantee is still required.

Scott Wilkinson, Assistant City Manager, encouraged the public, as they have a chance to go through all of the material and have very specific questions, to forward those to Ms. Laughlin. Yesterday evening there was a developer who contacted Ms. Laughlin with specific areas of concern. It was very beneficial because Mr. Wilkinson and Ms. Laughlin were able to talk about it and then those concerns can be forwarded to the City Attorney.

Mr. Stanton wanted to make a point about tabling, as a procedural matter. He thought that some of the members of public might not actually want this tabled. From what he was hearing, he thought they wanted the document to get improved and evolve, as it moves forward. Tabling the item locks it in. He thought what they wanted to do was to have new drafts be presented, that are taking the comments, input, and new changes into consideration. He thought that was the way the document review process should work. If there is a task force and a workshop there will be a whole bunch of other things that will go to it. Procedurally, tabling it will not accomplish that.

Mr. Thibault stated that he had read through the document and any comments he had were included. One thing about some of the comments from the public. There were some concerns raised about additional costs that are being created by this change. Mr. Thibault was curious where exactly those were. He knew there were costs involved with the Performance Guarantee. As stated that is already in the Code. Some specific statements about what changes in the code are adding costs is what Mr. Thibault would be curious to hear.

Mr. Holmes had no comments.

Mr. Calder had some general comments. The City Council, from time to time, decides to change code. A lot of the time it is not Planning and Zoning Code, it's unrelated. Right now we are going through a Traffic Code Amendment, so the Planning Commission wouldn't be involved, which is an additional level of public involvement. When we go through an ordinance change to change code, so everyone understands how that works, we ask the City Council to initiate a code change. Once they say go ahead and bring back a proposed draft, it goes through a 1<sup>st</sup> reading process, which isn't a formal public hearing but public comment is always taken at the City Council meeting. Based on the public comment, if there are going to be changes to the proposed code it would have to come back for another 1<sup>st</sup> reading before it's ready to go to a 2<sup>nd</sup> reading, and then gets adopted. That is the process to change City Code. Under the Planning and Zoning Code there's an additional level of involvement in the public meeting forum with the Planning Commission. That's why we felt it was important to get the Planning Commission's input, because the Planning Commission are the ones that do the heavy lifting every month when dealing with Planning and Zoning issues, and then they make recommendations to the City Council. There will be a lot of public involvement though out this process. City Staff has been pretty consistent in saying that as soon as the Planning Commission got a look at a draft to work off of, that we would be scheduling a joint workshop to include Planning Commission members, as well as City Council members, staff, and the public. There will be some logistics involved in that. He heard some comments that maybe they should wait until after the fair and the holiday. If that's what the public would like to see, we are happy to accommodate that. There is not a pressing rush to hold a workshop, so if it takes some time for the public and the Planning Commission to digest this, we can shoot for a workshop sometime after Labor Day. In the end what we want to see is an improved Code. Ultimately the City Council will decide on what the ordinance will be, which will set the Policy. Once the Policy is set it will be Staff's job to implement that Policy consistently and uniformly. The Policy issues have to be debated in public, and ultimately the Council needs to make a decision on which way they want to go.

Commissioner Evi Buell wanted to make sure she was understanding this part of the procedure correctly. Initiation just means that they get the ball rolling. They can start the process, start the workshops, and start the conversation. They aren't anywhere near approving or recommending anything. (Correct)

Mr. Stanton clarified that this was just a draft document to start talking about it. When it gets up to the City Council level there will be a 1<sup>st</sup> reading, and if there are a lot of changes after the 1<sup>st</sup> reading then there will be another 1<sup>st</sup> reading. If there aren't a lot of changes it will go to a 2<sup>nd</sup> reading and that's when it can be approved. That would occur after the Planning Commission sends it on to the City Council.

Chairman Freistroffer wanted to clarify that they had a zoning change on N, 5<sup>th</sup> Street, which was a mixed business residential zone, and that rather small change took about 5 months at the Planning Commission level before they sent it to the City Council. It was up for public hearings every month for five months. This is the process by which they start doing those sort of things.

Commission Buell said this is where they start getting input and making the document better.



Chairman Freistroffer had a few wording questions. The first one is probably just a modernization of wording, and also goes to procedure for when they approve things or don't approve them. Throughout, when it talks about approval of a map, for example, instead of using approve or not approve, it is using approve or disapprove. He wondered how that worked with formulating motions.

Mr. Stanton thought that archaic language came from some language from the NRS. There is an example in NRS 278.349 (2).

Chairman Freistroffer asked if it was synonymous with not approve. If they don't approve something, then they disapprove it.

Mr. Stanton said that was a procedural question, sometime things are just not approved because it dies, and sometimes there is an affirmative decision to disapprove something. He viewed the two as being synonymous.

Chairman Freistroffer asked if the Planning Commission had to change their practice to actively make motions to disapprove things because of the code they are creating.

Mr. Stanton didn't think so. The thing is that Chairman Freistroffer just raised an ambiguity, because he wasn't sure, so that means other people aren't sure. If that is the case then that should go in there.

Mr. Wilkinson mentioned with a subdivision, if the Planning Commission disapproves it they have to present findings justifying that decision to the developer and then to the City Council. In that case the Planning Commission would be taking action to disapprove it for whatever reasons.

Chairman Freistroffer asked if the motion would have in it findings to explain to the developer, and to direct staff to explain to developer.

Mr. Stanton said that was something they could put in the definitions section. The NRS doesn't really say anything about it, it's just language that appears in the statutes and they are expecting the local governments to apply.

Chairman Freistroffer agreed with Mr. Wilkinson. He thought it was at least partially addressed. At the beginning of Ms. Laughlin's presentation she presented a side by side of new code and old code for the Performance Guarantee section. That was to illustrate that it was already in code. He liked how staff tried to organize how the changes were made in the different documents that were included.

Ms. Laughlin explained that was the draft ordinance and all the deletions have to be bold and struck through and everything that is being added has to be bold and underlined. An ordinance isn't the track change document that was provided, that is very difficult to read, which was why the draft ordinance was provided.

Chairman Freistroffer said in the packet on Page 82 G(1)(d) was one of the sections.

Commissioner Dalling suggested they go over all questions in the workshop.



Chairman Freistroffer wanted to go over prevailing wages and local rates. He thought that was where one of the major concerns was coming from. That makes the performance guarantee twice as expensive. He needed a clarification between prevailing wages and local rates.

Mr. Wilkinson explained that under the NRS if the City is required to undertake work, and it's subject to prevailing wage, that would be the rate at which the City would incur if it had to complete the work. What is proposed is to address that. Typically we look at the local rates. The City bids a variety of projects over the course of a year and most of those are based on prevailing rates. If you had sidewalk and the engineer estimated that their cost was \$2/sq. yd. and we look at what the City has had to pay under contracts and its \$4, the City would adjust that rate up to \$4. There is a potential impact for that bond to be higher initially, but then the reimbursement, if you had a reduction in the bond over time, or the deposit of security, they would also be reducing it in accordance with those rates. There is just the beginning period of time where they might have an initial higher cost, but eventually that bond is being reduced accordingly.

Chairman Freistroffer said he understood the prevailing wage section. He then asked how the local rates fit into that.

Mr. Wilkinson explained that the City tracks the local rate. If on aggregate the City projects over the course of a year or two are \$3. He suggested maybe changing the code to read and/or. A prevailing rate would have you paying a higher amount, the City would go with the local rate, because that's what the City would end up paying.

Chairman Freistroffer asked if that could be done by NRS.

Mr. Wilkinson explained that the idea is that the unit rates that are tracked are reflective of the prevailing rates on a variety of different jobs. It could be clarified to say 'and/or', or 'or the local rates'. What we want to do is ensure that we have an appropriate security. The City has incurred expense in the past, because the bonds weren't sufficient. We need to be cautious when we calculate the Engineer's Estimates. Most communities that Mr. Wilkinson has looked at, under their code the engineer's estimate is approved by the Jurisdictional Authority, or the City Staff, and that is an appropriate procedure.

Chairman Freistroffer said he would save the rest of his comments for the workshop.

Mr. Wilkinson encouraged the Planning Commission, as they go through this, to send any questions or comments to the City Planner, so that we can take a look at that and be that much further along.

Commissioner Stefan Beck asked if the Planning Commission tabled the item if it would have any effect on the timeline of the general philosophy that Ms. Laughlin has mentioned, that we have to start somewhere. He thought it wouldn't affect anything at all until the next meeting.

Mr. Stanton explained that tabling it would stop it in its tracks. What you have right now is the agenda item and the agenda packet before you, and if you table it that would be what you would have at the next meeting. He thought they were talking about making this document evolve, making changes that would take into account comments from all different sources, and making

revisions and have another version of this document to take to a workshop. He recommended against tabling this particular item. It would make more sense to just move forward, take in more public input, and have a living document.

Commissioner Beck was wrestling with, as an oversight committee member, the purpose of a government is to serve the people. He was hearing the public saying that they didn't know what was going on, they are confused, they are drinking out of a fire hose, they've been blindsided, and there is a lot of concern on their part. What he was hearing was that they wanted to table this and put it off. He asked if there was a way that the public could be satisfied that their concerns are being heard, that there will be plenty of opportunity for them to have input, and to be satisfied without tabling it. He asked if there was a way to get an executive summary on what the path and procedures are. He stated that he was a little confused. His main argument was that when he looked out at the public and they're hesitant and unsure of what is going on, that is not a good sign. He thought there was too much of a disconnect with the information from his point of view.

Commissioner Dalling mentioned that was the motion he wanted to make, was to initiate the workshop, so they keep everyone on the same page.

Mr. Gurr saw a lot of value in what Commissioner Beck said about tabling it, initiating it at the next meeting, and then have a workshop after that. He said they'd be looking at September 11 through the 13<sup>th</sup> to have a workshop. He didn't see how it would stop the process, it didn't stop them from building the document before it came here. If there is going to be revisions and changes keeping going with it, bring it back, and they'll look at it. They are having their first second meeting Thursday afternoon, so they were going to look at it pretty closely. It's not going to be an in the dark situation. He didn't understand how it would stop anything.

Ms. Laughlin explained that as legal counsel said, if it gets tabled, using the word table, would leave the document as it was presented today exactly as it is, there won't be any changes made between now and the next meeting.

Chairman Freistroffer explained that initiation directs staff to keep working on it. Table says freeze.

Mr. Gurr asked when the Planning Commission first told staff to start working on it.

Chairman Freistroffer said it was at the May meeting.

Mr. Gurr said they should look at the middle of September for the workshop.

Commissioner Buell asked if there was a countdown clock to get this finished. (No)

Catherine Wines, 421 Railroad Street, explained that she was an architect, but she was coming to the Planning Commission as a citizen. The construction public, real estate agents, engineers, architects, and developers are asking to slow down. She appreciated everyone's comments. As the public they were asking to get caught up. She only became aware of this four days ago, and didn't have time to go through it because there is so much development going on. Elko is not going to stop if this is put off for a month. There was no one in the room that Ms. Wines was not

familiar with and she thought that was what was nice about living in a small town. She thought they all appreciated that. This disconnect between the public and government, why would we want this? Why not just give the public a chance to catch up.

Ms. Logsden said from someone who has to be fiscally responsible in her everyday life. She thought that it was the Planning Commission's responsibility to be fiscally responsible here as well. If this item is not tabled tonight, changes will be made every day, billable hours will be going to the City Attorney that the tax payers have to pay, and Ms. Logsden wasn't ok with that. If it gets tabled it stops random emails to the City Planner. Changes made on a daily basis can cause quite a mess. Please table this tonight, and have the much needed workshop, and come together with everybody's recommendation.

Commissioner Dalling wanted to propose keeping it going and have a public workshop with everyone and the building public. He wanted to keep that part going, so they all get together and have the public workshop. That doesn't mean they are passing anything, but they would be keeping it going. That's where everyone would get invited to come in and give input. That wouldn't be done until after the holiday. That would give plenty of time, moving forward, to digest it and to get questions in to Ms. Laughlin.

Commissioner Buell thought one of the keys was that the Planning Commission's duty was to safeguard the interest of the City, but at the same time to listen to the public. She stated that she had never built, or sold a home. The Planning Commission needs the public's input. She didn't want anyone locked out of this process, but they aren't on a deadline. Initiating this doesn't start a countdown clock, and it wouldn't mean that they would have to do something right now. It means that the Planning Commission can vote on this, this time next year. Commissioner Buell stated that she would vote to initiate the item tonight, but she would not vote to recommend anything to City Council until the Planning Commission was sure that the public's concerns had been addressed.

Commissioner Dalling added that they just wanted to initiate a conversation.

Commissioner Beck thought the Planning Commission's job was to protect and safeguard the public, as well as the City. He was still hearing, after all the debate, that there was still uncertainty and hesitancy. There is a disconnect. He thought to regain a good faith relationship, his recommendation was to have an executive summary put together to clarify what is being done and why. He wanted to table the item, because that's what the public wanted.

Mr. Calder said just so everyone knows, during this period of looking at this ordinance, considering changes, and up until the final option, the current Code, as it is written today, applies and will be enforced as it is written. If there are developers out in the audience that are concerned about Performance Guarantees, nothing changes until the Code changes. Mr. Calder stated that he didn't care how long this took, but a developer who had a concern about a Performance Guarantee, who may want the Council to change the current code, may have some concerns if this drags out and they are in the process of starting a subdivision.

Chairman Freistroffer clarified that Performance Guarantees were currently required under Code.

**\*\*\*Motion: Initiate an amendment to Title 3, Chapter 3 of the Elko City Code, known as Subdivisions, repealing and replacing the Chapter, and direct staff to get together a workshop, which would include the City Council, Planning Commission, and the public.**

**Moved by Jeff Dalling, Seconded by Evi Buell.**

*\*Motion passed (6-1 Commissioner Beck voted no).*

Commissioner Dalling clarified that they didn't initiate changes. Now they want to include the public. He thought that was the right step for the public and the Planning Commission.

Commissioner Tera Hooiman expressed that in her opinion initiation did not approve what had been done. It keeps it moving forward.

2. Review, consideration, and possible action to change the time of the regular Planning Commission Meetings, and matters related thereto. **FOR POSSIBLE ACTION**

Chairman Freistroffer explained that this decision was up to the Commissioners. He has been on the Planning Commission several years. He can't make the times work in the future. He explained that he needed to teach evening classes, or things wouldn't work for him at work. His evening classes have to be Tuesday and Thursday at 5:30 p.m. to 6:45 p.m. He said he would bug out of those early once a month to make it to this meeting if they are at 6:30 p.m. He couldn't make the 5:30 p.m. meetings anymore for the foreseeable future.

Ms. Laughlin explained that she talked to Mr. Stanton in regards to if the Vice-Chair was to start meeting at 5:30 p.m. and the Chairman arrived at 6:30 p.m., would there be an issue or an open meeting law violation. Mr. Stanton stated that as long as we have a quorum to start the meeting at 5:30 p.m., and as long as when the Chairman comes in at 6:30 he is given a summary of the current agenda item, or he abstains from the vote on that item. There is no problems with that.

Commissioner Dalling thought changing the meeting times to 5:30 p.m. was a great change for the public and City Staff. He thought they should stick with 5:30 p.m. meetings. He talked to a lot of the public and they liked the 5:30 p.m. meeting time as well. He didn't want to be at the meetings until 10:30 p.m.

Commissioner Buell said that it made no difference to her, and she wanted to know who else was in the same situation.

Commissioner Ian Montgomery said it didn't matter to him.

Commissioner Beck said it didn't matter to him.

Commissioner Hooiman said she couldn't to 6:30 p.m.

**\*\*\*Motion: Keep the Planning Commission meeting times at 5:30 p.m.**

**Moved by Jeff Dalling, Seconded by Tera Hooiman.**

*\*Motion passed. (6-0, Chairman Freistroffer abstained from the vote)*

### III. REPORTS

#### A. Summary of City Council Actions.

*Ms. Laughlin reported that at the July 24<sup>th</sup> City Council Meeting, they approved the Rezone for VFW, Elko Clinic, and Surgical Center; the Revocable Permit for VFW was approved; the Final Plat for Riverside Villas was approved; the Vacation for Humboldt Hills was approved; and the Preliminary Plat for Humboldt Hills was approved.*

#### B. Summary of Redevelopment Agency Actions.

#### C. Professional articles, publications, etc.

##### 1. Zoning Bulletin

#### D. Preliminary agendas for Planning Commission meetings.

*Ms. Laughlin reported that the September Planning Commission meeting will be a Special meeting. It got pushed to Thursday, September 6<sup>th</sup> because of Labor Day. The deadline for applications is August 16<sup>th</sup>.*

#### E. Elko County Agendas and Minutes.

#### F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.

*Chairman Freistroffer asked if anyone had any comments on today's meeting.*

*Commissioner Hooiman didn't think the public understood.*

*Commissioner Montgomery said the public didn't understand what tabling would have done to the item.*

*Commissioner Buell said the public was portraying it as the Planning Commission was not listening to them.*

*Commissioner Montgomery said that's why they started with initiation, was so that they could understand their comments, listen to them, and make note of them, and get to work on this.*

*Mr. Wilkinson thought they were taking the right action to accommodate the public input.*

*Chairman Freistroffer thought they took the action to get more public input.*



*Ms. Laughlin explained that once all changes are made that are wanted, and we come to a final agreement, then we set it for a public hearing at a Planning Commission meeting, which is when they would make a recommendation to City Council.*

G. Staff.

#### **COMMENTS BY THE GENERAL PUBLIC**

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

#### **ADJOURNMENT**

There being no further business, the meeting was adjourned.

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David Freistroffer, Chairman

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Tera Hooiman, Secretary

**Elko City Planning Commission  
Agenda Action Sheet**

1. **Review, consideration and possible action on Variance No. 9-18, filed by Moises Luna for a reduction of the required interior side yard setback from 5 ½' to 0' and the required rear yard setback from 10' to 0' for an accessory building, within an R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 6, 2018**
3. Agenda Category: **PUBLIC HEARINGS,**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant has requested a variance to allow him to build an accessory building within the interior side yard and rear yard setbacks.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion:  
  
**If denied, based on facts and findings presented in the Staff Report dated August 23, 2018**  
  
**If approved, recommend conditional approval based on facts, findings and conditions presented in the Staff Report dated August 23, 2018**
9. Findings: **See Staff Report dated August 23, 2018**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Moises Luna  
927 Benti Way  
Elko, NV 89801**

2014-125

CITY COPY

RECEIVED

APR 03 2014

City of Elko  
Building DepartmentREVIEWED FOR CODE COMPLIANCE  
City of Elko Building Dept.

JUL 15 2014

APPROVED BY:  
THIS DEPARTMENT SHALL BE HELD RESPONSIBLE FOR LIABILITY BY  
REASON OF ISSUANCE OF ANY PERMIT REQUIRED UNDER THE BUILDING CODE

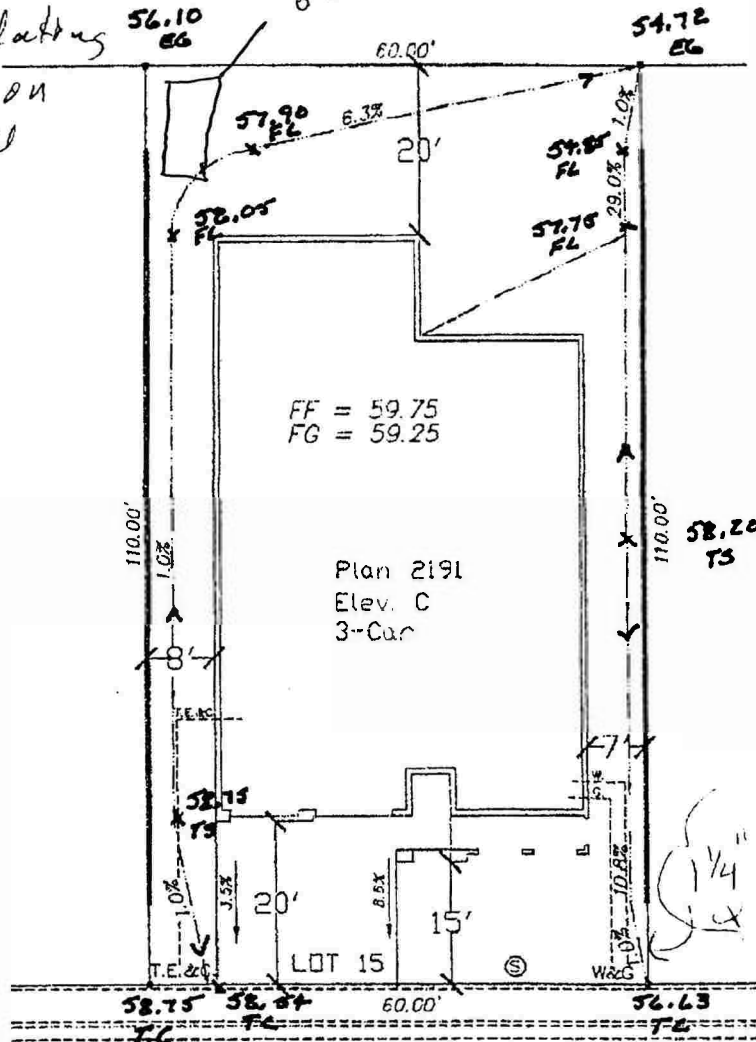
CITY DEPT.

SAW

4/9/14

Shed 8x14  
0 set back Requested- Pressure Regulating  
Valve Regd. on  
Water Service

ELKO CITY PLANNING DEPARTMENT APPROVED
City Planner: <u>Z. MAGNETT</u>
Date: <u>4/10/14 PM</u>



1/4" water line  
4" water meter

RECEIVED

AUG 13 2018

C/L BENTI WAY

APR 13 2018  
Engineer: [Signature]

1 BUILDING PAD  
SCALE: 1" = 10'

ARTISAN COMMUNITIES LLC  
9533 GATEWAY DR.  
RENO, NEVADA 89521  
(775) 742-8202  
FAX (775) 355-5702

**8 MILE ESTATES**  
PLAN INFO: 2191C, 3 BEDROOM, 2 1/2 BATH, 3 CAR GARAGE  
ADDRESS: 927 BENTI WAY  
ELKO, NV  
APN: 001-621-015

REQUIRE DSETBCKS  
FRONT: 15'  
(20' FOR GARAGE)  
INTERIOR SIDE: 5.5'  
EXTIOR SIDE: 15'  
REAR: 20'

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 9/16**

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

Title: Variance 9-18

Applicant(s): Moises Luna

Site Location: 927 Benti Way - APN 001-621-015

Current Zoning: R Date Received: 8/13/18 Date Public Notice: 8/22/18

COMMENT: This is to allow for a reduction of the required interior side yard setback from 5'1/2' to 0' and the rear yard setback from 10' to 0'.

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

Assistant City Manager: Date: 8/24/18

Recommend the P.C. review the FEMA information, findings when considering the application

SAW

Initial

City Manager: Date: 8/24/18

Recommend denial based upon Staff Report Findings.

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 23, 2018  
**PLANNING COMMISSION DATE:** September 6, 2018  
**AGENDA ITEM NUMBER:** I.A.1  
**APPLICATION NUMBER:** Variance 9-18  
**APPLICANT:** Moises Luna  
**PROJECT DESCRIPTION:** 927 Benti Way, Elko

**A Variance request to reduce:**

1. Allow accessory building to remain within the existing side and rear yard setbacks by reducing the side yard setback to 0" and the rear yard setback to 0" for the accessory structure



**STAFF RECOMMENDATION:**

RECOMMEND DENIAL, subject to findings of fact.



## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-621-015

**PARCEL SIZE:** 6,600 sq. ft.

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

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

**EXISTING LAND USE:** Residential

### **BACKGROUND:**

2. The applicant is the property owner.
3. The property is fully developed as a residential land use.
4. The area proposed for variance fronts Benti Way and the rear property line abuts the Peace Park.
5. The property was developed in approximately 2014.
6. The lot area is approximately 6,600 square feet and meets the area requirements stipulated in code.
7. The property, as developed, is built to the maximum extent of the parameters outside of setback requirements.
8. The parcel was created with 8 Mile Estates Subdivision Final Map, file number 682116, recorded with Elko County Recorder on December 18, 2013
9. 8 Mile Estates Subdivision Final Map states easements along street frontage of 7.5' and side lines of 5' for Mr. Luna's parcel. There are no rear easements on Mr. Luna's property as shown on file number 682116. There is a 15' slope and drainage easement located on the Peace Park parcel abutting Mr. Luna's parcel.
10. City of Elko Building Department put a stop work ticket on the door of the residence on 8/1/2018 when they noticed the accessory building being built. The property owner has stopped all work on the accessory structure.

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:

North: Public, Quasi-Public (PQP) / Developed as Peace Park

West: Single Family Residential (R) / Developed; Residential use

South: Single Family Residential (R) / Developed; Residential use

East: Single Family Residential (R) / Partially Developed; Residential use

### **PROPERTY CHARACTERISTICS:**

The property is currently developed with a single family use.

The property is generally flat.

The property is accessed from Benti Way

The property is several feet lower in elevation than the adjacent property to the west.

The parcel to the east has not been developed

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

- ) City of Elko Master Plan – Land Use Component
- ) City of Elko Master Plan – Transportation Component
- ) City of Elko Redevelopment Plan
- ) City of Elko Wellhead Protection Plan
- ) City of Elko Code – Section 2-1-4 Permits
- ) 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 3-2-22 Variances
- ) City of Elko Zoning – Section 3-3-25 Easement Planning
- ) City of Elko Zoning – Section 3-8 Flood Plain Management

**MASTER PLAN - Land use:**

1. The Master Plan Land Use Atlas shows the area as Residential Medium Density.
2. R- Single Family and Multiple Family Residential zoning district is listed as a corresponding zoning district for Residential Medium Density.
3. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
4. Objective 8: 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.

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

**MASTER PLAN - Transportation:**

1. The area will be accessed from Benti Way
2. Benti Way is classified as a local.

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

**ELKO REDEVELOPMENT PLAN:**

The property is not located within the redevelopment area and consideration of the plan is not required.

**ELKO WELLHEAD PROTECTION PLAN:**

1. The property is located within the 20 year capture zone for several City wells.

The existing use of the property does not present a hazard to City wells.

**SECTION 2-1-4(G) PERMITS:**

Permit Exemptions: The following buildings, structures and other improvements to property are exempt from any permit requirements contained in this title:

1. Buildings And Structures: Except as otherwise provided in this subsection, no permit shall be required for the construction or installation of any of the following:
  - a. A single one-story detached accessory structure used as a tool or storage shed, playhouse or similar use, or a patio cover, carport, garage or similar use, provided the

floor area does not exceed two hundred (200) square feet and further provided the structure is not occupied, except as follows:

(1) Permits are required for the following:

(A) Additional detached accessory buildings or structures of any size when built in conjunction with a building or structure that is classified as a Group R, Division 3 one-family or two-family dwelling; or

(B) Any one-story detached accessory structure located on any parcel used or zoned for any purpose other than single-family residential.

Notwithstanding the foregoing exceptions, accessory structures shall meet all setback requirements set forth in the Zoning Code.

As stated in this section of code, the accessory building is under 200 square feet and therefore is exempt from the requirement of a building permit, however, the structure shall meet all setback requirements set forth in the Zoning Code.

The proposed accessory building is not in conformance with Elko City Code 2-1-4(G)

#### **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.
  - ) 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.
  - ) 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.
  - ) 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.
  - ) 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 accessory structure, as located on the property does not conform to the rear and interior side yard setbacks.

The property does not conform to Section 3-2-4 of City Code. Approval of the variance application is required to bring the property into conformance.

### **SECTION 3-2-5(E)(7) RESIDENTIAL ZONING DISTRICTS:**

#### **1. Property Development Standards For Accessory Buildings:**

- a. Building Height: The maximum building height shall not exceed twenty five feet (25'), or requirements contained within the city airport master plan, whichever is the most restrictive.
- b. Building Setbacks: Any detached accessory building that is erected shall conform to front and side yard setback requirements. A minimum rear yard setback of ten feet (10') shall be required, which may be reduced to zero feet (0') if the rear lot line abuts a public alley.
- c. Building Area: A detached accessory building shall be limited to a maximum area of one thousand (1,000) square feet or ten percent (10%) of the lot area, whichever is greater, but not to exceed one thousand two hundred (1,200) square feet.

The property, as developed with the principal structure, meets all requirements of Elko City Code 3-2-5. The proposed accessory structure does not meet setback requirements for the rear or interior side yard.

If the accessory structure was to be located outside of the rear yard setback, it would be within 2 feet of the rear wall of the residence and therefore block necessary egress windows. This would be a safety concern.

Setbacks requirements are important for drainage purposes, easements as well as required for fire separation.

### **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.

*Mr. Luna stated in the application that the property is already developed from setback to setback due to it being a smaller lot and larger home. Area behind will not have neighbors due to it being the Peace Park. The property is lower than the neighbors to the west so the accessory building will not interrupt his neighbors view.*

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.

*Mr. Luna stated in the application that the property is a smaller parcel. There is no additional room for an accessory building. In order for him to comply with code 3-2-17, they park in garage which doesn't have any room for the items they want to store in the accessory building.*

With the FEMA flood zone as mapped, the northeast corner of the property is a lower elevation than the northwest. There is a greater possibility of exposure to the structure and contents to flooding in the northeast corner.

3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.

*Mr. Luna stated in the application that most subdivisions don't have park space abutting their rear property line like his does.*

FEMA floodway appears to come within a foot of the back property line of Mr. Luna's property.

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.

*Mr. Luna stated in the application that he spoke with his neighbor and there are no issue that will result in any material damage or affect their property or view.*

Due to the elevation change between Mr. Luna's property and the property to the west, the top of the accessory structure is within a foot of the height of the fence which separates the two properties.

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.

*Mr. Luna stated in the application that if there are zero setbacks it will not affect his neighbor or the park. It will not block any visibility. Land use to remain R- Residential and accessory buildings are allowed in that classification.*

6. The granting of the variance will not substantially impair affected natural resources.

*Mr. Luna stated in the application that there will be no drainage to adjacent properties and will not affect the park adjacent to the property.*



The Peace Park along the rear property line has a 15' drainage and utility easement running parallel to Mr. Luna's property.

**SECTION 3-3-25 EASEMENT PLANNING:**

**A. Utility Easements:**

2. Along side lot lines where required for distribution facilities, utility easements five feet (5') wide on each side of side lot lines; where service to street lighting is required: one foot (1') on each side of such lot lines, or as required by the utility company.

As shown on 8 Mile Estates Subdivision Final Map, the proposed accessory structure would be placed over the side lot line utility and drainage easement.

**SECTION 3-8 FLOODPLAIN MANAGEMENT:**

1. FEMA floodway, as mapped, is not located on the lot but appears to be on the lot line. As FEMA mapping is approximate, locating the accessory structure on the northeast corner of the property could expose the structure and its contents to flooding. There is an elevation difference between the northwest corner and northeast corner with the northeast corner being lower in elevation.

**FINDINGS**

1. It does not appear that granting the variance will result in material damage or prejudice to other properties in the vicinity.
2. It appears that the FEMA floodway would present a higher level of hazard for the structure or contents within the structure if it was located in the northeast corner
3. Granting of the variance does not appear to be detrimental to the interest, health, safety and general welfare of the public.
4. Granting of the variance will substantially impair the intent or purpose of the zoning ordinance.
5. Granting of the variance will not impair natural resources.
6. It appears that the features or conditions of the property result in practical difficulty or undue hardship and deprive the property owner of reasonable use of property.

**STAFF RECOMMENDATION:**

If **denied**, based on the findings and facts presented in this Staff Report.

If **conditionally approved**, staff would recommend the following conditions:

**Planning Department:**

1. Compliance with all staff recommendations.
2. Commencement within one year and completion within eighteen (18) months.
3. Vacate drainage and utility easement along the west property line.

**Building Department:**

1. Please see Elko City building code amendments table R302.1 regarding Exterior walls
  - } Walls: < 5 feet require 1 hour fire rating
  - } Projections: 2 feet to <5 feet require 1 hour on underside. 0 to 2 feet not allowed
  - } Openings: 3 feet to 5 feet allowed at 25% maximum of wall area or less
  - } Penetrations : < 5 feet must comply with section R317.3
2. Obtain an electrical permit for any electrical work to be completed.



# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@ci.elko.nv.us](mailto:planning@ci.elko.nv.us)

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

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August 27, 2018

Moises Luna  
927 Benti Way  
Elko, NV 89801

Re: Variance No. 9-18

Dear Applicant/Agent:

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

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

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

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

CC:

# Variance 9-18 Luna

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001621020	AGUILAR, JOSHUA S		967 BENTI WAY	ELKO NV	89801-3411
001621013	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621012	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621009	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621008	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621018	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621016	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621017	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621006	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001621007	ARTISAN EAST LLC		10630 MATHER BLVD	MATHER CA	95655-4125
001620074	BENTI, ROGER W ET AL		PO BOX 323	ELKO NV	89803-0323
001972031	CHAMBERS, JOHN B & SHARLYN		643 SPRUCE RD	ELKO NV	89801-4535
001972034	DAME, RICHARD S		631 SPRUCE RD	ELKO NV	89801-4535
001621010	DE CARLO, WILLIAM J & VALERIE J		930 BENTI WAY	ELKO NV	89801-3411
001620069	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801
001620035	ELKO, CITY OF		1755 COLLEGE AVE	ELKO NV	89801
001972030	FONDA, LOYD HENRYI		647 SPRUCE RD	ELKO NV	89801-4535
001621005	FRANKS, RAYMOND & AMBER		970 BENTI WAY	ELKO NV	89801-3411
001621014	GRISWOLD, CARL S		919 BENTI WAY	ELKO NV	89801-3411
001972028	HAGGARD, K D N		655 SPRUCE RD	ELKO NV	89801-4535
001838025	HEADLEY, G A Y & MARY		3105 UNIVERSITY CT	ELKO NV	89801-5055
001621019	PENROD, ZACHARY D & LANI		959 BENTI WAY	ELKO NV	89801-3411
001972029	POLKINGHORN, OWEN M & MARK A		651 SPRUCE RD	ELKO NV	89801 4535
001838012	SIROTEK, TIMOTHY R & TERRI TR		935 MITTRY AVE	ELKO NV	89801-5086
001972032	STONE, SHALUM J & CANDICE L		639 SPRUCE RD	ELKO NV	89801-4535
001621011	TESTOLIN, BARBARA A		922 BENTI WAY	ELKO NV	89801-3411
001838011	VILLEGAS, JOSE M & MARTHA G		364 MAPLE ST	ELKO NV	89801-3148
001972033	WILSON, MICHAEL M		55-550 NANILOA LOOP	LAIE HI	96762-1238

1 p.c.

NO P.C.

185

mailed 8/23/18

## **NOTICE OF PUBLIC HEARINGS**

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Thursday, September 6, 2018 beginning at 5:30 P.M. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.  
The specific item to be considered under public hearing format is:

**Variance No. 9-18, filed by Moises Luna for a reduction of the required interior side yard setback from 51/2' to 0' and the required rear yard setback from 10' to 0' for an accessory structure within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto.**

**The subject property is located generally on the north side of Benti Way, approximately 257' east of Spruce Road. (927 Benti Way - APN 001-621-015)**

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): MOISES LUNA  
MAILING ADDRESS: 927 BENT WAY  
PHONE NO (Home) 775-762-7218 (Business) \_\_\_\_\_  
NAME OF PROPERTY OWNER (if different): \_\_\_\_\_  
(Property owner's consent in writing must be provided.)  
MAILING ADDRESS: \_\_\_\_\_  
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):  
ASSESSOR'S PARCEL NO.: 001-421-015 Address 927 BENT WAY  
Lot(s), Block(s), & Subdivision 0 mile east of  
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 1<sup>st</sup> 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:

3-2-5(E)7

1. The existing zoning classification of the property R
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

Property is already developed from setback to setback due to it being smaller lot & larger home. Area behind will not have neighbors due to it being the Peace Park. My property is lower than my neighbors so the accessory building will not interrupt my neighbors view.

- 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.

The property is a smaller parcel. There is no additional room for accessory building. In order for us to comply with code 3-2-17 we park in garage which doesn't have any room for the items we want to store in accessory building.

- c) Indicate how the granting of the variance is necessary for the applicant or owner to make reasonable use of the property.

I have limited space to store my personal items.

- d) Identify how such circumstances, features or conditions do not apply generally to other properties in the same Land Use District.

Most subdivisions don't have park space abutting their rear property line like mine does.

- 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.

I spoke with my neighbor there are no issues that will result in any material damage or affect their property or view.

- f) Indicate how the variance will not be in conflict with the purpose or intent of the Code.

There are zero set backs it will not affect my neighbor or the park. It will not block any visibility.

- g) Indicate how the granting of the variance will not result in a change of land use or zoning classification.

Land use to remain R-residential. Accessory building allowed in that classification.

- h) Indicate how granting of the variance will not substantially impair affected natural resources.

There will be no drainage to adjacent properties & will not affect the park adjacent to the property.

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.: \_\_\_\_\_

I have been working on my property doing improvements.

The salary I make supports these improvements.

**(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** Moises Luna  
(Please print or type)

**Mailing Address** 927 Benti Way  
Street Address or P.O. Box  
Elko, NV 89801  
City, State, Zip Code

Phone Number: 775-762-7218

Email address: MOYLBECERRA@HOTMAIL.COM

**SIGNATURE:** 

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**FOR OFFICE USE ONLY**

**File No.:** 9-18 **Date Filed:** 8/13/18 **Fee Paid:** \$ 500 **CK#** 270

**RECEIVED**

AUG 13 2018



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on a transfer of Conditional Use Permit No. 4-86 to a new permittee, filed by Cristina Giammalva, which would allow for a childcare center within an R- Single Family and Multiple Family Residential Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 6, 2018**
3. Agenda Category: ***NEW BUSINESS***
4. Time Required: **15 Minutes**
5. Background Information: **CUP 4-86 was approved on September 16, 1986 for the second location of the Noah's Ark Childcare Center. The permittee of the 4-86 CUP is in the process of selling the business and property to the applicant.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to approve the transfer of Conditional Use Permit 4-86 based on facts, findings and conditions as presented in the Staff Report dated August 17, 2018.**
9. Findings: **See Staff Report dated August 17, 2018**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Cristina Giammalvo  
1292 4<sup>th</sup> Street  
Elko, NV 89801**



**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE:** 9/6

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

Title: Conditional Use Permit 4-86 Transfer

Applicant(s): Cristina Giammalva

Site Location: 1737 Sewell Drive

Current Zoning: R Date Received: 7/26/18 Date Public Notice: N/A

COMMENT: This is to Transfer CUP 4-86 from Kathy Stringfield to Cristina Giammalva to allow a child care center and a preschool within the R zoning district.

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

Assistant City Manager: Date: 8/21/18

Recommend approval as presented by staff

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SAW

Initial

City Manager: Date: 8/24/18

No comments/concerns.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

cy

Initial



City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7219

## **CITY OF ELKO STAFF REPORT**

**MEMO DATE:** July 31, 2018  
**PLANNING COMMISSION DATE:** September 6, 2018  
**APPLICATION NUMBER:** CUP 4-86  
**AGENDA ITEM:** I.B.1  
**APPLICANT:** Cristina Giammalva  
**PROJECT DESCRIPTION:** 1737 Sewell Drive

A transfer of conditional use permit 4-86 for new ownership of a Childcare Center within an R- Single Family and Multiple Family Residential zoned property.



### **STAFF RECOMMENDATION:**

RECOMMEND APPROVAL, subject to facts, findings, and conditions stated in this memo.

## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-640-035

**PARCEL SIZE:** 11,020 sq. ft.

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

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

**EXISTING LAND USE:** Was developed as Noah's Ark childcare center in 1988 with CUP approval in 1986

### **NEIGHBORHOOD CHARACTERISTICS:**

- )} The property is surrounded by:
  - o North & East: (R) Single and Multiple Family / Developed
  - o South & West: (PQP) Public, Quasi-Public / Developed

### **PROPERTY CHARACTERISTICS:**

- )} The property is developed.
- )} The property fronts 2nd Street and Sewell Drive.
- )} Main door access is off Sewell Drive in which there is no off street parking provided.
- )} Off Street parking is provided off 2<sup>nd</sup> Street.

### **BACKGROUND:**

1. The parcel is identified as APN 001-640-035.
2. The existing Conditional Use Permit 4-86 was conditionally approved by the Planning Commission on September 16, 1986. There were two conditions stated in the conditionally approved CUP, all of which have been satisfied. With the transfer of CUP, the new permittee would be required to comply with the existing conditions.
3. Kathy Stringfield, the CUP 4-86 permittee, still owns the property and is selling the property and business to the applicant October 1, 2018. Kathy has provided a letter stating her intentions.
4. CUP 4-86 was recorded with the Elko County Recorder's office, book 536 page 606.
5. CUP 4-86 is specific to childcare center and the address of 1737 Sewell Drive. The proposed transfer is not conflicting with the approved use or specific property.
6. The property is located on the north corner of 2<sup>nd</sup> Street and Sewell Drive intersection.
7. The area of the parcel is 11,020 square feet and is triangular shaped.
8. The existing structure was permitted April 22, 1988.

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

Applicable Master Plans and Elko 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 3-2-3 General Provisions
- )} City of Elko Zoning – Section 3-2-5(E) R – Single Family Multiple Family Residential District
- )} City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations

) City of Elko Zoning – Section 3-2-18 Conditional Use Permit

**MASTER PLAN:**

**Land use:**

1. The Master Plan Land Use Atlas shows the area as Medium Density Residential.
2. R- Single Family and Multiple Family Residential is listed as a corresponding zoning district for the Medium Density Residential Land Use.

The transfer of the Conditional Use Permit is in conformance with the Land Use Component of the Master Plan.

**Transportation:**

1. The property fronts 2<sup>nd</sup> Street and Sewell Drive.
2. Parking that is provided on site is off 2<sup>nd</sup> Street and is considered legal non-conforming.

The transfer of the Conditional Use Permit is consistent with the Transportation Component of the Master Plan. The proposed use, intensity of use and limitations of intensity of use will not create any significant cumulative issues on the existing transportation system.

**ELKO REDEVELOPMENT PLAN:**

The property is not located within the redevelopment area and therefore the Elko Redevelopment Plan was not considered for the transfer of the Conditional Use Permit.

**ELKO WELLHEAD PROTECTION PLAN:**

1. The property is located outside any capture zone for City wells.
2. The proposed use of the property and allowed uses under the R- Single Family and Multiple Family Residential zoning district do not present a hazard to City wells.

The transfer of Conditional Use Permit is in conformance with the Wellhead Protection Plan.

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

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

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

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

1. Section 3-2-3(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 use of the property requires a transfer of the existing conditional use permit to conform to Section 3-2-3 of City code.

The transfer of the existing conditional use permit is in conformance with Section 3-2-3 of City code.

### **SECTION 3-2-5 R- SINGLE FAMILY AND MULTIPLE FAMILY RESIDENTIAL:**

1. Childcare center is listed as a conditional permitted use under 3-2-5(E)(3).

The transfer of the existing conditional use permit is in conformance with Section 3-2-5(E)(3) of City code.

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

1. There are 6 off street parking spaces provided off 2<sup>nd</sup> Street.
2. Childcare centers require 1 parking space per every 10 students based on licensed occupancy, plus 1 per each employee on the largest shift, plus 1 per each facility vehicle.
3. Existing parking can be considered a legal non-conforming use.
4. A condition of the previously approved CUP 4-86 was frontage along Sewell Drive be designated a loading zone, with no parking allowed during the hours of operation.

Existing parking for the childcare center is considered a legal non-conforming use.

### **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.

With the filing of the application for the transfer from permittee to new owner, the applicant is in conformance with Section 3-2-18 of City code.as conformed to this section of code

## **FINDINGS**

1. The existing conditional use permit is consistent with the Land Use Component of the Master Plan.
2. The existing conditional use is consistent with the Transportation Component of the Master Plan. The proposed use, intensity of use and limitations of intensity of use will not create any significant cumulative issues on the existing transportation system.
3. The transfer of Conditional Use Permit is in conformance with the Wellhead Protection Plan.
4. The transfer of the existing conditional use permit is in conformance with Section 3-2-3 of City code.
5. The existing conditional use permit is in conformance with Section 3-2-5(E)(3) of City code.
6. With the filing of the application for the transfer from permittee to new owner, the applicant is in conformance with Section 3-2-18 of City code.
7. The property as developed is in conformance with City Code 3-2-17 as legal non-conforming.

## **STAFF RECOMMENDATION:**

Staff recommends the Conditional Use Permit 4-86 transfer to new owner, Cristina Giammalvo, be **approved** with the conditions as stated in approved CUP 4-86:

1. The parking spaces are to be located entirely upon the applicants property along 2<sup>nd</sup> Street, and frontage along Sewell Drive be designated a loading zone, with no parking allowed during the hours of operation.
2. This conditional use permit shall automatically lapse and be of no effect one year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which this permit is issued.

## **Planning Department Condition:**

1. The transfer of CUP 4-86 shall be recorded with the Elko County Recorder's office after the recordation of the deed of sale to Cristina Giammalvo. This to occur within 1 year of approval of the CUP transfer by the Planning Commission or the CUP transfer will automatically lapse and be of no effect.



# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@ci.elko.nv.us](mailto:planning@ci.elko.nv.us)

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

---

August 27, 2018

Cristina Giammalvo  
1292 4<sup>th</sup> Street  
Elko, NV 89801

Re: Conditional Use Permit No. 4-86 Transfer

Dear Applicant/Agent:

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

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

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

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

CC:

NOAH'S ARK CHILD CARE CENTER

Kathy Frederick  
1225 Sixth Street; Elko, NV 89801  
775-934-5218



July 30, 2018

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

SUBJECT: Transfer of ownership of Noah's Ark Child Care Center

Dear Cathy:

I am writing to inform the City of Elko that I am in the process of preparing to transfer ownership of Noah's Ark Child Care Center located at 1737 Sewell Drive, Elko, NV, to Cristina Giammalva. The planned effective date of this transfer of ownership will be October 1, 2018. This transfer of ownership will include the property at 1737 Sewell Drive and the business of Noah's Ark Child Care Center currently in operation at that address.

Please call or email me if further information is needed. Thank you!

Sincerely,

*Kathy Frederick*

Kathy Frederick  
Owner





## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue\* Elko\* Nevada\* 89801

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

RECEIVED

JUL 26 2018

### APPLICATION FOR CONDITIONAL USE PERMIT TRANSFER

APPLICANT(s): Cristina Giannino

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

MAILING ADDRESS: 12924<sup>th</sup> St Elko NV 89801

PHONE NO. (Home) (775) 751-7440 (Business) (775) 751-7440 738-9155

NAME OF PROPERTY OWNER (If different):

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

MAILING ADDRESS: 1737 Sewell Dr. Elko NV 89801

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

ASSESSOR'S PARCEL NO.: 001-1240-05 Address 1737 Sewell Dr Elko NV 89801

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 1<sup>st</sup> Tuesday of every month).

**Fee:** No fee is required.

**Note:** One .pdf of the entire application must be submitted.

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

1. Explain in detail the type and nature of the use proposed on the property: I intend to keep this property as is, meaning a child care facility. This has been a part of the community for several years. Noons Park has enrolled dozens of families over the years and is a safe nurturing environment for children. I intend with the best of my abilities to continue to offer the same at this established property.

**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.

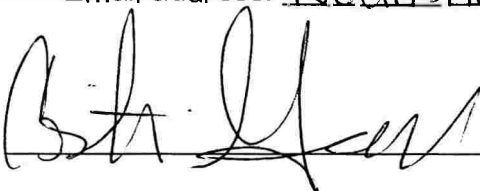
**Applicant / Agent** Cristina Giammalva  
(Please print or type)

**Mailing Address** 1292 4<sup>th</sup> St.  
Street Address or P.O. Box

ELKO, NV, 89801  
City, State, Zip Code

Phone Number: (626) 251-7440

Email address: NOAH5ARKElko@gmail.com

**SIGNATURE:** 

---

**FOR OFFICE USE ONLY**

**File No.:** 4-86 T **Date Filed:** 7/26/18 **Fee Paid:** N/A

---

CONDITIONAL USE PERMIT AGREEMENT

FILE NO. 4-86

THIS CONDITIONAL USE PERMIT AGREEMENT, made this 16th  
day of September, 1986, by the CITY OF ELKO, a municipal  
corporation of the State of Nevada, acting by and through its duly  
elected Board of Supervisors, hereinafter referred to as the "City",  
and Dave & Kathy Stringfield,  
of the City of Elko, County of Elko, State of Nevada,  
hereinafter referred to as "Permittee".

W I T N E S S E T H :

That the parties to this Agreement, in consideration  
of the City's agreement that, if all conditions enumerated below  
are faithfully performed, it will grant to Permittee a Conditional  
Use Permit authorizing the use of the following described property  
in the manner hereinafter set out and, in addition, the Permittee  
will faithfully perform all conditions enumerated herein, therefore  
City and Permittee do hereby agree and contract as follows:

I.

That the property which is subject to this Conditional  
Use Permit is located in the City of Elko, County of Elko, State of  
Nevada and is more fully described as follows: \_\_\_\_\_

1730 Sewell Drive  
\_\_\_\_\_  
\_\_\_\_\_

II.

That the application for a Conditional Use Permit under  
Elko City Code 3-2-17 filed by the Permittee on the 13th day  
of August, 1986, is attached hereto as, Exhibit A,  
incorporated herein and made a part of this Agreement and the terms



and conditions thereof are hereby ratified by Permittee and City as though the same had been set forth fully in this Agreement.

III.

That the terms and conditions enumerated in this Agreement shall not prevent the City from imposing such other conditions or amending or terminating any of the conditions set forth in this Agreement as may be reasonably necessary in order to promote the health, safety, morals, or general welfare of the City of Elko.

IV.

That the City shall file this Agreement in the Elko County Recorder's Office. That the Permittee shall pay all recording costs incurred thereby.

V.

That this Agreement for a Conditional Use Permit shall be personal to the Permittee and applicable only to the specific use and to the specific property for which it is issued. 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 transferrable and shall run with the land whereupon the maintenance of 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.

VI.

The Board of Supervisors may review the Conditional Use Permit, from time to time, during the terms of this Agreement, and upon them finding that the terms and conditions of this Agreement have not been met, or finding that previous statements or representations by Permittee in Permittee's application or otherwise are not true and correct, the Board of Supervisors of the City may revoke such Conditional Use Permit upon giving fifteen (15) days written notice to Permittee of Permittee's failure to comply with the conditions and requirements of this Agreement.

VII.

That the following conditions and requirements are hereby imposed by the City of Elko in authorizing the issuance of said Conditional Use Permit: \_\_\_\_\_

The parking spaces are to be located entirely upon the applicants  
property along 2nd Street, and frontage along Sewell Drive be  
designated a loading zone, with no parking allowed during the hours  
of operation.

This Conditional Use Permit shall automatically lapse and be of no effect  
one year from the date of its issue unless the permit holder is actively  
engaged in developing the specific property to the use for which this  
permit is issued.

VIII.

It is hereby understood between the City and Permittee that this Agreement does not abrogate the Permittee's duty to obey all applicable federal, state, county and City rules, regulations, statutes, ordinances and laws.

IX.

This instrument contains the entire Agreement between the parties and no statement by either party which is not contained in this written agreement shall be considered valid or binding, and this Agreement may not be altered except in writing signed by the parties hereto.

X.

It is further understood and agreed by the parties hereto that if any part, term, or provision of this Agreement shall be decided by any court to be illegal or in conflict with any federal, state, county or City law, ordinance or statute, the validity of the remaining portions or provisions of this Agreement shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have hereunto  
set their hands this 25th day of Sept, 19 86.

CITY:  
BY D. George Corner  
MAYOR

ATTEST:

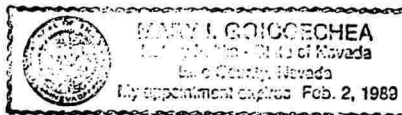
Giuliana Murphy  
CITY CLERK

STATE OF NEVADA )  
 ) ss.  
COUNTY OF ELKO )

On Sept. 25, 19 86, personally appeared before  
me, a Notary Public, D. GEORGE CORNER, Mayor and GIULIANA MURPHY,  
City Clerk, City of Elko, who acknowledged to me that they executed  
the above instrument in the name of and on behalf of said City.

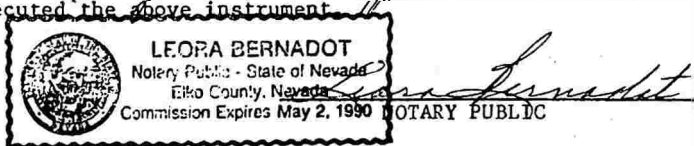
Mary I. Goicoechea  
NOTARY PUBLIC

PERMITTEE: Dave & Kathy Stringfield



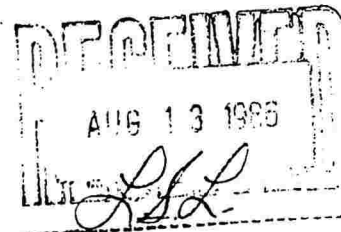
BY Kathy Stringfield  
David Stringfield  
STATE OF NEVADA )  
 ) ss.  
COUNTY OF ELKO )

On Sept 24, 19 86, personally appeared before  
me, a Notary Public Kathy & David Stringfield who acknowledged  
that They executed the above instrument.



Applicant: Stringfield  
File No.: 4-86  
Date Filed: Aug. 13, 1986  
Fee Paid: \$75.00 8/13/86  
HEARING DATE:  
Planning Commission: Sept. 2, 1986

APPLICATION FOR CONDITIONAL USE PERMIT  
ELKO CITY CODE 3-2-17



TO THE PLANNING COMMISSION  
OF THE CITY OF ELKO, NEVADA:

1. The legal owner(s) of said property being petitioned for change (is) (are)

DAVID AND KATHY STRINGFIELD

2. Legally described property being petitioned for change:  
(Give exact legal description including Lot, Block, Track, etc.  
If more space is needed than has been provided, please put  
complete description on an additional sheet of paper and attach  
same to this application).

PARCEL 1 OF THAT CERTAIN PARCEL MAP FOR MICHAEL W. AND  
PAMELA LATIN AND DAVID L. AND KATHERN L. STRINGFIELD WITHIN  
THE NE 1/4 NE 1/4 OF SECTION 16, T. 34N., R. 55 E., M.D.B. & M.,  
FILED NOVEMBER 7, 1985, IN THE OFFICE OF THE ELKO, COUNTY  
RECORDER, ELKO COUNTY, NEVADA, FILE NO. 209417

3. Applicant acquired title to such property on:

APRIL 15, 1986 (Date).

4. The property is situated (Give street address or  
exterior boundaries of area petitioned for change by streets,  
alleys, property lines, etc.):

NORTHWEST CORNER AT THE INTERSECTION  
OF SEWELL AND 2<sup>nd</sup> ST.

5. A detailed site plan of the property involved showing the location of all existing and proposed buildings and showing plans and descriptions of the proposed use of property with ground plans and elevations for all proposed buildings is attached hereto and made a part of this petition.

6. Applicant(s) ~~(has)~~ (have) the ability and intention to utilize said Conditional Use Permit within one (1) year from the date of final approval; and the applicant(s) understands that this Conditional Use Permit, if granted, becomes null and void and of no effect if unused within one (1) year from the date of filing of the application, or if at any time after granting, the use is discontinued for a period of six (6) months, or if the applicant(s) fails to comply with conditions and safeguards which are part of the terms under which such permit is granted.

7. When a Conditional Use Permit is granted subject to conditions, such Conditional Use Permit does not become effective until such time as those conditions have been met.

8. Provision of Zoning Ordinance for which the Conditional Use Permit is required:

3-2-5 (C) 3. CHILD CARE CENTERS

9. Explain in detail the type of use which will be made on this property. If it is a commercial, industrial or public, quasi-public use, including an explanation of the intended operation.

CHILD CARE CENTER AND PRESCHOOL

10. Is the proposed site adequate in size and topographic characteristics to accommodate the Conditional Use? Explain.

YES. MEETS STATE REQUIREMENTS FOR  
YARD, BUILDING AND CITY REQUIREMENTS FOR  
OFF STREET PARKING

11. Describe in detail the method to be used in development as it may pertain to earth fill or excavation, flood provisions, drainage, terracing or other unusual features.

NO EARTH FILL; NO FLOOD PROVISIONS  
REQUIRED; DRAINAGE OFF SITE TO CITY STORM  
DRAIN; NO UNUSUAL FEATURES.

12. In accordance with the Zoning Ordinance, construction will be commenced within one (1) year, or the extension thereof. Is there any reason foreseen which would require an extension?

NONE

13. Describe the site including storm drainage, soil conditions, erosion susceptibility, general topography, other distinguishing characteristics and any other features which may affect the use of the property.

Very firm Soil, no fill req'd; Lot will be  
fully landscaped to eliminate erosion; FLAT SITE;  
TRIANGULAR SHAPED LOT.

14. (a). Will the use entail the use of additional vehicles? Yes FIVE EMPLOYEES - NO BUSINESS VEHICLES.

(b). Number: 5 for employees, None for Business

15. What provisions have been made for the elimination or reduction of any traffic problems or hazards resulting from increased traffic?

Long driveway on two sides makes pickup and  
drop off of children very reasonable.

16. (a). Is there sufficient off-street parking available on the site to meet the off-street parking requirements of Elko City Code 3-2-16? YES - 5 SPACES Req'd.

(b). Explanation: Using 3-2-16 (G) 9 (a),  
"ELEMENTARY AND INTERMEDIATE SCHOOLS";  
"1 per employee"



17. (a). If a sign is to be erected give the dimensions of the sign and the type of sign.

Sign of about 4' x 8' ATTACHED TO BUILDING.

(b). Does the sign meet the requirements of Chapter 5, Title 2 of the Elko City Code YES 1/2 5

(c). Explanation: NOT FREE STANDING

18. (a). Will there be any outside storage of goods, materials or equipment at the site? NO

(b). Give a detailed explanation of this type of storage.

19. (a). Will there be any accessory building structures whose uses are associated with the general use on the site?

NO

(b). Explanation:

20. A nonrefundable filing fee of \$75.00 must accompany this application and filed in the Office of the City Clerk of the City of Elko, 1751 College Avenue, Elko, Nevada 89801.

21. This Application will be referred to the Planning Commission of the City of Elko and a public hearing will be held on such application by such Commission.

22. If the Planning Commission approves the Application, it shall issue a Conditional Use Permit Agreement setting forth all conditions and requirements covering such use and shall make the approved site plan a part of the record of the case.

23. If the Planning Commission denies the permit, notice of the denial, including reasons therefore, shall be mailed to the applicant(s) at the address shown on said Application.

Applicant's Name: KATHERN AND DAVID STRINGFIELD

Applicant's Phone Number: Home 702-359-6195

Business 738-5202

Applicant's Mailing Address: 3623 WATERFALL CT.  
Street

SPARKS NV 89431  
City State Zip

I, the applicant(s) (or an authorized agent or employer of Applicant) being first duly sworn deposes and says that all of the above statements contained in the document submitted herewith are true and as to those matters stated on information and belief I believe the same to be true.

Kathern Stringfield  
Applicant  
David Stringfield

\$13.00 220023  
FILED FOR RECORD  
AT REQUEST OF  
City of Elko  
'86 SEP 26 P 1: 23

INDEXED

536 606  
JERRY D. REYNOLDS  
ELKO CO. RECORDER

220023

BOOK 536 PAGE 614

**Elko City Planning Commission  
Agenda Action Sheet**

1. **Review, consideration and possible approval of Final Plat No. 11-18, filed by Parrado Partners LP., for the development of a subdivision entitled Great Basin Estates, Phase 3 involving the proposed division of approximately 9.650 acres of property into 38 lots for residential development within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **September 6, 2018**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **15 Minutes**
5. Background Information: **Subject property is located generally northeast of Flagstone Drive between Opal Drive and Clarkson Drive (APN 001-633-030). Preliminary Plat was recommended to City Council to conditionally approve by Planning Commission May 3, 2016 and conditionally approved by City Council May 24, 2016.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Recommend to City Council to conditionally approve Final Plat 11-18 based on the findings of fact and conditions in the Staff Report dated August 23, 2018**
9. Findings: **See Staff Report dated August 23, 2018**
10. Agenda Distribution: **Parrado Partners, LP  
12257 Business Park Drive #1  
Truckee, CA 96161  
  
High Desert Engineering  
Bob Morley  
640 Idaho Street  
Elko, NV 89801**

**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE:** 9/6

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

Title: Final Plat 11-18 Great Basin Estates Phase 3

Applicant(s): Parrado Partners, LP

Site Location: Extension of Village Parkway + Opal Drive

Current Zoning: R Date Received: 8/15/18 Date Public Notice: N/A

COMMENT: This is to subdivide 9.65 acres into 38 lots.

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

Assistant City Manager: Date: 8/24/18

- Recommend approval as per sent by  
Staff

SAW

Initial

City Manager: Date: 8/24/18

Recommend approval based upon conditions listed in Staff Report.

W

Initial





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

## **CITY OF ELKO STAFF REPORT**

<b>DATE:</b>	August 23, 2018
<b>PLANNING COMMISSION DATE:</b>	September 6, 2018
<b>AGENDA ITEM NUMBER:</b>	I.B.2
<b>APPLICATION NUMBER:</b>	Final Plat 11-18
<b>APPLICANT:</b>	Parrado Partners, LP
<b>PROJECT DESCRIPTION:</b>	Great Basin Estates, Phase 3

A Final Map for the division of approximately 9.650 acres into 38 lots for single family residential development within an R (Single Family and Multiple Family Residential) Zoning District and one remaining lot.



### **STAFF RECOMMENDATION:**

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

## **PROJECT INFORMATION**

**PARCEL NUMBERS:** 001-633-030

**PARCEL SIZE:** 9.650 acres Phase 3, final phase of the subdivision

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

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

**EXISTING LAND USE:** Vacant

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:

- } Northwest: River corridor / Undeveloped
- } Northeast: RMH- Residential Mobile Home / Developed
- } Southwest: Single Family Residential (R) / Developed
- } Southeast: Single Family Residential (R) and (RMH) / Developed

### **PROPERTY CHARACTERISTICS:**

- } The property is an undeveloped residential parcel.
- } The area abuts the second phase the Great Basin Estates Subdivision.
- } The parcel is generally flat.

### **MASTER PLAN, COORDINATING PLANS, and CITY CODE SECTIONS:**

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

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

## **BACKGROUND INFORMATION**

1. The Final Plat for Great Basin Estates Phase 1B was recorded on June 29, 2017.
2. The Final Plat for Great Basin Estates Phase 2 was approved by City Council on August 14, 2018.
3. The Final Plat for Great Basin Estates Phase 3 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
4. The Planning Commission reviewed and recommended a conditional approval to the City Council on the Preliminary Plat on May 3, 2016.



5. The City Council conditionally approved the Preliminary Plat at its meeting on May 24, 2016.
6. Phasing was shown on the preliminary plat.
7. Under the conditional approval for the preliminary plat, a modification of standards was granted for all lot dimensions.
8. The subdivision is located on APN 001-633-030, shown as parcel E on Final Plat for Phase 2.
9. The proposed subdivision consists of 38 lots with no additional phases.
10. The total subdivided area is approximately 9.650 acres in size.
11. The proposed density is 5.09 units per acre.
12. Approximately 2.187 acres are offered for dedication for street development.
13. The area proposed for subdivision has been removed from the FEMA Special Flood Hazard Area by a Letter of Map Revision submitted to and approved by FEMA as Case No. 16-09-0367P with an effective date of April 3, 2017.
14. The property is located off Opal Drive and Clarkson Drive.

### **MASTER PLAN:**

#### **Land Use**

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

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

#### **Transportation**

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

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

### **ELKO REDEVELOPMENT PLAN:**

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

### **ELKO WELLHEAD PROTECTION PLAN:**

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

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

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

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

**Pre-submission Requirements (A)(2)** – The proposed final plat conforms to the preliminary plat.

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

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

- A. Form and Content-The final plat conforms to the required size specifications and provides the appropriate affidavits and certifications.
- B. Identification Data
  - 1. The subdivision map identified the subdivision, and provides its location by section, township, range and county.
  - 2. The subdivision map was prepared by a properly licensed surveyor.
  - 3. The subdivision map provides a scale, north point, and date of preparation.
- C. Survey Data
  - 1. The boundaries of the tract are fully balanced and closed.
  - 2. All exceptions are noted on the plat.
  - 3. The location and description of cardinal points are tied to a section corner.
  - 4. The location and description of any physical encroachments upon the boundary of the tract are noted on the plat.
- D. Descriptive Data
  - 1. The name, right of way lines, courses, lengths and widths of all streets and easements are noted on the plat.
  - 2. All drainage ways are noted on the plan.
  - 3. All utility and public service easements are noted on the plat.
  - 4. The location and dimensions of all lots, parcels and exceptions are shown on the plat.
  - 5. All residential lots are numbered consecutively on the plat.
  - 6. There are no sites dedicated to the public shown on the plat.
  - 7. The location of adjoining subdivisions are noted on the plat with required information.
  - 8. There are no deed restrictions proposed.
- E. Dedication and Acknowledgment
  - 1. The owner's certificate has the required dedication information for all easements and right of ways.
  - 2. The execution of dedication is acknowledged and certified by a notary public.
- F. Additional Information
  - 1. All centerline monuments for streets are noted as being set on the plat.
  - 2. The centerline and width of each right of way is noted on the plat.
  - 3. The plat indicates the location of monuments that will be set to determine the boundaries of the subdivision.
  - 4. The length and bearing of each lot line is identified on the plat.
  - 5. The city boundary adjoining the subdivision is not identified on the plat, as the plat is not adjoining a boundary.
  - 6. The plat identifies the location of the section lines, and 1/16<sup>th</sup> section line adjoining the subdivision boundaries.
- G. City Engineer to Check
  - 1. The Engineer shall check the final map for accuracy of dimensions, placement of monuments, the establishment of survey records, and conformance with the preliminary map.
    - a) Closure calculations have been provided.

- b) Civil improvement plans have been provided, previous civil improvement plans have been approved for this subdivision.
- c) Civil improvement plans for drainage have been submitted.
- d) An engineer's estimate has **not** been provided.

2. It appears the lot closures are within the required tolerances.

H. Required certifications

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

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

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

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

**SECTION 3-3-40-RESPONSIBILITY FOR IMPROVEMENTS**

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

**SECTION 3-3-41-ENGINEERING PLANS**

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

**SECTION 3-3-42-CONSTRUCTION AND INSPECTION**

The Subdivider has submitted plans to the city and state agencies for review to receive all required permits in accordance with the requirements of Section 3-3-42 of city code.

**SECTION 3-3-43-REQUIRED IMPROVEMENTS**

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

Civil improvements include curb, gutter and sidewalk, paving and utilities within the Village Parkway, Village Green Circle, Nicole Court and Opal Drive right of ways.

### **SECTION 3-3-44-AGREEMENT TO INSTALL IMPROVEMENTS**

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

### **SECTION 3-3-45-PERFORMANCE GUARANTEE**

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

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

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

Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G) and 3-2-17 of city code.

### **SECTION 3-8-FLOODPLAIN MANAGEMENT**

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

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

### **FINDINGS**

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

8. The Subdivider has submitted plans to the city and state agencies for review to receive all required permits in accordance with the requirements of Section 3-3-42 of city code.
9. The Subdivider has submitted civil improvement plans which are in conformance with Section 3-3-43 of city code.
10. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-44 of city code.
11. The Subdivider will be required to provide a Performance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-45 of city code.
12. Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G) and 3-2-17 of city code.
13. The proposed development is in conformance with Section 3-8 of city code.
14. The subdivision is in conformance with 3-8 Floodplain Management.

## **RECOMMENDATION**

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

1. The Developer shall execute a Performance Agreement in accordance with Section 3-3-44 of city code. The Performance Agreement shall be secured in accordance with Section 3-3-45 of city code. In conformance with Section 3-3-44 of city code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Plat approval by the City Council unless extended as stipulated in city code.
2. The Performance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance Agreement within 30 days of approval of the Final Plat by the City Council.
4. The Final Plat is approved for 38 single family residential lots.
5. The Utility Department will issue a Will Serve Letter for the subdivision.
6. State approval of the subdivision is required.
7. Conformance with Preliminary Plat conditions is required.
8. Civil improvements are to comply with Chapter 3-3 of City code.
9. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition Standard Specifications for Public Works. All Right-of-Way and utility improvements are to be certified by the Engineer of Record for the project.

10. An engineer's estimate for the public improvements shall be provided prior to the final plat being presented to the City Council to allow for finalization of the required Performance Agreement.
11. Modify Planning Commission approval jurat to the 3<sup>rd</sup> day of May, 2016 prior to City Council approval.





# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@ci.elko.nv.us](mailto:planning@ci.elko.nv.us)

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

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August 27, 2018

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

Re: Final Plat No. 11-18

Dear Applicant/Agent:

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

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

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

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

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



## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

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

### APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s):	Parrado Partners, LP		
MAILING ADDRESS:	12257 Business Park Drive #8, Truckee, CA 96161		
PHONE NO (Home):		(Business):	(530) 587-0740
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.:	001-633-030	Address	Flagstone Dr/Granite Dr
Lot(s), Block(s), & Subdivision	Lot E, Great Basin Estates Subdivision, Phase 2		
Or Parcel(s) & File No.			
PROJECT DESCRIPTION OR PURPOSE:			
APPLICANT'S REPRESENTATIVE OR ENGINEER:	High Desert Engineering, LLC		

#### FILING REQUIREMENTS

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

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

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

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

RECEIVED

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

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

**By My Signature below:**

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

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

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

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

☒ I acknowledge that, if approved, I must provide an AutoCAD file containing the final subdivision layout on NAD 83 NV East Zone Coordinate System to the City Engineering Department when requesting final map signatures for recording.

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

**Applicant/ Agent**

Robert E. Morley, P.L.S.

(Please print or type)

**Mailing Address**

640 Idaho Street

Street Address or P.O. Box

Elko, Nevada 89801

City, State, Zip Code

Phone Number:

775-738-4053

Email address:

remorley@frontiernet.net

**SIGNATURE:**

*Robert E. Morley*

**FOR OFFICE USE ONLY**

38 Lots x 25 \$950 + 750 =  
\$1700

**File No.:** 11-18 **Date Filed:** 8/15/18 **Fee Paid:** \$1700 **CR#** 1504

AUG 15 2018

Phase 3.txt

Parcel name: Lot 44

North: 28473550.8913 East : 612360.1426  
 Line Course: S 48-15-09 E Length: 59.00  
 North: 28473511.6062 East : 612404.1617  
 Line Course: S 41-44-51 W Length: 100.00  
 North: 28473436.9976 East : 612337.5768  
 Line Course: N 48-15-09 W Length: 74.00  
 North: 28473486.2704 East : 612282.3664  
 Line Course: N 41-44-51 E Length: 9.55  
 North: 28473493.3955 East : 612288.7253  
 Line Course: N 41-44-51 E Length: 75.45  
 North: 28473549.6878 East : 612338.9636  
 Curve Length: 23.56 Radius: 15.00  
 Delta: 90-00-00 Tangent: 15.00  
 Chord: 21.21 Course: N 86-44-51 E  
 Course In: S 48-15-09 E Course Out: N 41-44-51 E  
 RP North: 28473539.7000 East : 612350.1549  
 End North: 28473550.8913 East : 612360.1426

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

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0000 Course: S 90-00-00 E  
 Error North: 0.00000 East : 0.00000  
 Precision 1: 341,560,000.00

Parcel name: Lot 45

North: 28473511.6062 East : 612404.1617  
 Line Course: S 48-15-09 E Length: 60.00  
 North: 28473471.6552 East : 612448.9269  
 Line Course: S 41-44-51 W Length: 100.00  
 North: 28473397.0466 East : 612382.3420  
 Line Course: N 48-15-09 W Length: 60.00  
 North: 28473436.9975 East : 612337.5768  
 Line Course: N 41-44-51 E Length: 100.00  
 North: 28473511.6062 East : 612404.1617  
 Line Course: S 21-04-39 W Length: 0.00  
 North: 28473511.6062 East : 612404.1617

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

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0000 Course: S 90-00-00 E  
 Error North: 0.00000 East : 0.00000

Precision 1: 320,000,000.00

---

Parcel name: Lot 46

North: 28473471.6552 East : 612448.9268  
Line Course: S 48-15-09 E Length: 60.00  
North: 28473431.7042 East : 612493.6920  
Line Course: S 41-44-51 W Length: 100.00  
North: 28473357.0956 East : 612427.1071  
Line Course: N 48-15-09 W Length: 60.00  
North: 28473397.0465 East : 612382.3419  
Line Course: N 41-44-51 E Length: 100.00  
North: 28473471.6552 East : 612448.9268  
Line Course: S 31-08-20 W Length: 0.00  
North: 28473471.6552 East : 612448.9268

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

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

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

Error North: 0.00000 East : 0.00000

Precision 1: 320,000,000.00

---

Parcel name: Lot 47

North: 28473431.7042 East : 612493.6920  
Line Course: S 48-15-09 E Length: 60.00  
North: 28473391.7532 East : 612538.4571  
Line Course: S 41-44-51 W Length: 100.00  
North: 28473317.1446 East : 612471.8722  
Line Course: N 48-15-09 W Length: 60.00  
North: 28473357.0955 East : 612427.1070  
Line Course: N 41-44-51 E Length: 100.00  
North: 28473431.7042 East : 612493.6920  
Line Course: S 44-32-56 W Length: 0.00  
North: 28473431.7042 East : 612493.6920

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

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

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

Error North: 0.00000 East: 0.00000

Precision 1: 320,000,000.00



Phase 3.txt

Parcel name: Lot 48

North: 28473391.7532 East : 612538.4571  
Line Course: S 48-15-09 E Length: 60.00  
North: 28473351.8022 East : 612583.2223  
Line Course: S 41-44-51 W Length: 100.00  
North: 28473277.1936 East : 612516.6374  
Line Course: N 48-15-09 W Length: 60.00  
North: 28473317.1445 East : 612471.8722  
Line Course: N 41-44-51 E Length: 100.00  
North: 28473391.7532 East : 612538.4571  
Line Course: S 46-10-09 W Length: 0.00  
North: 28473391.7532 East : 612538.4571

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

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

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

Error North: 0.00000 East : 0.00000

Precision 1: 320,000,000.00

---

Parcel name: Lot 49

North: 28473311.8512 East : 612627.9874  
Line Course: N 48-15-09 W Length: 60.00  
North: 28473351.8021 East : 612583.2222  
Line Course: S 41-44-51 W Length: 100.00  
North: 28473277.1935 East : 612516.6373  
Line Course: S 48-15-09 E Length: 60.00  
North: 28473237.2425 East : 612561.4025  
Line Course: N 41-44-51 E Length: 100.00  
North: 28473311.8512 East : 612627.9874  
Line Course: S 36-17-33 W Length: 0.00  
North: 28473311.8512 East : 612627.9874

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

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

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

Error North: 0.00000 East : 0.00000

Precision 1: 320,000,000.00

---

Parcel name: Lot 50

North: 28473307.5780 East : 612632.7754  
Line Course: N 48-15-09 W Length: 6.42  
North: 28473311.8528 East : 612627.9855

Phase 3.txt

Line Course: S 41-44-51 W Length: 100.00  
 North: 28473237.2442 East : 612561.4006  
 Line Course: S 48-15-09 E Length: 25.06  
 North: 28473220.5580 East : 612580.0975  
 Line Course: S 37-41-16 E Length: 43.58  
 North: 28473186.0708 East : 612606.7405  
 Line Course: N 41-45-12 E Length: 105.55  
 North: 28473264.8130 East : 612677.0289  
 Curve Length: 61.56 Radius: 775.00  
 Delta: 4-33-04 Tangent: 30.80  
 Chord: 61.54 Course: N 45-58-37 W  
 Course In: S 46-17-55 W Course Out: N 41-44-51 E  
 RP North: 28472729.3656 East : 612116.7424  
 End North: 28473307.5826 East : 612632.7754  
 Line Course: S 01-47-24 E Length: 0.00  
 North: 28473307.5826 East : 612632.7754

Perimeter: 342.16 Area: 6,912 S.F. 0.159 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0045 Course: N 00-20-13 E  
 Error North: 0.00452 East : 0.00003  
 Precision 1: 76,037.78

Parcel name: Lot 51

North: 28473264.8082 East : 612677.0290  
 Curve Length: 74.85 Radius: 775.00  
 Delta: 5-32-02 Tangent: 37.45  
 Chord: 74.82 Course: S 40-56-04 E  
 Course In: S 46-17-55 W Course Out: N 51-49-57 E  
 RP North: 28472729.3608 East: 612116.7425  
 End North: 28473208.2818 East : 612726.0533  
 Line Course: S 48-00-44 W Length: 108.30  
 North: 28473135.8321 East : 612645.5553  
 Line Course: N 37-41-16 W Length: 63.48  
 North: 28473186.0672 East : 612606.7463  
 Line Course: N 41-45-12 E Length: 105.55  
 North: 28473264.8095 East : 612677.0347

Perimeter: 352.18 Area: 7,389 S.F. 0.170 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0058 Course: N 77-25-02 E  
 Error North: 0.00125 East : 0.00562  
 Precision 1: 60,720.69

Phase 3.txt

Parcel name: Lot 52

North: 28473208.2841 East : 612726.0514  
 Curve Length: 74.85 Radius: 775.00  
 Delta: 5-32-01 Tangent: 37.45  
 Chord: 74.82 Course: S 35-24-03 E  
 Course In: S 51-49-57 W Course Out: N 57-21-58 E  
 RP North: 28472729.3631 East : 612116.7405  
 End North: 28473147.2966 East : 612769.3940  
 Line Course: S 50-43-33 W Length: 111.20  
 North: 28473076.9034 East : 612683.3113  
 Line Course: N 32-39-03 W Length: 69.99  
 North: 28473135.8332 East : 612645.5504  
 Line Course: N 48-00-44 E Length: 108.30  
 North: 28473208.2829 East : 612726.0484

Perimeter: 364.34 Area: 7,935 S.F. 0.182 ACRES

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

Error Closure: 0.0032 Course: S 67-29-22 W

Error North: -0.00121 East : -0.00293

Precision 1: 113,856.25

Parcel name: Lot 53

North: 28473147.2961 East : 612769.3946  
 Curve Length: 74.85 Radius: 775.00  
 Delta: 5-32-01 Tangent: 37.45  
 Chord: 74.82 Course: S 29-52-02 E  
 Course In: S 57-21-58 W Course Out: N 62-53-59 E  
 RP North: 28472729.3626 East : 612116.7410  
 End North: 28473082.4133 East : 612806.6542  
 Line Course: S 53-39-25 W Length: 107.04  
 North: 28473018.9794 East : 612720.4353  
 Line Course: N 32-39-03 W Length: 68.80  
 North: 28473076.9072 East : 612683.3165  
 Line Course: N 50-43-33 E Length: 111.20  
 North: 28473147.3003 East : 612769.3993  
 Line Course: S 90-00-00 E Length: 0.00  
 North: 28473147.3003 East : 612769.3993

Perimeter: 361.89 Area: 7,824 S.F. 0.180 ACRES

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

Error Closure: 0.0063 Course: N 47-53-33 E

Error North: 0.00425 East : 0.00471

Precision 1: 57,442.86

Phase 3.txt

Parcel name: Lot 54

North:	28473069.3312	East :	612868.4368
Curve Length:	63.52	Radius:	825.00
Delta:	4-24-42	Tangent:	31.78
Chord:	63.51	Course:	N 26-32-30 W
Course In:	S 65-39-51 W	Course Out:	N 61-15-09 E
RP North:	28472729.3617	East :	612116.7416
End North:	28473126.1459	East :	612840.0585
Line Course:	N 63-48-49 E	Length:	103.71
North:	28473171.9123	East :	612933.1240
Line Course:	S 33-34-46 E	Length:	76.31
North:	28473108.3370	East :	612975.3305
Line Course:	S 68-46-47 W	Length:	108.63
North:	28473069.0179	East :	612874.0661
Line Course:	S 65-39-51 W	Length:	5.00
North:	28473066.9574	East :	612869.5104
Line Course:	N 24-20-09 W	Length:	2.61
North:	28473069.3355	East :	612868.4349

Perimeter: 359.77 Area: 7,621 S.F. 0.175 ACRES

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

Error Closure: 0.0047 Course: N 24-54-01 W

Error North: 0.00429 East : -0.00199

Precision 1: 76,548.94

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Parcel name: Lot 55

North:	28473126.1460	East :	612840.0584
Curve Length:	58.26	Radius:	825.00
Delta:	4-02-46	Tangent:	29.14
Chord:	58.25	Course:	N 30-46-14 W
Course In:	S 61-15-09 W	Course Out:	N 57-12-23 E
RP North:	28472729.3618	East :	612116.7416
End North:	28473176.1938	East :	612810.2588
Line Course:	N 57-29-16 E	Length:	100.01
North:	28473229.9471	East :	612894.5949
Line Course:	S 33-34-46 E	Length:	69.66
North:	28473171.9120	East :	612933.1234
Line Course:	S 63-48-49 W	Length:	103.71
North:	28473126.1455	East :	612840.0578

Perimeter: 331.63 Area: 6,473 S.F. 0.149 ACRES

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

Error Closure: 0.0008 Course: S 50-47-13 W

Error North: -0.00049 East : -0.00060

Precision 1: 414,550.00

Phase 3.txt

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Parcel name: Lot 56

North:	28473176.1939	East :	612810.2587
Curve Length:	70.23	Radius:	825.00
Delta:	4-52-39	Tangent:	35.14
Chord:	70.21	Course:	N 35-13-56 W
Course In:	S 57-12-23 W	Course Out:	N 52-19-44 E
RP North:	28472729.3620	East :	612116.7414
End North:	28473233.5426	East :	612769.7552
Curve Length:	22.40	Radius:	15.00
Delta:	85-33-39	Tangent:	13.88
Chord:	20.38	Course:	N 05-06-33 E
Course In:	N 52-19-44 E	Course Out:	N 42-06-37 W
RP North:	28473242.7095	East :	612781.6281
End North:	28473253.8373	East :	612771.5697
Line Course:	N 47-53-23 E	Length:	75.24
North:	28473304.2903	East :	612827.3869
Line Course:	S 42-06-44 E	Length:	100.22
North:	28473229.9438	East :	612894.5930
Line Course:	S 57-29-16 W	Length:	100.01
North:	28473176.1904	East :	612810.2569
Line Course:	N 90-00-00 W	Length:	0.00
North:	28473176.1904	East :	612810.2569

Perimeter: 368.09 Area: 8,568 S.F. 0.197 ACRES

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

Error Closure:	0.0039	Course:	S 28-20-56 W
Error North:	-0.00347	East :	-0.00187
Precision 1:	94,384.62		

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Parcel name: Lot 57

North:	28473304.2895	East :	612827.3875
Line Course:	N 47-53-23 E	Length:	60.35
North:	28473344.7578	East :	612872.1584
Curve Length:	21.47	Radius:	15.00
Delta:	82-00-04	Tangent:	13.04
Chord:	19.68	Course:	N 88-53-25 E
Course In:	S 42-06-37 E	Course Out:	N 39-53-27 E
RP North:	28473333.6300	East :	612882.2168
End North:	28473345.1390	East :	612891.8367
Line Course:	S 50-06-33 E	Length:	84.57
North:	28473290.9020	East :	612956.7246
Curve Length:	17.45	Radius:	20.00
Delta:	49-59-41	Tangent:	9.33

Phase 3.txt

Chord: 16.90 Course: S 25-06-43 E  
 Course In: S 39-53-27 W Course Out: N 89-53-08 E  
 RP North: 28473275.5566 East : 612943.8980  
 End North: 28473275.5965 East : 612963.8980  
 Line Course: S 56-37-37 W Length: 82.99  
 North: 28473229.9447 East : 612894.5925  
 Line Course: N 42-06-44 W Length: 100.22  
 North: 28473304.2912 East : 612827.3865  
 Line Course: N 90-00-00 W Length: 0.00  
 North: 28473304.2912 East : 612827.3865

Perimeter: 367.04 Area: 8,586 S.F. 0.197 ACRES

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

Error Closure: 0.0020 Course: N 29-41-16 W  
 Error North: 0.00171 East : -0.00098  
 Precision 1: 183,525.00

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 Parcel name: Lot 58

North: 28473275.5971 East : 612963.8968  
 Curve Length: 81.11 Radius: 50.00  
 Delta: 92-56-48 Tangent: 52.64  
 Chord: 72.51 Course: S 46-35-16 E  
 Course In: N 89-53-08 E Course Out: S 03-03-40 E  
 RP North: 28473275.6970 East : 613013.8967  
 End North: 28473225.7683 East : 613016.5668  
 Line Course: S 03-03-40 E Length: 99.50  
 North: 28473126.4103 East : 613021.8802  
 Line Course: S 68-46-47 W Length: 49.94  
 North: 28473108.3343 East : 612975.3263  
 Line Course: N 33-34-46 W Length: 76.31  
 North: 28473171.9097 East : 612933.1198  
 Line Course: N 33-34-46 W Length: 69.66  
 North: 28473229.9448 East : 612894.5914  
 Line Course: N 56-37-37 E Length: 82.99  
 North: 28473275.5966 East : 612963.8969  
 Line Course: S 90-00-00 E Length: 0.00  
 North: 28473275.5966 East : 612963.8969

Perimeter: 459.51 Area: 11,758 S.F. 0.270 ACRES

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

Error Closure: 0.0005 Course: S 06-41-40 E  
 Error North: -0.00053 East: 0.00006  
 Precision 1: 919,020.00

Phase 3.txt

Parcel name: Lot 59

North: 28473225.7683 East : 613016.5668  
 Curve Length: 62.48 Radius: 50.00  
 Delta: 71-36-03 Tangent: 36.06  
 Chord: 58.50 Course: N 51-08-19 E  
 Course In: N 03-03-40 W Course Out: S 74-39-43 E  
 RP North: 28473275.6970 East : 613013.8968  
 End North: 28473262.4713 East : 613062.1159  
 Line Course: S 74-39-43 E Length: 262.30  
 North: 28473193.0894 East : 613315.0733  
 Line Course: S 80-27-31 W Length: 217.18  
 North: 28473157.0896 East : 613100.8977  
 Line Course: S 68-46-47 W Length: 84.76  
 North: 28473126.4104 East : 613021.8848  
 Line Course: N 03-03-40 W Length: 99.50  
 North: 28473225.7684 East : 613016.5714

Perimeter: 726.22 Area: 18,725 S.F. 0.430 ACRES

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

Error Closure: 0.0046 Course: N 89-24-51 E  
 Error North: 0.00005 East : 0.00455  
 Precision 1: 157,873.91

Parcel name: Lot 60

North: 28473316.4906 East : 613042.8083  
 Curve Length: 61.10 Radius: 50.00  
 Delta: 70-00-42 Tangent: 35.02  
 Chord: 57.37 Course: S 19-40-04 E  
 Course In: S 35-19-35 W Course Out: S 74-39-43 E  
 RP North: 28473275.6970 East : 613013.8967  
 End North: 28473262.4714 East : 613062.1157  
 Line Course: S 74-39-43 E Length: 262.30  
 North: 28473193.0894 East : 613315.0731  
 Line Course: N 46-55-41 W Length: 204.73  
 North: 28473332.9029 East : 613165.5185  
 Line Course: N 54-33-09 W Length: 90.62  
 North: 28473385.4585 East : 613091.6952  
 Line Course: S 35-19-35 W Length: 84.54  
 North: 28473316.4848 East : 613042.8113

Perimeter: 703.28 Area: 19,445 S.F. 0.446 ACRES

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

Error Closure: 0.0066 Course: S 27-18-00 E  
 Error North: -0.00584 East : 0.00301  
 Precision 1: 106,559.09



Phase 3.txt

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Parcel name: Lot 61

North: 28473329.2660 East : 612988.7897  
Line Course: N 50-06-33 W Length: 34.90  
North: 28473351.6483 East : 612962.0121  
Line Course: N 37-00-20 E Length: 102.79  
North: 28473433.7340 East : 613023.8806  
Line Course: S 54-33-09 E Length: 83.24  
North: 28473385.4584 East : 613091.6918  
Line Course: S 35-19-35 W Length: 84.54  
North: 28473316.4847 East : 613042.8080  
Curve Length: 39.65 Radius: 50.00  
Delta: 45-25-49 Tangent: 20.93  
Chord: 38.61 Course: N 77-23-20 W  
Course In: S 35-19-35 W Course Out: N 10-06-14 W  
RP North: 28473275.6911 East: 613013.8963  
End North: 28473324.9157 East : 613005.1246  
Curve Length: 17.45 Radius: 20.00  
Delta: 49-59-41 Tangent: 9.33  
Chord: 16.90 Course: N 75-06-24 W  
Course In: N 10-06-14 W Course Out: S 39-53-27 W  
RP North: 28473344.6055 East : 613001.6159  
End North: 28473329.2601 East : 612988.7894

Perimeter: 362.57 Area: 8,289 S.F. 0.190 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0059 Course: S 02-53-31 W  
Error North: -0.00584 East : -0.00030  
Precision 1: 61,452.54

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Parcel name: Lot 62

North: 28473407.8278 East : 612910.4311  
Line Course: N 37-00-20 E Length: 86.93  
North: 28473477.2481 East : 612962.7536  
Line Course: S 54-33-09 E Length: 75.03  
North: 28473433.7339 East : 613023.8766  
Line Course: S 37-00-20 W Length: 102.79  
North: 28473351.6482 East : 612962.0081  
Line Course: N 50-06-33 W Length: 35.20  
North: 28473374.2229 East : 612935.0002  
Curve Length: 10.93 Radius: 20.00  
Delta: 31-18-01 Tangent: 5.60  
Chord: 10.79 Course: N 34-27-33 W  
Course In: N 39-53-27 E Course Out: S 71-11-28 W  
RP North: 28473389.5683 East : 612947.8268

Phase 3.txt

End North: 28473383.1200 East : 612928.8948  
 Curve Length: 31.36 Radius: 50.00  
 Delta: 35-56-09 Tangent: 16.22  
 Chord: 30.85 Course: N 36-46-36 W  
 Course In: S 71-11-28 W Course Out: N 35-15-19 E  
 RP North: 28473366.9994 East : 612881.5648  
 End North: 28473407.8288 East : 612910.4259  
 Line Course: N 08-52-50 E Length: 0.00  
 North: 28473407.8288 East : 612910.4259

Perimeter: 342.23 Area: 7,239 S.F. 0.166 ACRES

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

Error Closure: 0.0053 Course: N 79-03-06 W

Error North: 0.00101 East : -0.00524

Precision 1: 64,573.58

Parcel name: Lot 63

North: 28473414.6415 East : 612866.4001  
 Line Course: N 07-35-56 W Length: 146.26  
 North: 28473559.6171 East : 612847.0591  
 Line Course: S 54-33-09 E Length: 142.02  
 North: 28473477.2516 East : 612962.7553  
 Line Course: S 37-00-20 W Length: 86.93  
 North: 28473407.8313 East : 612910.4328  
 Curve Length: 46.18 Radius: 50.00  
 Delta: 52-55-02 Tangent: 24.88  
 Chord: 44.56 Course: N 81-12-12 W  
 Course In: S 35-15-19 W Course Out: N 17-39-43 W  
 RP North: 28473367.0019 East : 612881.5718  
 End North: 28473414.6450 East : 612866.4018

Perimeter: 421.39 Area: 9,139 S.F. 0.210 ACRES

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

Error Closure: 0.0039 Course: N 25-04-50 E

Error North: 0.00353 East : 0.00165

Precision 1: 108,048.72

Parcel name: Lot 64

North: 28473458.0698 East : 612756.4434  
 Line Course: N 41-44-40 E Length: 136.10  
 North: 28473559.6170 East : 612847.0601  
 Line Course: S 07-35-56 E Length: 146.26  
 North: 28473414.6414 East : 612866.4011

Phase 3.txt

Curve Length: 48.65 Radius: 50.00  
Delta: 55-44-56 Tangent: 26.45  
Chord: 46.75 Course: S 44-27-49 W  
Course In: S 17-39-43 E Course Out: N 73-24-39 W  
RP North: 28473366.9983 East : 612881.5711  
End North: 28473381.2736 East : 612833.6522  
Line Course: N 45-09-12 W Length: 108.90  
North: 28473458.0712 East : 612756.4425  
Line Course: S 08-52-50 E Length: 0.00  
North: 28473458.0712 East : 612756.4425

Perimeter: 439.91 Area: 9,913 S.F. 0.228 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0017 Course: N 32-10-58 W  
Error North: 0.00141 East : -0.00089  
Precision 1: 258,770.59

Parcel name: Lot 65

North: 28473398.3800 East : 612703.1787  
Line Course: N 41-44-40 E Length: 80.00  
North: 28473458.0697 East: 612756.4435  
Line Course: S 45-09-12 E Length: 108.90  
North: 28473381.2722 East : 612833.6532  
Curve Length: 10.93 Radius: 20.00  
Delta: 31-18-02 Tangent: 5.60  
Chord: 10.79 Course: S 32-14-22 W  
Course In: N 73-24-39 W Course Out: S 42-06-37 E  
RP North: 28473386.9823 East : 612814.4856  
End North: 28473372.1452 East : 612827.8968  
Line Course: S 47-53-23 W Length: 63.83  
North: 28473329.3434 East : 612780.5442  
Line Course: N 48-15-17 W Length: 103.69  
North: 28473398.3823 East : 612703.1798  
Line Course: N 90-00-00 W Length: 0.00  
North: 28473398.3823 East : 612703.1798

Perimeter: 367.34 Area: 8,290 S.F. 0.190 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0025 Course: N 26-06-30 E  
Error North: 0.00228 East : 0.00112  
Precision 1: 146,940.00

Parcel name: Lot 66

Phase 3.txt

North: 28473398.3800 East : 612703.1787  
 Line Course: S 48-15-17 E Length: 103.69  
     North: 28473329.3411 East : 612780.5431  
 Line Course: S 47-53-23 W Length: 54.90  
     North: 28473292.5274 East : 612739.8152  
 Curve Length: 23.29 Radius: 15.00  
     Delta: 88-58-41 Tangent: 14.73  
     Chord: 21.02 Course: N 87-37-17 W  
     Course In: N 42-06-37 W Course Out: S 46-52-04 W  
     RP North: 28473303.6552 East : 612729.7568  
     End North: 28473293.3999 East : 612718.8102  
 Curve Length: 73.73 Radius: 825.00  
     Delta: 5-07-13 Tangent: 36.89  
     Chord: 73.70 Course: N 45-41-33 W  
     Course In: S 46-52-04 W Course Out: N 41-44-51 E  
     RP North: 28472729.3604 East : 612116.7434  
     End North: 28473344.8817 East : 612666.0689  
 Line Course: N 48-15-09 W Length: 7.93  
     North: 28473350.1619 East : 612660.1524  
 Line Course: N 41-44-40 E Length: 64.62  
     North: 28473398.3763 East : 612703.1770  
 Line Course: S 90-00-00 E Length: 0.00  
     North: 28473398.3763 East : 612703.1770

Perimeter: 328.16 Area: 6,570 S.F. 0.151 ACRES

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

Error Closure: 0.0041 Course: S 24-14-30 W  
 Error North: -0.00371 East : -0.00167  
 Precision 1: 80,039.02

Parcel name: Lot 67

North: 28473350.1625 East : 612660.1514  
 Line Course: N 48-15-09 W Length: 88.68  
     North: 28473409.2100 East : 612593.9885  
 Curve Length: 23.56 Radius: 15.00  
     Delta: 90-00-00 Tangent: 15.00  
     Chord: 21.21 Course: N 03-15-09 W  
     Course In: N 41-44-51 E Course Out: N 48-15-09 W  
     RP North: 28473420.4013 East : 612603.9762  
     End North: 28473430.3890 East : 612592.7849  
 Line Course: N 41-44-51 E Length: 49.62  
     North: 28473467.4099 East : 612625.8244  
 Line Course: S 48-15-17 E Length: 103.67  
     North: 28473398.3843 East : 612703.1738  
 Line Course: S 41-44-40 W Length: 64.62  
     North: 28473350.1699 East : 612660.1492  
 Line Course: N 30-41-59 E Length: 0.00  
     North: 28473350.1699 East : 612660.1492

Phase 3.txt

Perimeter: 330.16 Area: 6,651 S.F. 0.153 ACRES

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

Error Closure: 0.0077 Course: N 16-43-22 W

Error North: 0.00736 East : -0.00221

Precision 1: 42,876.62

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Parcel name: Lot 68

North: 28473467.4083 East : 612625.8264

Line Course: S 48-15-17 E Length: 103.67

North: 28473398.3827 East : 612703.1758

Line Course: N 41-44-40 E Length: 80.00

North: 28473458.0724 East : 612756.4406

Line Course: N 48-15-19 W Length: 80.37

North: 28473511.5838 East : 612696.4750

Curve Length: 56.70 Radius: 50.00

Delta: 64-58-12 Tangent: 31.84

Chord: 53.71 Course: S 59-15-27 W

Course In: N 63-13-39 W Course Out: S 01-44-33 W

RP North: 28473534.1063 East : 612651.8349

End North: 28473484.1294 East : 612650.3145

Curve Length: 17.45 Radius: 20.00

Delta: 49-59-42 Tangent: 9.33

Chord: 16.90 Course: S 66-44-42 W

Course In: S 01-44-33 W Course Out: N 48-15-09 W

RP North: 28473464.1386 East : 612649.7064

End North: 28473477.4556 East : 612634.7846

Line Course: S 41-44-51 W Length: 13.46

North: 28473467.4133 East : 612625.8223

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

North: 28473467.4133 East : 612625.8223

Perimeter: 351.65 Area: 7,196 S.F. 0.165 ACRES

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

Error Closure: 0.0065 Course: N 38-48-39 W

Error North: 0.00505 East : -0.00406

Precision 1: 54,100.00

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Parcel name: Lot 69

North: 28473511.5796 East : 612696.4796

Curve Length: 64.43 Radius: 50.00

Delta: 73-50-06 Tangent: 37.56

Chord: 60.07 Course: N 10-08-42 W

Phase 3.txt

Course In: N 63-13-39 W      Course Out: N 42-56-15 E  
 RP North: 28473534.1020      East : 612651.8395  
 End North: 28473570.7069      East : 612685.8995  
 Line Course: N 42-56-15 E Length: 85.16  
           North: 28473633.0523      East : 612743.9105  
 Line Course: S 54-33-09 E Length: 126.62  
           North: 28473559.6182      East : 612847.0611  
 Line Course: S 41-44-40 W Length: 136.10  
           North: 28473458.0710      East : 612756.4445  
 Line Course: N 48-15-19 W Length: 80.37  
           North: 28473511.5824      East : 612696.4789  
 Line Course: N 03-34-35 W Length: 0.00  
           North: 28473511.5824      East : 612696.4789

Perimeter: 492.68      Area: 15,110 S.F. 0.347 ACRES

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

Error Closure: 0.0029      Course: N 13-24-13 W  
 Error North: 0.00278      East : -0.00066  
 Precision 1: 169,889.66

Parcel name: Lot 70

North: 28473581.5078      East : 612635.9433  
 Line Course: N 48-15-19 W Length: 88.98  
           North: 28473640.7518      East : 612569.5537  
 Line Course: N 46-08-47 E Length: 96.52  
           North: 28473707.6226      East : 612639.1554  
 Line Course: S 54-33-09 E Length: 128.59  
           North: 28473633.0460      East : 612743.9109  
 Line Course: S 42-56-15 W Length: 85.16  
           North: 28473570.7006      East : 612685.8999  
 Curve Length: 53.65      Radius: 50.00  
           Delta: 61-28-29      Tangent: 29.73  
           Chord: 51.11      Course: N 77-48-00 W  
           Course In: S 42-56-15 W      Course Out: N 18-32-14 W  
           RP North: 28473534.0957      East : 612651.8399  
           End North: 28473581.5016      East : 612635.9439  
 Line Course: S 43-37-31 E Length: 0.00  
           North: 28473581.5016      East : 612635.9439

Perimeter: 452.90      Area: 12,635 S.F. 0.290 ACRES

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

Error Closure: 0.0062      Course: S 05-10-00 E  
 Error North: -0.00618      East : 0.00056  
 Precision 1: 73,048.39

Phase 3.txt

Parcel name: Lot 71

North: 28473581.8964 East : 612517.0211  
Line Course: S 48-30-52 E Length: 107.41  
North: 28473510.7447 East : 612597.4844  
Curve Length: 17.45 Radius: 20.00  
Delta: 49-59-41 Tangent: 9.33  
Chord: 16.90 Course: N 16-45-01 E  
Course In: N 48-15-09 W Course Out: N 81-45-10 E  
RP North: 28473524.0617 East : 612582.5626  
End North: 28473526.9306 East : 612602.3558  
Curve Length: 69.56 Radius: 50.00  
Delta: 79-42-36 Tangent: 41.74  
Chord: 64.08 Course: N 31-36-28 E  
Course In: N 81-45-10 E Course Out: N 18-32-14 W  
RP North: 28473534.1028 East : 612651.8387  
End North: 28473581.5087 East : 612635.9427  
Line Course: N 48-15-19 W Length: 88.98  
North: 28473640.7527 East : 612569.5531  
Line Course: S 41-44-51 W Length: 78.89  
North: 28473581.8940 East : 612517.0242

Perimeter: 362.30 Area: 7,099 S.F. 0.163 ACRES

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

Error Closure: 0.0040 Course: S 51-25-09 E

Error North: -0.00249 East : 0.00312

Precision 1: 90,572.50

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Parcel name: Lot 72

North: 28473581.8964 East : 612517.0211  
Line Course: S 48-30-52 E Length: 107.41  
North: 28473510.7447 East : 612597.4844  
Line Course: S 41-44-51 W Length: 63.08  
North: 28473463.6816 East : 612555.4826  
Curve Length: 23.56 Radius: 15.00  
Delta: 90-00-00 Tangent: 15.00  
Chord: 21.21 Course: S 86-44-51 W  
Course In: N 48-15-09 W Course Out: S 41-44-51 W  
RP North: 28473473.6693 East : 612544.2913  
End North: 28473462.4780 East : 612534.3036  
Line Course: N 48-15-09 W Length: 92.41  
North: 28473524.0091 East : 612465.3577  
Line Course: N 41-44-51 E Length: 77.59  
North: 28473581.8980 East : 612517.0210

Perimeter: 364.05 Area: 8,312 S.F. 0.191 ACRES



Phase 3.txt

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0015 Course: N 05-02-22 W  
Error North: 0.00153 East : -0.00014  
Precision 1: 242,700.00

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Parcel name: Lot 73

North: 28473588.1956 East : 612393.4351  
Line Course: S 48-15-09 E Length: 96.40  
North: 28473524.0077 East : 612465.3579  
Line Course: N 41-44-51 E Length: 77.59  
North: 28473581.8966 East : 612517.0211  
Line Course: N 48-15-09 W Length: 111.40  
North: 28473656.0722 East : 612433.9071  
Line Course: S 41-44-51 W Length: 62.59  
North: 28473609.3746 East : 612392.2316  
Curve Length: 23.56 Radius: 15.00  
Delta: 90-00-00 Tangent: 15.00  
Chord: 21.21 Course: S 03-15-09 E  
Course In: S 48-15-09 E Course Out: S 41-44-51 W  
RP North: 28473599.3869 East : 612403.4229  
End North: 28473588.1956 East : 612393.4351

Perimeter: 371.54 Area: 8,595 S.F. 0.197 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0000 Course: N 00-00-00 E  
Error North: 0.00000 East : 0.00000  
Precision 1: 371,540,000.00

---

Parcel name: Lot 74

North: 28473656.0721 East : 612433.9072  
Line Course: N 41-44-51 E Length: 78.89  
North: 28473714.9309 East : 612486.4360  
Line Course: S 48-15-09 E Length: 111.40  
North: 28473640.7553 East : 612569.5500  
Line Course: S 41-44-51 W Length: 78.89  
North: 28473581.8965 East : 612517.0212  
Line Course: N 48-15-09 W Length: 111.40  
North: 28473656.0721 East : 612433.9072  
Line Course: N 42-11-04 W Length: 0.00  
North: 28473656.0721 East : 612433.9072

Perimeter: 380.58 Area: 8,788 S.F. 0.202 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Page 17

Phase 3.txt

Error Closure: 0.0000 Course: S 90-00-00 E  
Error North: 0.00000 East : 0.00000  
Precision 1: 380,580,000.00

---

Parcel name: Lot 75

North: 28473714.9308 East : 612486.4361  
Line Course: S 48-15-09 E Length: 111.40  
North: 28473640.7552 East : 612569.5501  
Line Course: N 46-08-47 E Length: 96.52  
North: 28473707.6260 East : 612639.1519  
Line Course: N 54-33-09 W Length: 105.44  
North: 28473768.7767 East : 612553.2554  
Line Course: N 48-15-09 W Length: 14.00  
North: 28473778.0986 East : 612542.8102  
Line Course: S 41-44-51 W Length: 84.67  
North: 28473714.9274 East : 612486.4328  
Line Course: S 43-28-06 E Length: 0.00  
North: 28473714.9274 East : 612486.4328

Perimeter: 412.03 Area: 10,309 S.F. 0.237 ACRES

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

Error Closure: 0.0047 Course: S 44-02-34 W  
Error North: -0.00339 East : -0.00328  
Precision 1: 87,665.96

---

Parcel name: Lot 76

North: 28473875.3134 East : 612433.8827  
Line Course: N 48-15-09 W Length: 25.00  
North: 28473891.9596 East : 612415.2306  
Line Course: S 41-44-51 W Length: 63.60  
North: 28473844.5085 East : 612372.8826  
Line Course: S 48-15-09 E Length: 111.00  
North: 28473770.5992 East : 612455.6982  
Line Course: N 41-44-51 E Length: 63.60  
North: 28473818.0503 East : 612498.0462  
Line Course: N 48-15-09 W Length: 86.00  
North: 28473875.3134 East : 612433.8827

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

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

Error Closure: 0.0000 Course: S 90-00-00 E  
Error North: 0.00000 East : 0.00000  
Precision 1: 349,200,000.00

Phase 3.txt

---

Parcel name: Lot 77

North: 28473844.5086 East : 612372.8825  
Line Course: S 48-15-09 E Length: 111.00  
North: 28473770.5993 East : 612455.6981  
Line Course: S 41-44-51 W Length: 63.60  
North: 28473723.1482 East : 612413.3501  
Line Course: N 48-15-09 W Length: 111.00  
North: 28473797.0575 East : 612330.5345  
Line Course: N 41-44-51 E Length: 63.60  
North: 28473844.5086 East : 612372.8825  
Line Course: N 32-00-19 W Length: 0.00  
North: 28473844.5086 East : 612372.8825

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

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

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

Error North: 0.00000 East : 0.00000

Precision 1: 349,200,000.00

---

Parcel name: Lot 78

North: 28473797.0575 East : 612330.5345  
Line Course: S 48-15-09 E Length: 111.00  
North: 28473723.1483 East : 612413.3501  
Line Course: S 41-44-51 W Length: 63.60  
North: 28473675.6972 East : 612371.0021  
Line Course: N 48-15-09 W Length: 111.00  
North: 28473749.6064 East : 612288.1865  
Line Course: N 41-44-51 E Length: 63.60  
North: 28473797.0575 East : 612330.5345  
Line Course: N 01-47-24 W Length: 0.00  
North: 28473797.0575 East : 612330.5345

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

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

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

Error North: 0.00000 East : 0.00000

Precision 1: 349,200,000.00

---

Parcel name: Lot 79

Phase 3.txt

North: 28473749.6065 East : 612288.1864  
Line Course: S 48-15-09 E Length: 111.00  
North: 28473675.6972 East : 612371.0020  
Line Course: S 41-44-51 W Length: 63.60  
North: 28473628.2461 East : 612328.6540  
Line Course: N 48-15-09 W Length: 111.00  
North: 28473702.1554 East : 612245.8384  
Line Course: N 41-44-51 E Length: 63.60  
North: 28473749.6065 East : 612288.1864  
Line Course: N 90-00-00 W Length: 0.00  
North: 28473749.6065 East : 612288.1864

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

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0000 Course: S 90-00-00 E  
Error North: 0.00000 East : 0.00000  
Precision 1: 349,200,000.00

---

Parcel name: Lot 80

North: 28473702.1554 East : 612245.8384  
Line Course: S 48-15-09 E Length: 111.00  
North: 28473628.2462 East : 612328.6539  
Line Course: S 41-44-51 W Length: 63.60  
North: 28473580.7951 East : 612286.3059  
Line Course: N 48-15-09 W Length: 111.00  
North: 28473654.7043 East : 612203.4903  
Line Course: N 41-44-51 E Length: 63.60  
North: 28473702.1554 East : 612245.8384  
Line Course: N 29-21-28 E Length: 0.00  
North: 28473702.1554 East : 612245.8384

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

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0000 Course: S 90-00-00 E  
Error North: 0.00000 East : 0.00000  
Precision 1: 349,200,000.00

---

Parcel name: Lot 81

North: 28473654.7044 East : 612203.4903  
Line Course: S 41-44-51 W Length: 63.60  
North: 28473607.2533 East : 612161.1423  
Line Course: S 48-15-09 E Length: 111.00

Phase 3.txt

North: 28473533.3440 East : 612243.9579  
 Line Course: N 41-44-51 E Length: 63.60  
 North: 28473580.7951 East : 612286.3059  
 Line Course: N 48-15-09 W Length: 111.00  
 North: 28473654.7044 East : 612203.4903  
 Line Course: N 48-21-59 W Length: 0.00  
 North: 28473654.7044 East : 612203.4903

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

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

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

Error North: 0.00000 East : 0.00000

Precision 1: 349,200,000.00

-----  
 Parcel name: Street Dedication

North: 28472369.4166 East : 613949.2330  
 Line Course: S 48-15-09 E Length: 60.00  
 North: 28472329.4656 East : 613993.9982  
 Line Course: S 41-44-51 W Length: 226.15  
 North: 28472160.7382 East : 613843.4164  
 Curve Length: 23.56 Radius: 15.00  
 Delta: 90-00-00 Tangent: 15.00  
 Chord: 21.21 Course: S 03-15-09 E  
 Course In: S 48-15-09 E Course Out: S 41-44-51 W  
 RP North: 28472150.7504 East : 613854.6077  
 End North: 28472139.5592 East : 613844.6200  
 Line Course: S 48-15-09 E Length: 188.81  
 North: 28472013.8402 East: 613985.4886  
 Curve Length: 23.56 Radius: 15.00  
 Delta: 90-00-00 Tangent: 15.00  
 Chord: 21.21 Course: N 86-44-51 E  
 Course In: N 41-44-51 E Course Out: S 48-15-09 E  
 RP North: 28472025.0315 East : 613995.4763  
 End North: 28472015.0437 East : 614006.6676  
 Line Course: N 41-44-51 E Length: 63.08  
 North: 28472062.1069 East : 614048.6694  
 Curve Length: 17.45 Radius: 20.00  
 Delta: 49-59-41 Tangent: 9.33  
 Chord: 16.90 Course: N 16-45-01 E  
 Course In: N 48-15-09 W Course Out: N 81-45-10 E  
 RP North: 28472075.4239 East : 614033.7476  
 End North: 28472078.2927 East : 614053.5408  
 Curve Length: 244.34 Radius: 50.00  
 Delta: 279-59-23 Tangent: 41.96  
 Chord: 64.29 Course: S 48-15-09 E  
 Course In: N 81-45-10 E Course Out: S 01-44-33 W  
 RP North: 28472085.4650 East : 614103.0237  
 End North: 28472035.4881 East : 614101.5033

## Phase 3.txt

Curve Length: 17.45 Radius: 20.00  
 Delta: 49-59-42 Tangent: 9.33  
 Chord: 16.90 Course: S 66-44-42 W  
 Course In: S 01-44-33 W Course Out: N 48-15-09 W  
 RP North: 28472015.4973 East : 614100.8952  
 End North: 28472028.8143 East : 614085.9734  
 Line Course: S 41-44-51 W Length: 63.08  
 North: 28471981.7512 East : 614043.9717  
 Curve Length: 23.56 Radius: 15.00  
 Delta: 90-00-00 Tangent: 15.00  
 Chord: 21.21 Course: S 03-15-09 E  
 Course In: S 48-15-09 E Course Out: S 41-44-51 W  
 RP North: 28471971.7635 East : 614055.1630  
 End North: 28471960.5722 East : 614045.1752  
 Line Course: S 48-15-09 E Length: 96.61  
 North: 28471896.2445 East : 614117.2547  
 Curve Length: 73.73 Radius: 825.00  
 Delta: 5-07-13 Tangent: 36.89  
 Chord: 73.70 Course: S 45-41-33 E  
 Course In: S 41-44-51 W Course Out: N 46-52-04 E  
 RP North: 28471280.7232 East : 613567.9291  
 End North: 28471844.7627 East : 614169.9959  
 Curve Length: 23.29 Radius: 15.00  
 Delta: 88-58-41 Tangent: 14.73  
 Chord: 21.02 Course: S 87-37-17 E  
 Course In: N 46-52-04 E Course Out: S 42-06-37 E  
 RP North: 28471855.0180 East : 614180.9426  
 End North: 28471843.8902 East : 614191.0010  
 Line Course: N 47-53-23 E Length: 118.73  
 North: 28471923.5057 East : 614279.0815  
 Curve Length: 10.93 Radius: 20.00  
 Delta: 31-18-02 Tangent: 5.60  
 Chord: 10.79 Course: N 32-14-22 E  
 Course In: N 42-06-37 W Course Out: S 73-24-39 E  
 RP North: 28471938.3428 East : 614265.6703  
 End North: 28471932.6327 East : 614284.8378  
 Curve Length: 126.19 Radius: 50.00  
 Delta: 144-36-07 Tangent: 156.68  
 Chord: 95.27 Course: N 88-53-25 E  
 Course In: S 73-24-39 E Course Out: N 71-11-28 E  
 RP North: 28471918.3573 East : 614332.7566  
 End North: 28471934.4779 East : 614380.0866  
 Curve Length: 10.93 Radius: 20.00  
 Delta: 31-18-01 Tangent: 5.60  
 Chord: 10.79 Course: S 34-27-33 E  
 Course In: N 71-11-28 E Course Out: S 39-53-27 W  
 RP North: 28471940.9262 East : 614399.0186  
 End North: 28471925.5808 East : 614386.1921  
 Line Course: S 50-06-33 E Length: 70.10  
 North: 28471880.6238 East : 614439.9775  
 Curve Length: 17.45 Radius: 20.00  
 Delta: 49-59-41 Tangent: 9.33  
 Chord: 16.90 Course: S 75-06-24 E

Phase 3.txt

Course In: N 39-53-27 E	Course Out: S 10-06-14 E
RP North: 28471895.9692	East : 614452.8041
End North: 28471876.2794	East : 614456.3127
Curve Length: 244.34	Radius: 50.00
Delta: 279-59-22	Tangent: 41.96
Chord: 64.29	Course: S 39-53-27 W
Course In: S 10-06-14 E	Course Out: S 89-53-08 W
RP North: 28471827.0548	East : 614465.0844
End North: 28471826.9549	East : 614415.0845
Curve Length: 17.45	Radius: 20.00
Delta: 49-59-41	Tangent: 9.33
Chord: 16.90	Course: N 25-06-43 W
Course In: S 89-53-08 W	Course Out: N 39-53-27 E
RP North: 28471826.9150	East : 614395.0845
End North: 28471842.2603	East : 614407.9111
Line Course: N 50-06-33 W Length: 84.57	
North: 28471896.4973	East : 614343.0233
Curve Length: 21.47	Radius: 15.00
Delta: 82-00-04	Tangent: 13.04
Chord: 19.68	Course: S 88-53-25 W
Course In: S 39-53-27 W	Course Out: N 42-06-37 W
RP North: 28471884.9883	East : 614333.4033
End North: 28471896.1162	East : 614323.3450
Line Course: S 47-53-23 W Length: 135.59	
North: 28471805.1950	East : 614222.7568
Curve Length: 22.40	Radius: 15.00
Delta: 85-33-39	Tangent: 13.88
Chord: 20.38	Course: S 05-06-33 W
Course In: S 42-06-37 E	Course Out: S 52-19-44 W
RP North: 28471794.0671	East : 614232.8152
End North: 28471784.9002	East : 614220.9422
Curve Length: 192.01	Radius: 825.00
Delta: 13-20-07	Tangent: 96.44
Chord: 191.58	Course: S 31-00-12 E
Course In: S 52-19-44 W	Course Out: N 65-39-51 E
RP North: 28471280.7196	East : 613567.9285
End North: 28471620.6891	East : 614319.6237
Line Course: S 24-20-09 E Length: 2.61	
North: 28471618.3110	East : 614320.6992
Line Course: S 65-39-51 W Length: 50.00	
North: 28471597.7068	East : 614275.1420
Line Course: N 24-20-09 W Length: 2.61	
North: 28471600.0849	East : 614274.0664
Curve Length: 323.50	Radius: 775.00
Delta: 23-55-00	Tangent: 164.14
Chord: 321.16	Course: N 36-17-39 W
Course In: S 65-39-51 W	Course Out: N 41-44-51 E
RP North: 28471280.7196	East : 613567.9285
End North: 28471858.9366	East : 614083.9615
Line Course: N 48-15-09 W Length: 365.42	
North: 28472102.2512	East : 613811.3266
Curve Length: 23.56	Radius: 15.00
Delta: 90-00-00	Tangent: 15.00



Phase 3.txt

Chord: 21.21 Course: S 86-44-51 W  
 Course In: S 41-44-51 W Course Out: N 48-15-09 W  
 RP North: 28472091.0599 East : 613801.3389  
 End North: 28472101.0476 East : 613790.1476  
 Line Course: S 41-44-51 W Length: 75.45  
 North: 28472044.7554 East : 613739.9093  
 Line Course: N 48-15-09 W Length: 60.00  
 North: 28472084.7063 East : 613695.1441  
 Line Course: N 41-44-51 E Length: 381.60  
 North: 28472369.4129 East : 613949.2321  
 Line Course: S 32-00-19 E Length: 0.00  
 North: 28472369.4129 East : 613949.2321

Perimeter: 3501.57 Area: 95,280 S.F. 2.187 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
 Error Closure: 0.0038 Course: S 13-46-59 W  
 Error North: -0.00367 East : -0.00090  
 Precision 1: 921,468.42

-----  
 Parcel name: Total Area

North: 28472443.3259 East : 613866.4175  
 Line Course: S 48-15-09 E Length: 185.00  
 North: 28472320.1438 East : 614004.4435  
 Line Course: S 54-33-09 E Length: 751.56  
 North: 28471884.2716 East : 614616.6998  
 Line Course: S 46-55-41 E Length: 204.73  
 North: 28471744.4581 East : 614766.2544  
 Line Course: S 80-27-31 W Length: 217.18  
 North: 28471708.4584 East : 614552.0789  
 Line Course: S 68-46-47 W Length: 243.33  
 North: 28471620.3840 East : 614325.2477  
 Line Course: S 65-39-51 W Length: 55.00  
 North: 28471597.7193 East : 614275.1346  
 Line Course: N 24-20-09 W Length: 2.61  
 North: 28471600.0974 East : 614274.0591  
 Curve Length: 37.39 Radius: 775.00  
 Delta: 2-45-52 Tangent: 18.70  
 Chord: 37.39 Course: N 25-43-05 W  
 Course In: S 65-39-51 W Course Out: N 62-53-59 E  
 RP North: 28471280.7321 East : 613567.9212  
 End North: 28471633.7828 East : 614257.8344  
 Line Course: S 53-39-25 W Length: 107.04  
 North: 28471570.3489 East : 614171.6155  
 Line Course: N 32-39-03 W Length: 138.79  
 North: 28471687.2064 East : 614096.7357  
 Line Course: N 37-41-16 W Length: 107.06  
 North: 28471771.9288 East : 614031.2837  
 Line Course: N 48-15-09 W Length: 399.06

Phase 3.txt

North: 28472037.6426 East : 613733.5505  
Line Course: N 41-44-51 E Length: 9.55  
North: 28472044.7677 East : 613739.9093  
Line Course: N 48-15-09 W Length: 171.00  
North: 28472158.6279 East : 613612.3286  
Line Course: N 41-44-51 E Length: 381.60  
North: 28472443.3345 East : 613866.4166

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

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

Error Closure: 0.0086 Course: N 06-12-57 W

Error North: 0.00852 East : -0.00093

Precision 1: 350,104.65

# Zoning Bulletin

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## Notice/Authority—When neighbor does not receive notice of landowner's Act 250 application, district commission issues second notice

Applicant contends district commission lacks authority to issue second notice after permit is final

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### Contributors

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Citation: *In re Mathez Act 250 LU Permit*, 2018 VT 55, 2018 WL 2382006 (Vt. 2018)

VERMONT (05/25/18)—This case addressed the issue of whether a district commission had the authority to issue a second notice for a final Act 250 permit when a neighbor did not receive notice of the permit before it became final, and the neighbor failed to timely appeal.

**The Background/Facts:** Act 250 is Vermont's land use and development law under which statutes dictate procedures related to permit applications. (See, e.g. 10 V.S.A. § 6084). Nine district commissions review Act 250 applications and issue decisions and land use permits. Under Act 250's statutory application process, applicants are required to list on their application, adjoining landowners and those with a "significant interest in the affected property" so that those with an interest have notice of the permit application and can request a hearing on the permit if desired.

On May 9, 2016, Lori and Richard Mathez (the "Applicants") applied for an Act 250 permit to build a steel building for commercial vehicle repair and body shop. Applicants listed their neighbor, Wyle Solomon, but not his spouse, Sung-Hee Chung ("Neighbor"). Neighbor therefore did not receive an Act 250 notice of Applicants' permit application, and thus did not request a hearing before the permit issued, without a hearing, on June 15, 2016.

On July 21, 2016, Neighbor learned about the permit, yet she did not seek to challenge or appeal the permit. Still, having been advised that Neighbor had not received notice about the permit, the District Commission, on August 25, 2016, sent out a second Act 250 notice for the permit. That second notice stated that the District Commission was "again reviewing [Applicants'] application under Act 250 Rule 51" and would decide "the status of [the] permit . . . as a component of its current application review."

The Applicants appealed the second notice to the Superior Court, Environmental Division. The court held that in issuing a second notice, the District Commission "attempted to void or revoke" the permit, which was analogous to a collateral attack on a final decision, and the Commission lacked the authority to do so. Having determined that the second notice was therefore beyond the Commission's authority, the court granted summary judgment in favor of the Applicants, and ordered the District Commission to vacate its decision to issue a second notice of the permit.

Neighbor appealed. Neighbor argued that the District Commission had authority to issue the second notice of the permit because "the District Commission was correcting an error, not adjudicating the final permit a second time, and the Commission has express, inherent, and implied authority to correct errors."

**DECISION: Judgment of Superior Court, Environmental Division, affirmed.**

The Supreme Court of Vermont concluded that Neighbor's arguments "miss[ed] the mark," and held that, "[w]ithout deciding whether a District Commission ever at any time has authority to issue a second notice of a permit . . . the Commission did not have that authority here."

In so holding, the court acknowledged that "Act 250 and its rules authorize

the District Commission to grant or deny permits and to correct application errors in certain circumstances.” (See 10 V.S.A. § 6025(b)(3) (authorizing Natural Resources Board to create procedures for District Commission to approve Act 250 permits); Act 250 Rules, Rule 30 (directing District Commission to approve, approve with conditions, or deny permit applications); Act 250 Rules, Rule 31 (allowing District Commission to alter Act 250 permits in certain circumstances); Act 250 Rules, Rule 34 (authorizing District Commission to amend permit in certain circumstances).) The court also acknowledged that aggrieved parties could challenge an issued permit. (See 10 V.S.A. § 8504(a) (authorizing appeal of District Commission decision to Environmental Division).) However, the court emphasized that such “opportunities are circumscribed; they do not give the Commission open-ended authority to change a permit or an aggrieved party unlimited opportunity to appeal.”

Here, the court found, in light of the lack of required notice, Neighbor had the legal option of requesting that the court extend or reopen the time to appeal. (V.R.A.P. 4.) The court further found that Neighbor did not do so. “Having failed to appeal through an authorized procedure,” Neighbor could not then appeal Applicants’ permit “through this alternative second-notice process,” determined the court. The District Commission, said the court, “is limited by the applicable statutes and rules and cannot create an alternative mechanism for review.” In so concluding, the court recognized “the tension between fairness and the finality of judgments that exists in all types of cases,” but found that “to protect and balance these competing interests,” “existing procedural rules already set the balance between finality and fairness” through avenues which Neighbor here did not take advantage.

See also: *In re Mahar Conditional Use Permit*, 2018 VT 20, 183 A.3d 1136 (Vt. 2018).

See also: *In re Treetop Development Co. Act 250 Development*, 201 Vt. 532, 2016 VT 20, 143 A.3d 1086 (2016).

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**Case Note:**

*In its decision, the court also addressed the procedural issue of whether the issuance of the second permit notice was properly before the Supreme Court for interlocutory review. The court concluded that interlocutory review was appropriate because the matter challenged was whether the District Commission “clearly exceeded its jurisdiction,” and “delaying review until the final decision would harm the parties.”*

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## Hearings and meetings in general— Planning Commission holds hearing on permit, but Board of Commissioners fails to provide for notice for hearing before approving same permit

Neighbors contend board's failure to notice hearing violated Georgia's Zoning Procedures Law, but board says law only requires one noticed hearing per permit

Citation: *Hoechstetter v. Pickens County*, 2018 WL 2465513 (Ga. 2018)

GEORGIA (06/04/18)—This case addressed the issue of whether a hearing before a county planning commission afforded interested citizens a meaningful opportunity to be heard by the county board of commissioners on an application for a conditional use permit, and thus satisfied the notice-and-hearing requirements of the Zoning Procedures Law.

**The Background/Facts:** In August 2015, Doug and Lynda Tatum (the “Tatums”) applied for a conditional use permit for a 75-acre parcel in Pickens County (the “County”). Following publication of notice, in October 2015, the County Planning Commission held a hearing on the permit application. Several neighbors appeared at the hearing and objected to the application. Nevertheless, the Planning Commission approved the permit application. At its January 2016 meeting, the County Board of Commissioners (the “Board”) also approved the permit.

Some of the neighbors (the “Neighbors”) then filed a petition for judicial review. The Neighbors argued that they were denied a meaningful opportunity to be heard on the application. In particular, the Neighbors asserted that the Board failed to give notice as required by Georgia's Zoning Procedures Law (“ZPL”) of the January 2016 Board meeting at which the Board approved the Tatums' permit.

Pursuant to the ZPL, before a county or municipality makes a “zoning decision,” it must afford affected landowners and other interested citizens an opportunity to be heard. To that end, it must “provide for a hearing” on the proposed zoning decision and publish notice of that hearing. (See OCGA § 36-66-4 (a).)

The Board maintained that the hearing for which notice was required under the ZPL was not its January 2016 meeting, but rather, the October 2015 hearing before the Planning Commission—for which proper notice had been given.

The superior court agreed with the Board, holding that the notice of the October 2015 hearing was enough to satisfy the ZPL.

The neighbors appealed, and the Court of Appeals affirmed.



The Supreme Court of Georgia then issued a writ of certiorari to review the decision of the Court of Appeals.

**DECISION: Judgment of Court of Appeals reversed.**

Agreeing with the Neighbors, the Supreme Court of Georgia held that because the January Board meeting was “too attenuated in time or circumstances” from the Planning Commission’s October decision, it did not afford interested citizens a meaningful opportunity to be heard by the Board on the permit application, and therefore another hearing was required for the Board’s January 2016 meeting in order to satisfy the notice-and-hearing requirements of the ZPL.

In so holding, the court agreed with the Board that “a hearing is not required at every stage of the process that leads up to a zoning decision,” and “what the statute requires is one hearing during the continuous course of a zoning matter fore the local government.” Nevertheless, the court found that only one hearing in this case was insufficient to afford the Neighbors a meaningful opportunity to be heard on the permit application. The court said this was because: the Planning Commission had no authority to make a final zoning decision; and although the Planning Commission could make recommendations to the Board, here there was not an adequate record of the hearing before the Planning Commission made and transmitted to the Board—such that the final zoning decision of the Board could be said to have been meaningfully informed by what happened at the Planning Commission’s hearing. Rather, the Board received only a one-page memorandum about the Planning Commission’s October hearing, which noted “considerable objections from the surrounding neighbors in attendance,” but “fail[ed] to disclose even the general nature of those ‘considerable objections.’” “The court could not find how the memorandum informed the Board in a “meaningful way” of what happened at the hearing. Accordingly, the court concluded that it could not find that the hearing before the Planning Commission afforded interested citizens a meaningful opportunity to be head by the Board on the Tatums’ permit application. Thus, the court concluded that the October 2015 hearing did not satisfy the notice-and-hearing requirements of the ZPL.

See also: *City of Roswell v. Outdoor Systems, Inc.*, 274 Ga. 130, 549 S.E.2d 90 (2001).

## Structures and Scale—Zoning board finds by-law limiting scale of new construction does not apply to an applicant's proposed new construction

Abutting landowners challenge that determination and urge a different interpretation of the by-law and its applicability

Citation: *Sinaiko v. Zoning Board of Appeals of Provincetown*, 93 Mass. App. Ct. 274 (May 25, 2018)

MASSACHUSETTS (05/25/18)—This case addressed the issue of the application of a municipal zoning by-law to a proposed new construction. The case involved the interpretation and application of the by-law.

**The Background/Facts:** Stanley Sikorski (“Sikorski”) apparently agreed to purchase a vacant lot (the “Lot”) in the Town of Provincetown (the “Town”). The purchase was contingent on Sikorski obtaining a building permit. Sikorski proposed to build a two-and-a-half story single-family home, totaling 33,810 cubic feet in volume.

Section 2640 of the Town’s zoning by-law was “applicable to all new buildings and all additions in all zoning districts in [the Town].” Section 2640 regulated the scale of new construction and additions. Its purpose was to preserve the Town’s existing character of “buildings that have relatively consistent and harmonious scale within neighborhoods,” and to prevent the construction of “[n]ewer buildings, where the appropriate scale has not been maintained, [that] have disrupted the character of the neighborhoods.” To serve that purpose, the by-law limited the size of new buildings and building additions that could be constructed. More specifically, new buildings were allowed, as of right, in a scale up to 25% larger than the average size of existing buildings in the area (the “neighborhood average”). The by-law dictated that, with regard to new construction, the neighborhood average was to be calculated based on existing structures that lie within 250 feet of the center of the parcel—with “the largest and smallest structures’ within that radius . . . to be excluded.” Landowners seeking to construct a larger building than could be built as of right could apply for a special permit from the Town’s Zoning Board of Appeals (the “Board”).

When Sikorski applied for a building permit for his proposed home, the building commissioner determined that by-law § 2640—and its scale limitations—was not applicable. The building commissioner so determined because in calculating the “neighborhood average” structure scale, only two nearby structures lay within 250 feet of the center of Sikorski’s Lot (with the mean volume of those structures being 6,380 cubic feet). The building commis-

sioner determined that since § 2640 dictated that the “largest and smallest structures” within 250 feet be excluded from the scale calculation for proposed new construction, then § 2640 placed “no constraints on the size of building that Sikorski could build as of right.”

Jonathan Sinaiko and Camille Cabrey (the “Abutters”) appealed the building commissioner’s decision. They argued that the plain language of § 2640 required its application to all new construction—including that proposed by Sikorski, and that, as applied, the by-law required Sikorski to seek a special permit for his proposed building since its 33,810 cubic feet in volume was over five times as large as the 6,380 cubic foot mean volume of the two structures within 250 feet of the center of Sikorski’s Lot.

The Board affirmed the building commissioner’s decision. The Board agreed with the building commissioner’s interpretation of the application of § 2640, and found that, in this case, “there [was] no scale calculation procedure to follow.”

The Abutters appealed. Finding there was not material issue of fact in dispute, and deciding the matter based on the law alone, the superior court affirmed the Board’s decision. The court reasoned that § 2640 was “ambiguous because it did not address how the neighborhood average was to be calculated in the circumstances of this case” (i.e., where there are only two structures within the 250-foot radius of the center of the parcel). The court found it reasonable for the Board to conclude that “where no qualifying structures exist in the 250[-]foot radius, there is no existing scale which must be protected.”

The Abutters again appealed.

**DECISION: Judgment of superior court reversed.**

The Appeals Court of Massachusetts agreed with the Abutters’ arguments. It held that by its plain language, § 2640 was “applicable to all new buildings,” and the Board was therefore “not free to determine that the by-law simply [was] inapplicable.”

Having determined that § 2640 applied to Sikorski’s proposed structure, the court next looked at how the neighborhood scale average was to be calculated in the circumstances presented. The court concluded that there was an interpretation of the by-law that would “accord both its language and its express purpose.” The court found that “[n]othing in the language of § 2640 compelled the building commissioner to exclude existing structures when doing so would leave him without a basis upon which to set a neighborhood average.” In fact, the court found that “the specific language of the by-law cuts in the other direction.” Finding that the terms “largest” and “smallest” that appear in the by-law properly are used only in relation to three or more items, the court concluded that “a grammatically correct reading of the by-law’s plain language, the directive that the building commissioner exclude the ‘largest’ and ‘smallest’ structures in calculating a neighborhood average would apply only where there are three or more structures within 250 feet of the applicable measuring point.” Applying such an interpretation here, the court found that the two structures within 250 feet of the applicable measuring point would not be excluded in calculating the neighborhood average.

With Sikorski’s proposed structure having a volume five times greater than

the mean volume of the two structures within the 250-foot radius, the court agreed with the Abutters that the proposed building was “too large to be approved . . . without a special permit.”

See also: *MacGibbon v. Board of Appeals of Duxbury*, 356 Mass. 635, 255 N.E.2d 347, 1 Env't. Rep. Cas. (BNA) 1122 (1970).

## Vested Rights—After applicant files building permit for farm structures, town zones land as non-agricultural

Applicant contends Wisconsin's Building Permit Rule applies to land and not just structures, thus vesting its right to agricultural use

Citation: *Golden Sands Dairy LLC v. Town of Saratoga*, 2018 WI 61, 2018 WL 2710392 (Wis. 2018)

WISCONSIN (06/05/18)—This case addressed the issue of whether the Building Permit Rule—which vests the right to use property consistent with current zoning at the time a building permit application that strictly conforms to all applicable zoning regulations is filed—applies to all land specifically identified in the building permit application, or whether it applies merely to structures.

**The Background/Facts:** In June 2012, Golden Sands Dairy, LLC (“Golden Sands”) filed a building permit application with the Town of Saratoga (the “Town”). Golden Sands sought to operate a farm on 6,388 acres in and around the Town. In furtherance of that use, Golden Sands’ building permit application sought to build seven farm structures on 92 acres of the 6,388 acres. Attached to Golden Sands’ building permit application was a map of the property. The map highlighted the agricultural land in blue and the land on which the building structures would be constructed in yellow. The map was based on a U.S. Geological Survey topographical map that contained details such as county borders, roads, and latitude and longitude.

At the time Golden Sands filed its building permit application, the Town did not have any zoning ordinances, and the county zoning ordinance zoned the land as “unrestricted,” meaning it could be used for any lawful purpose. In October 2012, the Town passed a permanent zoning ordinance, which was ratified by the county in November 2012. Under the Town’s new zoning ordinance, only 2% of the town—and none of Golden Sands’ land—was zoned for agricultural use. Accordingly, Golden Sands’ planned dairy farming operation did not conform to the zoning ordinance.

Ultimately, in light of its new zoning ordinance, the Town refused to issue the building permit to Golden Sands. Golden Sands then filed a mandamus action to compel the Town to issue the building permit. Golden Sands argued that the Building Permit Rule extended to all land specifically identified in a

building permit application—and as such, Golden Sands thus had a vested right to use all of the property for agricultural purposes. Under Wisconsin law, the Building Permit Rule vests the right to use property consistent with current zoning at the time a building permit application that strictly conforms to all applicable zoning regulations is filed.

The circuit court concluded that Golden Sands' building permit application was complete and complied with all zoning regulations at the time it was filed. The circuit court also agreed with Golden Sands and concluded that the Building Permit Rule extends to all land identified in the building permit application. Finding there was no material issues of fact in dispute, and deciding the matter on the law alone, the court issued summary judgment in favor of Golden Sands.

The Town appealed. On appeal, the Town argued that Golden Sands' building permit was limited to vesting its right to build the seven structures identified in the building permit but did not also grant Golden Sands the right to use for agricultural purposes the farmland specifically identified in the building permit application.

The court of appeals agreed with the Town. The court of appeals distinguished between the right to build a structure and the right to use land. It determined that "the right to build a structure vests with the filing of a building permit application that strictly conforms to all applicable zoning regulations, but the right to use land vests with open and obvious use under the nonconforming use doctrine." Based on that distinction, the court of appeals concluded that Golden Sands' building permit vested its right to build the structures, but not to use the other land identified in the building permit application for agricultural purposes—since Golden Sands was not yet using the land for agricultural purposes. The court of appeals concluded that because Golden Sands had not established a nonconforming use before the Town's zoning ordinance took effect, it could not use any of its land for agricultural purposes.

Golden Sands appealed.

**DECISION: Judgment of court of appeals reversed.**

Agreeing with Golden Sands, the Supreme Court of Wisconsin held that "the Building Permit Rule extends to all land specifically identified in a building permit application." The court concluded that, consequently, Golden Sands had a vested right to use all of the property for agricultural purposes.

In so holding, the court found that the "primary policy underlining the bright-line Building Permit Rule" was "predictability." The court concluded that predictability was "best advanced by applying the [Building Permit Rule] to all land specifically identified in the building permit application." Otherwise, noted the court, "piecemealing," as advanced by the Town and the court of appeals, "would require extensive litigation over how much land specifically identified in the building permit application [was] necessary . . . ." Moreover, said the court, "for any business that requires land in addition to structures for its operations, a building permit is nearly worthless if the rights vested by virtue of obtaining a conforming building permit do not extend to the land necessary to put the structures to their proper use." Further, the court said that "[t]o separate structures from their associated land would be to allow zoning

authorities to circumvent the Building Permit Rule by enacting restrictive zoning regulations on land that is necessary to give the buildings value.” (The court found support for its conclusion under the principles advanced in other jurisdictions—namely those that “emphasize that the rights vested by a building permit application are to develop land, not merely build structures.”)

Applying its holding to the facts here, the court held that because Golden Sands’ building permit application included a map that provided “an objective means to determine the contours of the [p]roperty,” Golden Sands possessed a vested right to use the property for agricultural purposes.

See also: *McKee Family I, LLC v. City of Fitchburg*, 2017 WI 34, 374 Wis. 2d 487, 893 N.W.2d 12 (2017).

See also: *Manna Funding, LLC v. Kittitas County*, 173 Wash. App. 879, 295 P.3d 1197 (Div. 3 2013), as amended on denial of reconsideration, (Apr. 9, 2013).

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*Case Note:*

*Wisconsin is in the minority of United States jurisdictions that adheres to the Building Permit Rule. The majority of other jurisdictions require both a building permit and “substantial construction and/or substantial expenditures before rights vest.” The court explained that under the majority rule, a landowner’s building permit can be revoked if the property is rezoned (even if construction has already begun).*

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## Zoning News from Around the Nation

### HAWAII

The Puna County Council Planning Committee has reportedly postponed action until mid-July on vacation rental legislation while the County recovers from its ongoing lava flow emergency. The proposed legislation would prohibit un-hosted short-term rentals in residential and agricultural zones, while allowing them in hotel and resort zones as well as commercial districts. Existing rentals in disallowed areas would be able to be grandfathered in by applying for a nonconforming use certificate that must be renewed annually at a cost of \$500. One council woman has reportedly proposed adding language to the bill that would allow the County planning director to accept applications for new short-term vacation rentals to replace those lost during an emergency. However, opponents of that proposed amendment argue it is contrary to the original intent of the bill.

Source: *West Hawaii Today*; [www.westhawaiiitoday.com](http://www.westhawaiiitoday.com)

### OHIO

Governor John Kasich recently signed legislation, which, among other things, contained an amendment that would accelerate an expected referen-



dum on the proposed rezoning of approximately 290 acres in the Village of Lordstown, Trumbull County—on which the TJX Companies has proposed to build a HomeGoods distribution center. “The legislation allows the Trumbull County Board of Elections to schedule a special election for the referendum 60 days after a council vote accepting the rezoning.” Without the legislation, a referendum would not have taken place until the general election in November.

Source: *The Business Journal*; <https://businessjournaldaily.com>

## TENNESSEE

Effective May 23, 2018, a new state law (House Bill 1020)—The Short-Term Rental Unit Act—allows “cities to regulate short-term rental units if they choose, but will protect those hosts who already have been renting their properties through online platforms such as Airbnb.” Under the new law, “short-term rentals” are defined as “a residential dwelling that is rented wholly or partially for a fee for a period of less than 30 continuous days” and does not include a hotel or bed and breakfast. The new law allows municipalities to pass local legislation that bans or limits short-term rentals. However, the state law grandfathers short-term rental hosts that can prove they were offering short-term rentals for at least six months of the 12-month period before the effective date of any new municipal law regulating such use.

Source: *The Daily Times*; [www.thedailytimes.com](http://www.thedailytimes.com)



# Zoning Bulletin

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## Vested rights—After developer submits incomplete zoning application, township adopts ordinance prohibiting developer's proposed use

Developer says its still entitled to develop pursuant to New Jersey's Time of Application Rule, but township says Rule only applies to "complete" applications

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Citation: *Dunbar Homes, Inc. v. Zoning Board of Adjustment of Township of Franklin*, 2018 WL 3041000 (N.J. 2018)

NEW JERSEY (06/20/18)—This case addressed the issue of whether an incomplete zoning application triggers New Jersey’s Time of Application Rule (the “TOA Rule”) (N.J.S.A. 40:55D-10.5)—which provides that “development regulations which are in effect on the date of the submission of an application for development shall govern the review of that application for development.” More specifically, the case addressed the issue of “whether an application for development that does not include all required materials should be considered an ‘application for development’ for purposes of the TOA Rule.”

**The Background/Facts:** Dunbar Homes, Inc. (“Dunbar”) was a land developer and residential builder. Dunbar owned a 276-unit garden apartment complex in a General Business Zone (“GB-Zone”) in Franklin Township (the “Township”). Dunbar also owned 6.9 acres adjacent to its apartment complex. Dunbar sought to develop on those 6.9 acres an additional 55 garden apartments.

At the time Dunbar was considering the proposed development, under the Township’s zoning ordinance, garden apartments were a permitted conditional use in the GB-Zone. As such, Dunbar was required to obtain a (d)(3) variance and site plan approval. However, in May 2013, the Township introduced a proposed ordinance that eliminated garden apartments as a permitted conditional use in the GB-Zone. One day before the public hearing on that proposed ordinance, Dunbar submitted an application to the Township’s Planning Board for site plan approval and a (d)(3) variance to build those additional 55 garden apartments. The next day, July 16, 2013, the Town adopted the new ordinance eliminating garden apartments as a permitted conditional use in the GB-Zone. The new ordinance became effective on August 5, 2013. On August 7, 2013, a Township zoning officer notified Dunbar that its application was incomplete. As such, and given the effectiveness of the new ordinance, Dunbar was instructed that it would now need to apply for a (d)(1) variance (with stricter standards) instead of a (d)(3) variance.

Dunbar appealed the zoning officer’s determination to the Township’s Zoning Board of Adjustment (the “Board”). Dunbar argued that its application was “complete” upon submission and therefore was protected by New Jersey’s Time of Application (“TOA”) Rule. The TOA rule provides:

“Notwithstanding any provision of law to the contrary, those development regulations which are in effect on the date of submission of an application for development shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.” (N.J.S.A. 40:55D-10.5.)

Dunbar argued that, therefore, for the purpose of its application, the TOA Rule preserved the zoning ordinance in place at the time Dunbar submitted its application (allowing garden apartments as permitted conditional uses, and requiring a less stringent (d)(3) variance). Dunbar contended that despite some admitted deficiencies in its application, its application was “sufficient.” It also argued that requiring its application be “complete” for the TOA Rule to be effective would “frustrate the purpose” of New Jersey’s Municipal Land Use Law (“MLUL”) (which includes the TOA Rule), which only required an “application for development” rather than a “complete application for development” to trigger the protections of the TOA Rule.

The Township argued that the zoning ordinance required an application for development to be “complete” for the TOA Rule to apply.

Agreeing with the Township’s view, the Board denied Dunbar’s appeal. The Board determined that Dunbar’s application was not an “application for development” as defined by the ordinance because it did not include materials required by the ordinance. Thus, the Board concluded that because Dunbar’s application was not deemed “complete” before the effective date of the ordinance prohibiting garden apartments in the GB-Zone, the TOA Rule did not shield Dunbar from the Township’s new zoning ordinance, and Dunbar was required to obtain a (d)(1) variance for its proposed development.

Dunbar appealed to the superior court. The superior court determined that the TOA Rule should apply “if the applicant provide[s] enough information . . . so that a meaningful review of the application can commence.” And, here, the court found that Dunbar’s submission met that standard. The court thus concluded that Dunbar’s application was protected by the TOA Rule.

The Township appealed. The Appellate Division reversed the trial court. In doing so, the Appellate Division rejected the trial court’s “enough information for meaningful review” standard. The Appellate Division instead held that an application must meet the definition of “application for development” under the MLUL. Under the MLUL (N.J.S.A. 40:55D-3), “application for development” is defined as “the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit.” Thus, the Appellate Division concluded that “[t]he benchmark for determining whether documents required for the submission to constitute an application for development . . . is whether they are specifically required by the ordinance.” Applying that standard to Dunbar’s application, the Appellate Division concluded that Dunbar’s submission did not constitute an “application for development” within the meaning of the MLUL because it did not include all items required by the ordinance. Accordingly, the Appellate Division determined that therefore the Board’s decision not to extend the protection of the TOA Rule to Dunbar’s submission was not arbitrary or capricious or unreasonable.

Dunbar petitioned for certification, and the Supreme Court of New Jersey granted the petition.

**DECISION: Judgment of Appellate Division affirmed.**

Agreeing with the Appellate Division and looking at the plain language of the MLUL, the Supreme Court of New Jersey held that for protections of the TOA Rule to apply, an “application for development” must include the information and all accompanying documents required by the relevant municipal ordinance. In its holding, the court rejected Dunbar’s argument that the TOA Rule did not require a “complete” application. The court found that although the TOA Rule did not use the word “complete,” it explicitly cross-referenced the local ordinance provisions of the MLUL, which list application requirements. (See N.J.S.A. 40:55D-3, defining “application for development.”)

The court found support for its position in noting that such a “clear, easily, applied, and objective standard advances the MLUL’s goal of statewide consistency and uniformity in land use decisions.” The court explained that such a standard “requires that the zoning officer compare the contents of a submission to the requirements of the municipal ordinance; it does not require review of each submission to determine whether a ‘meaningful review’ can be undertaken.”

Having determined that, to be protected by the TOA Rule, applicants must submit precisely what the MLUL (N.J.S.A. 40:55D-3) requires—"the application form and all accompanying documents required by ordinance for approval of a . . . site plan, . . . conditional use, zoning variance or direction of the issuance of a permit"—the court concluded that the Board's determination that Dunbar's application was not entitled to the protection of the TOA Rule and that Dunbar would have to complete a more stringent (d)(1) variance application was not "arbitrary and capricious or unreasonable." The court found it undisputed that Dunbar's submission lacked items mandated by the ordinance. Because Dunbar's application was incomplete and Dunbar had not sought a waiver, the court concluded that Dunbar's application could not benefit from the TOA Rule.

See also: *Grabowsky v. Township of Montclair*, 221 N.J. 536, 115 A.3d 815 (2015).

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*Case Note:*

*In this case, the Supreme Court of New Jersey granted the following motions for leave to appear as amicus curiae: a joint motion by the New Jersey Builders Association, NAIOP New Jersey Chapter, Inc., and the International Council of Shopping Centers; a joint motion by the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys; and an individual motion by the New Jersey State Bar Association.*

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*Case Note:*

*In its decision, the Supreme Court of New Jersey also noted "some important practical limits to Board determinations based on an application's failure to include all required materials." The court said that an application is not rendered "incomplete" simply because a municipality requires "correction of any information found to be in error and submission of additional information not specified in the ordinance or any revisions in the accompanying documents." (See N.J.S.A. 40:55D-10.3). Further, the court said that "in the event information required by local ordinance is not pertinent, the applicant may request a waiver as to that information or those documents it finds extraneous." (See N.J.S.A. 40:55D-10.3). In such a case, the court explained, if a waiver request for one or more items accompanies all other required materials, the applicant's submission will provisionally trigger the TOA Rule. Then, if the Board grants the waiver, the application will be deemed complete. If the Board denies the waiver, its decision will be subject to review under the customary "arbitrary and capricious or unreasonable" standard.*

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## Civil Rights/Procedures—Property owner appeals issuance of zoning permits to neighbor, and later brings a civil rights claim against borough

Property owner's civil rights claim contends borough violated her substantive right to be heard in her appeal

Citation: *Harz v. Borough of Spring Lake*, 2018 WL 3117016 (N.J. 2018)

NEW JERSEY (06/26/18)—This case addressed the issue of whether a homeowner, who challenges the issuance of a zoning permit allowing construction on neighboring property, has a statutory right to be heard before the municipal planning board, and if so, whether the violation of that right gives rise to an action under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2.

**The Background/Facts:** In December 2009, the Borough of Spring Lake (the “Borough”) issued a zoning permit (the “First Permit”) to Thomas Carter (“Carter”). The permit was for construction of a two-and-a-half story residence and a detached garage. Mary Harz (“Harz”) owned the property adjacent to Carter’s. She was unaware of the issuance of the permit until late spring 2010 when construction began on Carter’s residence. Concerned about what she was observing of the construction, Harz reviewed Carter’s development plans on file at the Borough’s Zoning Office and determined that they allowed for several violations of the Borough’s land-use ordinance. Harz brought her concerns to the Borough’s zoning officer. Unsatisfied with the zoning officer’s response, Harz hired an attorney.

In June 2010, Harz’s attorney appealed the issuance of Carter’s zoning permit. Despite Harz’s request to do so, the zoning officer failed to transmit the appeal to the Borough’s Planning Board. The zoning officer did request revised construction plans from Carter, and although no stop work order issued, construction on the project effectively ceased.

In August 2010, the zoning officer approved a new set of revised plans and issued an amended zoning permit to Carter (the “Second Permit”). Harz appealed the Second Permit, alleging that the revised plans still violated the Borough’s height regulations. The Planning Board set a hearing for the appeal, but later cancelled it, and instead the zoning officer issued a stop work order on the determination that Carter’s construction plans were not in conformance with the Borough’s land-use ordinance.

After Carter again submitted revised construction plans, another permit (the “Third Permit”) issued. Harz again believed the revised plans still violated the Borough’s land-use ordinance. She sought and obtained from the superior court a temporary restraining order to stop construction, and then she appealed the issuance of the Third Permit to the Planning Board.

After a hearing, the Planning Board agreed with some of Harz’s objections, finding Carter’s construction plans violated some of the Borough’s land-use ordinance. The Planning board rescinded the Third Permit, and then, once Carter met specified conditions, issued a final permit to Carter.



Harz did not appeal that final permit. However, in August 2011, Harz filed a federal and state civil rights action against the Borough and the initial zoning officer (hereinafter, collectively the “Borough”). Among other things, Harz brought a claim under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2, alleging that the Borough violated her substantive rights under the New Jersey Constitution and New Jersey’s Municipal Land Use Law (the “MLUL”). Essentially, Harz complained that she had a right to a hearing on her appeal, and that right was violated, causing her to expend substantial funds to retain an attorney and other licensed professionals in battling the improperly issued zoning permits.

Finding no material issues of fact in dispute, and deciding the matter on the law alone, the trial court issued summary judgment in favor of the Borough and dismissed Harz’s complaint. With regard to Harz’s civil rights claim, the trial court concluded that the MLUL only established a “right to be heard,” and not a “right to a hearing.” The court found that Harz was “heard” by filing her appeals, and therefore concluded that her rights were not violated.

Harz appealed. Disagreeing with the trial court, the Appellate Division found that, under the MLUL—N.J.S.A. 40:55D-72—Harz had a substantive right to appeal the issuance of the permits, which the Borough violated when the zoning officer failed to transmit her initial appeal to the Planning Board and when the Borough cancelled the hearing on the appeal of the Second Permit. The Appellate Division essentially concluded that Harz’s action in getting a temporary restraining order on construction from the trial court “was the means by which Harz vindicated her substantive right to secure the ’[Planning B]oard’s review of an alleged zoning violation.’ ”

The Borough petitioned for certification, challenging the reinstatement of Harz’s state civil rights claim. The Borough argued that N.J.S.A. 40:55D-72 does not confer on an “interested party,” such as Harz, the “right to a board hearing” on an appeal challenging the issuance of a zoning permit and therefore the Appellate Division erred in finding the violation of a cognizable substantive right under the Civil Rights Act. Alternatively, the Borough argued that, even assuming that the statute conferred a right to appeal to a Board, Harz “received relief under the statute because the appealed zoning permits issued to her neighbors were either withdrawn (after Harz’s first Notice of Appeal) or rescinded (after Harz’s second Notice of Appeal)—thus rendering moot Harz’s appeals to the Board.

The Supreme Court of New Jersey granted the Borough’s petition.

**DECISION: Judgment of Appellate Division reversed.**

The Supreme Court of New Jersey held that Harz did have a substantive right to be heard pursuant to the MLUL. However, the court concluded that “the Borough did not violate a substantive right as envisaged under [New Jersey’s] Civil Rights Act.”

The court explained that New Jersey’s Civil Rights Act—subsection (c) of N.J.S.A. 10:6-2—provides in part: “Any person who has been deprived of . . . any substantive rights, privileges or immunities secured by the Constitution or laws of this State, . . . by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.” (N.J.S.A. 10:6-2(c).) The court noted that the prevailing party in a private cause of action under the Civil Rights Act may also receive “reasonable attorney’s fees and costs.” (N.J.S.A. 10:6-2(f).)



The court further explained that identifying whether a claimed right is a “substantive right” protected under the state’s Civil Rights Act involves a multi-step test under which the court must determine: “(1) whether, by enacting the statute, the Legislature intended to confer a right on an individual” . . . ; (2) whether the right “is not so ‘vague and amorphous’ that its enforcement would strain judicial competence,” . . . ; and (3) whether the statute “unambiguously impose[s] a binding obligation on the [governmental entity]” ; and (4) whether the “right is substantive, not procedural.” With regard to differentiating “substantive” from “procedural” rights, the court noted that “a substantive right is ‘[a] right that can be protected or enforced by law; a right of substance rather than form.’”

Here, the court found that the nature of the substantive right at issue—a property right—was “clearly identifiable,” and that Harz had a right to have her property concerns “heard in some form.” Looking at the MLUL, the court found that it “clearly” conferred on Harz a right to be heard before the Planning Board. Finding “an interested party’s right to be heard is inextricably tied to a party’s property rights,” the court found that the MLUL right to be heard was “substantive, not procedural.”

Although the court found that Harz had a substantive right to be heard by the Board, the court also found that the zoning officer’s failure to transmit Harz’s initial appeal to the Planning Board and the Borough’s cancellation of the hearing on the appeal of the Second Permit “did not deprive Harz of a substantive right because she suffered no adverseness.” The court cited the effective ceasing of construction on Carter’s property after Harz’s initial appeal as reason that Harz “suffered no adverseness to any property right she possessed.” Moreover, the court found that nothing in the record suggested that if Harz had not filed her action with the trial court for the temporary restraining order, the Planning Board would have denied her a hearing. Thus, the court concluded that, for the purposes of the state Civil Rights Act, Harz did not exhaust the statutory process for securing her right to be heard under the MLUL. Having found that Harz failed to prove that the Borough deprived her of the right to be heard, the court concluded that Harz’s civil rights claim must be dismissed.

See also: *Tumpson v. Farina*, 218 N.J. 450, 95 A.3d 210 (2014).

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*Case Note:*

*In its decision, the court acknowledged that if the zoning officer had permitted construction to proceed on Carter’s property and blocked Harz’s ability to appeal and be heard by the Board, that scenario may have been a violation of Harz’s substantive property right and a Civil Rights Act violation.*

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## Telecommunications Act—After zoning board denies variance for telecommunications tower, variance applicant alleges board violated the federal Telecommunications Act

Applicant contends board's decision failed to provide substantial evidence related to express consideration of the Act's requirements

Citation: *American Towers LLC v. Town of Shrewsbury*, 2018 WL 3104105 (D. Mass. 2018)

MASSACHUSETTS (06/22/18)—This case addressed the issue of whether a zoning board's decision in denying a variance for a telecommunications tower was supported by "substantial evidence," as required by the federal Telecommunications Act. It also addressed the issue of whether the federal Telecommunications Act requires municipal zoning boards, when denying a particular application, to expressly consider the requirements of the Telecommunications Act—including coverage gap or whether a denial is an effective prohibition of wireless services.

**The Background/Facts:** American Towers LLC and T-Mobile Northeast LLC (collectively, "American Towers") entered into a lease agreement to lease a certain part of a property in the Town of Shrewsbury (the "Town"). American Towers planned to construct a wireless communications facility on the property, including a 149-foot multicarrier monopole-style tower. The property was located in a Rural A Zoning district which did not allow wireless communication towers or structures taller than 35 feet. Accordingly, American Towers applied to the Town's Zoning Board of Appeals ("ZBA") for a use variance and a dimensional variance.

Eventually, the ZBA voted to deny the variances. The ZBA issued a three-page decision denying the application. The decision explained that the Board found that the proposed tower "would create a nuisance by virtue of noise, odor, smoke, vibration, traffic generated, unsightliness and other conditions detrimental to the public good." The ZBA also found "no unique conditions of the lot's size, topography, orientation, and shape, where strict compliance with the requirements of the Zoning Bylaw would be an undue hardship upon [American Towers]."

American Towers later brought a lawsuit against the Town and the ZBA. American Towers contended that the ZBA's denial of the variances violated the federal Telecommunications Act of 1996 ("TCA").

Among other things, the TCA provides that the state and local regulation of "the placement, construction, and modification of personal wireless service facilities" shall not "unreasonably discriminate among providers of functionally equivalent services" or "prohibit or have the effect of prohibiting the provision

of personal wireless services.” (47 U.S.C.A. § 332(c)(7)(B)(i) and (iii).) Also, when a local zoning authority denies an application to construct a wireless facility, the TCA requires the local authority’s decision be (1) “in writing” and (2) “supported by substantial evidence contained in a written record.” (47 U.S.C.A. § 332(c)(7)(B)(iii).)

Here, under Count 1 of its complaint, American Towers alleged that the Town had effectively prohibited cell-phone service in violation of the TCA. Under Count 2, American Towers alleged that the ZBA’s opinion was not based on substantial evidence contained in a written record, in violation of the TCA.

American Towers asked the court to find there were no material issues of fact and to issue summary judgment in their favor on Count 2. American Towers sought this summary judgment on the theory that if the ZBA’s denial of the variances was found not to be supported by substantial evidence—in violation of the TCA—American Towers would be entitled to an injunction requiring the Town to approve the variances (and Count 1 would then be moot). American Towers argued that the ZBA did not comply with the TCA’s requirement that its decision be “supported by substantial evidence contained in a written record.” Specifically, American Towers contended that the “hardship” warranting their requested variance was a significant gap in wireless service coverage. They further contended that the TCA required local zoning boards to treat such a gap in coverage as an additional category of hardship under the Massachusetts variance standard. (Under the Massachusetts Zoning Act, zoning variances are permitted for hardships related to soil conditions, shape, or topography of the land. (Mass. Gen. Laws Ch. 40A, § 10.)) Thus, they contended that the ZBA had a duty to consider, under the TCA’s substantial-evidence requirement, whether a variance denial effectively prohibited wireless service. They argued that: “(1) they demonstrated, without contradiction, a significant gap in coverage—indeed, the Board so found; (2) the Board’s refusal to permit the closing of such a gap constitutes an ‘effective prohibition of wireless service’ within the meaning of the TCA; and (3) the Board did not give any reason as to why its refusal to permit the variance did not constitute ‘effective prohibition’; [and] therefore (4) the Board’s decision [was] not supported by substantial evidence contained in a written record.”

In a cross-motion, the Town asked the court to issue summary judgment on Count 2 in its favor.

**DECISION: American Tower’s motion for partial summary judgment on Count 2 and the affirmative defenses granted in part as to liability for Count 2, and denied in part without prejudice as to the affirmative defenses and the remedy for Count 2. Town’s cross-motion for partial summary judgment on Count 2 denied.**

The United States District Court, D. Massachusetts, held that the ZBA’s decision did violate the substantial-evidence standard of the TCA.

In so holding, the court rejected American Tower’s argument that a zoning board must expressly consider the requirements of the TCA—including coverage gap or whether a denial is an effective prohibition of wireless services. The court found the TCA did require a variance if a town’s denial would be an effective prohibition of wireless services. And, the court found that the TCA requires zoning decisions be supported by substantial evidence. However, in reviewing the statutory language, First Circuit (Court of Appeals) guidance, and explicit holdings in other circuits, the court found those two requirements were separate.

For example, explained the court, “[t]o demonstrate an effective-prohibition claim based on the denial of a particular proposal, the proponent of the tower has the burden to show ‘that further reasonable efforts are so likely to be fruitless that it is a waste of time to even try.’” Moreover, “[w]hile an individual denial by a zoning board might amount to an effective prohibition, the information necessary to make that determination is broader than the particular site for which approval is sought— . . . presumably includ[ing] information about the town’s regulatory scheme, the feasibility of other possible locations, and so on.” In comparison, to demonstrate a “substantial evidence” claim, “a plaintiff need only establish that the particular decision by the zoning board in a given case was not in writing or not supported by substantial evidence.” Those different standards of review, said the court, “appear to reflect a judgment that deference is due to the zoning board’s specific decision about the appropriateness of a particular project, whereas the question of whether wireless service has been effectively prohibited is a question on which a lay zoning board has no particular expertise.” Thus, the court concluded that a zoning board “need not expressly consider the requirements of the TCA.” Rather, “[t]he relevant standard the [b]oard must use to determine a variance is that set forth by state and local law.” Accordingly, the court concluded that its substantial-evidence review here was limited to the ZBA’s decision under the Massachusetts Zoning Act’s standards for obtaining a zoning variance.

Under that review, the court concluded that the ZBA failed to support its zoning variance denials with substantial evidence, as required by the TCA. The court noted that “it is not sufficient under the TCA for a board to simply recite the applicable legal standard.” Here, the court found that was all that the ZBA had done in issuing its decision denying American Tower’s variances. The ZBA, found the court, failed to address Massachusetts Zoning Act variance standards—such as the hardship of land topography (which might require a tall tower). In fact, the court found that the ZBA failed to address any claimed hardship at all. The court concluded that the ZBA’s “bare-bones decision” was not “sufficient explanation of the reasons for the denial ‘to allow a reviewing court to evaluate the evidence supporting those reasons.’” In short, the court concluded that the reasons given by the ZBA for variance denials were “plainly inadequate.”

Having concluded that the ZBA violated the TCA’s substantial-evidence requirement, the court next addressed the remedy due American Towers. American Towers had argued that the ZBA’s violation of the TCA’s substantial-evidence requirement warranted an injunction, ordering the Town to issue the variances. While the court acknowledged that an injunction might be warranted for such a violation under “some circumstances”—such as when a “board is hostile to an applicant and using an . . . unsupported decision as cover for unreasonably obstructing a proposal”—here, the court concluded that it was not yet prepared to address a remedy for the substantial-evidence violation. The court said it would not address a remedy until American Tower’s effective-prohibition claim under Count 1 of the complaint was resolved (which could be dispositive).

See also: *Nextel Communications of Mid-Atlantic, Inc. v. Town of Wayland Mass.*, 231 F. Supp. 2d 396 (D. Mass. 2002).

See also: *Second Generation Properties, L.P. v. Town of Pelham*, 313 F.3d 620 (1st Cir. 2002).

See also: *T-Mobile Central, LLC v. Unified Government of Wyandotte County, Kansas City, Kan.*, 546 F.3d 1299 (10th Cir. 2008).

See also: *MetroPCS, Inc. v. City and County of San Francisco*, 400 F.3d 715 (9th Cir. 2005).

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*Case Note:*

*In its decision, the Court further noted that “although it is by no means required to do so, a local zoning board is not prohibited from considering whether its decision in a particular case would amount to an effective prohibition on the provision of wireless services.” The court said that in choosing to address the effective-prohibition issue, a zoning board thereby “retain[s] substantial control over where and how cell towers are built within its borders.” Still, if the zoning board chooses not to address that issue—as it may, the court advised that “it runs the risk that an individual decision might be held to be an effective prohibition, and it may be forced to issue a variance without further discussion of alternatives.”*

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## Zoning News from Around the Nation

### MAINE

The state House and Senate have passed a “sweeping medical marijuana reform bill.” The bill was headed to Governor LePage. Among other things, the bill would let medical marijuana caregivers “open retail stores, letting them become mini dispensaries that can serve as many card-carrying patients as they can from 30 flowering marijuana plants, but only in towns that have authorized medical marijuana storefronts.” A municipal opt-in amendment that was adopted with the bill “essentially allows a town to shut out caregiver retail stores by doing nothing,” and also allows towns “to shut down existing stores that have popped up without municipal authorization.”

Source: *The Times Record*; [www.timesrecord.com](http://www.timesrecord.com)

### NEW YORK

The state Senate recently quashed a bill—Senate Bill S6760—which would have eliminated the cap on the residential floor area ratio. If the bill had passed, it would have allowed for taller and denser residential building.

Source: *Brownstoner*; [www.brownstoner.com](http://www.brownstoner.com)

### OHIO

The state Senate Energy and Natural Resources Committee is considering a bill—House Bill 114—that would reportedly “relax the state’s strict wind turbine setbacks rules but again weaken renewable and energy efficiency standards.” Under the bill property line setbacks for commercial wind turbines would be “at least 1,225 feet to the nearest habitable structure on a property.”

Source: *Energy News Network*; <https://energynews.us>

# Zoning Bulletin

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## Inverse Condemnation—City encourages and invites public to use privately-owned beach parcel

Parcel owner sues city, alleging a taking of property without just compensation

Citation: *Chmielewski v. City of St. Pete Beach*, 890 F.3d 942 (11th Cir. 2018)

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

ELEVENTH CIRCUIT (FLORIDA) (05/16/18)—This case addressed the issue of whether a city's encouragement and invitation to the general public to access private beachfront property amounted to an illegal seizure in violation of the property owner's Fourth Amendment rights, and a taking without just compensation in violation of the Florida Constitution.

**The Background/Facts:** The estate of Chester Chmielewski (the "Chmielewskis") owned beachfront property in the Don CeSar Place Subdivision in the City of St. Pete Beach (the "City"). Specifically, the Chmielewskis' home sat adjacent to one of the two blocks of the subdivision—Block M, and the Chmielewskis had title to the beachfront portion of Block M contiguous to their residence and extending across Block M to the mean high water line ("MHWL") of the Gulf of Mexico. The Chmielewskis' fee simple ownership was subject only to: (1) a 1925 plat restriction that allowed Don CeSar Subdivision owners the right to use Block M, including the Chmielewskis' beach parcel, for "beach and bathing purposes"; and (2) Florida law making available for public use the beach area between the water and the MHWL.

In 1975, the City acquired the original Don CeSar subdivision developer's residence, known as the Don Vista property. The Don Vista property adjoined Block M, just north of the Chmielewskis' property. From 2003 to 2005, the City renovated the Don Vista property, turning it in to a community center. As part of the renovations, the City cleared a direct public access path from a mini-park across from Block M to the Gulf of Mexico, and posted large signs with the City's emblem stating "Beach Access." The City also provided public parking to facilitate beach access, and published a map showing public access to the Block M beach at the Don Vista Center. While the City was renovating the Don Vista Center, it also zoned and mapped Block M, including the Chmielewskis' beach parcel, as "recreation open space/public park." That zoning designated the property as a public beach for public use (inconsistent with the Chmielewskis' private ownership rights).

The Chmielewskis later claimed that following these City renovations and actions, large numbers of public beachgoers flocked onto the Chmielewskis' private beach parcel. The Chmielewskis also claimed that the City declined to enforce its trespassing laws against those members of the public trespassing on the Chmielewskis' property. Moreover, the Chmielewskis pointed to the fact that the City actually facilitated public use of the Chmielewskis' beach parcel by, among other things: allowing Block M to be used for weddings, including nuptials on the Chmielewskis' beach parcel; and organizing a large wiffle ball tournament that occurred on Block M, including the Chmielewskis' beach parcel.

In 2009, the Chmielewskis sued the City. They alleged the City committed an unreasonable seizure of the property in violation of the Chmielewskis' Fourth Amendment rights and an unlawful taking of their property without full compensation in violation of the Florida Constitution.

Ultimately, a jury returned a verdict for the Chmielewskis on both the federal and state claims. The jury awarded the Chmielewskis \$1,489,700—which was the exact amount that the Chmielewskis' appraiser testified represented “just compensation” for the value of the entire beach parcel plus the severance damages to the Chmielewskis' residential property.

After trial, the City moved for judgment as a matter of law (i.e., arguing that the evidence was insufficient to support the jury's verdict), asking the court to issue judgment in the City's favor. The district court refused. The court held that the evidence was sufficient to support the jury's finding that “the City had meaningfully interfered with the Chmielewskis' use and enjoyment of their property, in violation of the Fourth Amendment, and that the Chmielewskis had presented substantial evidence from which a reasonable jury could find that the City's statements and actions had demonstrated ‘more than a passive attitude’ about the public's use of the Chmielewski property.” On the takings claim, the district court also held that the evidence supported a finding that the City: “created a right of public access across Block M behind the Don Vista Center, so that a fair-minded person could conclude that the City's actions gave members of the public a permanent and continuous right to pass to and fro on Block M, so that the Chmielewski Block M beach parcel may be continuously traversed.”

The City had also contended that if the judgment was to be enforced, then the City should receive title to the Chmielewskis' beach parcel. The district court denied this request.

The City appealed. On appeal, the City argued that the inverse condemnation award must be reversed because there was no evidence of a taking under Florida law. Alternatively, the City again contended that if the judgment was to be enforced, it should receive title to the beach parcel.

**DECISION: Judgment of United States District Court for the Middle District of Florida affirmed.**

The United States Court of Appeals, Eleventh Circuit, was “unpersuaded by the City's arguments.” The court first held that the evidence at trial supported the jury's finding that a physical taking occurred through the continuous occupation of the Chmielewskis' property by members of the general public, and that, through its actions, the City encouraged public occupation.

The court noted that Article X, § 6(a) of the Florida Constitution

provides: “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner . . . .” The court explained that this clause prohibits the government from taking private property for a public use without paying for it. Moreover, the court explained that a plaintiff (such as the Chmielewskis here) “need not demonstrate direct government appropriation of private property to prove a taking.” Notably, citing United States Supreme Court precedent, the court said that “[a] taking also occurs when the government gives third parties ‘a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed.’” “[E]ven a temporary or intermittent invasion of private property can trigger physical takings liability,” said the court.

Here, the court found that the City encouraged public use of the beach parcel by placing beach access signs, clearing vegetation, creating nearby parking spaces, hosting events at the property, and refusing to remove trespassers. The court found that those City actions “resulted in frequent public use of the beach parcel.”

The City had argued that a taking could not be found here because the City had “never asserted ownership or exclusive control over [the Chmielewskis’ beach parcel].” But the court asserted that “ownership and exclusive control are not necessary elements for a takings claim.” Rather, noted the court, a physical taking can occur “when government ‘deliberately brings it about that . . . the public at large regularly use or permanently occupy space or a thing which theretofore was understood to be under private ownership.’ ”

Here, the court found that there was sufficient evidence to establish that the continuous public trespassing and occupation of the Chmielewskis’ property was “the natural and intended effect of the City’s actions.” In other words, the court found that the City’s actions imposed a de facto public access easement on the Chmielewskis’ property.

Addressing the City’s alternative request for fee simple ownership of the beach parcel upon payment of the judgment, the court held such relief was not warranted under Florida law and that the district court did not abuse its discretion in denying the City’s request to transfer title. The court explained that, under Florida law, “the taking of an easement may, in some cases, amount to the taking of the full value of the fee with resultant severance damages, but ‘naked fee title’ still remains in the property owner.” Moreover, the court noted that Florida law restricts the City from acquiring a greater interest in condemned property than necessary to serve the public purpose for which it is acquired. Because existing plat restrictions prevented the land in question from being developed, the court found that the City needed nothing more than a public easement across the land to accomplish its goal

of beach access (i.e., it didn't need to own the fee simple). Furthermore, the court noted that the jury's award of inverse condemnation damages was based on an appraisal by the Chmielewskis' expert who used a "before and after" approach to determine the loss of value to the Chmielewskis' property as a result of the easement-type taking, which thus did not reflect a market valuation of the fee simple estate. Accordingly, the court affirmed the district court's ruling denying the City's request to transfer title of the beach parcel. However, the Eleventh Circuit also made clear in its holding that the City had "paid for, and is entitled to, a permanent easement across the Chmielewskis' beach property for the benefit of the public."

See also: *Nollan v. California Coastal Com'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677, 26 Env't. Rep. Cas. (BNA) 1073, 17 Envtl. L. Rep. 20918 (1987).

See also: *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868, 8 Media L. Rep. (BNA) 1849 (1982).

See also: *Smith v. City of Tallahassee*, 191 So. 2d 446 (Fla. 1st DCA 1966).

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**Case Note:**

*The City had also sought a new trial on both counts. The appellate court concluded that there was no basis to grant a new trial.*

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## **Vested Rights/Preemption—Under county zoning ordinance, licensed medical cannabis dispensary is denied a building permit**

**Dispensary sues claiming entitlement to the permit and arguing state cannabis regulations preempt the county ordinance**

Citation: *Hippocratic Growth, LLC v. Board of County Commissioners of Queen Anne's County*, 2018 WL 3343588 (Md. Ct. Spec. App. 2018)

MARYLAND (07/09/18)—This case addressed the issue of whether a medical cannabis dispensary possessed a protected property inter-

est—either a vested right in the zoning use or a legitimate claim of entitlement to a permit or approval—in a medical cannabis dispensary interest. The case also addressed the issue of whether a county ordinance requiring conditional use approval and establishing set-back requirements for cannabis growing operations was preempted by state legislation—specifically the regulatory framework established by the Maryland Medical Cannabis program.

**The Background/Facts:** In anticipation of receiving a license to dispense medical cannabis, Hippocratic Growth, LLC (“HG”) entered into agreements with 101 Drummer Drive, LLC (“Drummer”) and 111 Scherr Lane, LLC to open a dispensary at an address (the “Property”) in Queen Anne’s County (the “County”). In December 2016, HG was awarded preliminary licensing approval. In February 2017, Drummer submitted a building permit application for the Property.

Meanwhile, in January 2017, the County Commissioners enacted Resolution 17-06, which put a temporary moratorium on the approval of medical cannabis zoning applications. In March 2017, Resolution 17-06 was rescinded. In April 2017, Ordinance 17-06 was adopted. Among other things, Ordinance 17-06 created regulations that required conditional use approval and established set-back requirements for cannabis growing operations.

In May 2017, the County Planning Department notified Drummer that its building permit had been denied pursuant to Ordinance 17-06.

HG and Drummer (collectively, the “Applicants”) brought a legal action for: (1) mandamus; (2) declaratory judgment; (3) preliminary injunctive relief; (4) permanent injunctive relief; and (5) violations of the Maryland Constitution and Maryland Declaration of Rights. More specifically, the Applicants argued that they had a protected constitutional interest in completing “Stage 2” of Maryland’s Cannabis Commission’s licensing approval process. According to the Applicants, upon the Commission’s announcement of HG’s preliminary approval in December, 2016, the Applicants “possessed a vested property interest in a medical cannabis dispensary license that is cognizable under Article 24 of the Maryland Declaration of Rights.” They maintained that right was violated when the County Commissioners passed Resolution 17-06, which had the effect of prohibiting them from completing Stage 2 of the licensing process, and Ordinance 17-06, which imposed zoning regulations “so restrictive that identifying a qualifying property in the unincorporated portion of Queen Anne’s County became virtually impossible.” The Applicants further argued that Ordinance 17-06 was preempted by the Maryland Medical Cannabis Program’s regulatory framework.

The County, on the other hand, maintained that the Applicants did not have a vested property interest because they did not obtain a build-

ing permit, and did not make a substantial beginning to reconstruct the building at the Property. The County also argued that the state Legislature did not intend to preempt local municipalities from exerting zoning control over the medical cannabis industry.

The circuit court found that the Applicants “failed to meet the requirements under Maryland law to assert a claim that they acquired a property interest to develop [the Property] and, as a result, [could] not meet the burden required to prove either a substantive due process or procedural due process claim.” The circuit court also concluded that the Ordinance was not preempted “by any other legislation.”

The Applicants appealed.

**DECISION: Judgment of circuit court affirmed.**

The Court of Special Appeals of Maryland first held that the Applicants did not acquire a vested property interest or “have a legitimate claim of entitlement to any other cognizable constitutional interest.”

In so holding, the court explained that there were “two avenues” by which the Applicants could acquire a constitutionally protected property interest: (1) by obtaining a “vested right” in the existing zoning use; or (2) by possessing a “legitimate claim of entitlement” to a permit or approval. The court addressed each of those avenues.

The court explained that, under Maryland law, in order to obtain a vested right in the existing zoning use that will be constitutionally protected against a later change in the zoning ordinance prohibiting or limiting that use, the owner must: “(1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.” Here, the court found that the Applicants “never acquired a vested property interest” since they did not obtain a permit at the Property, and did not make a substantial beginning to reconstruct the building at the property such that “the neighborhood [was] advised that the land [was] being devoted to that use.”

In finding that the Applicants also did not have a legitimate claim of interest to a permit or approval, the court explained that whether the property interest at issue here was a permit license or a medical cannabis dispensary license, the test would be the same: “a constitutionally cognizable interest requires a ‘legitimate claim of entitlement’ and turns on whether the ‘local agency lacks all discretion to deny issuance of the permit or to withhold its approval.’ ” Here, the court found that the County did not lack discretion to deny the permit or withhold its approval. In fact, the court found that “the [Cannabis] Commission’s regulations indicate that local zoning authorities wield independent authority in the licensing process.” Specifically, Commission regulations authorize the Commission to issue a dispensary license on a de-



termination that the proposed premises “comply with all zoning and planning requirements” (COMAR 10.62.25.07(B)(3)(b)), and require “[t]he premises and operation of a licensee shall conform to all local zoning and planning requirements” (COMAR 10.62.27.02(D)). Furthermore, the court noted that Maryland courts had “made clear that the issuance of a building permit is not a ministerial act unless applications ‘fully comply with applicable ordinances and regulations[.]’ “ Moreover, the court found that a lack of certainty as to the County’s medical cannabis zoning requirements was “evidence that the zoning regulations [were] discretionary, not objective in nature.”

Addressing the Applicants preemption argument, the Court of Special Appeals of Maryland also held that the Maryland Medical Cannabis Program’s regulatory framework did not preempt “the entire field of zoning law.” And, the court held that Ordinance 17-06 did not prohibit an activity that was intended to be permitted by state law “where the plain language of the regulations requires dispensaries, growers, and processors to ‘conform to all local zoning and planning requirements.’ “ As such, the court held that there was no preemption of Ordinance 17-06, and therefore it applied to the Property.

See also: *Siena Corporation v. Mayor and City Council of Rockville Maryland*, 873 F.3d 456 (4th Cir. 2017).

## **Vested Rights/Mootness—After Village denies special-use permit for strip club, state adopts ordinance essentially foreclosing any locations for strip clubs in village**

District court concludes applicant’s appeal for injunctive relief is thus moot, but applicant claims a vested right to regulations at the time of the permit application

Citation: *Chicago Joe’s Tea Room, LLC v. Village of Broadview*, 894 F.3d 807 (7th Cir. 2018)

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



SEVENTH CIRCUIT (ILLINOIS) (06/29/18)—This case addressed the issue of whether an applicant for a special-use permit had a vested right to use the property for operation of a strip club. The case also addressed the issue of whether the applicant's claim seeking injunctive relief was mooted by Illinois' adult entertainment facility statute.

**The Background/Facts:** Chicago Joes' Tea Room, LLC was formed to operate a strip club. In 2006, Pervis Conway ("Conway") contracted to sell land (the "Property") in the Village of Broadview (the "Village") to David Donahue ("Donahue"). Donahue assigned the land contract to Chicago Joe's Tea Room, LLC. The manager of Chicago Joe's Tea Room, LLC then applied to the Village for a special-use permit needed to operate a strip club on the Property. The Village denied the application.

Subsequently, Chicago Joe's Tea Room, LLC and Conway (hereinafter, collectively, "Chicago Joe's") sued the Village. They alleged that the Village violated Chicago Joe's First Amendment rights. Among other things, Chicago Joe's asked the district court to declare that certain Village zoning ordinances were unconstitutional, in violation of the First Amendment. Chicago Joe's also asked the court to issue an injunction blocking the Village from enforcing its zoning ordinance.

The Village's zoning ordinance required a special-use permit for "adult businesses," which included strip clubs. The Village's zoning ordinance also used a separate adult-use zoning ordinance to regulate the placement of strip clubs.

Finding there were no material issues of fact in dispute, and deciding the matter based on the law alone, the district court judge granted summary judgment in favor of the Village on Chicago Joe's declaratory judgment and injunction claims. With regard to the injunction claim, the district court concluded that those claims were moot in light of an Illinois statute prohibiting the location of "adult entertainment facilities" within one mile of certain other uses.

Chicago Joe's appealed that order, limiting its arguments on appeal to the denials of injunctive relief.

**DECISION: Judgment of United States District Court for the Northern District of Illinois affirmed.**

The United States Court of Appeals, Seventh Circuit, agreed with the district court that Chicago Joe's injunction claims were moot.

The court explained that, a few months after the Village had denied Chicago Joe's permit application, the Illinois legislature had amended its "adult entertainment facility" statute to prohibit "locat[ing], construct[ing], or operat[ing] a new adult entertainment facility within one mile of the property boundaries of any school, day care center, cemetery, public park, forest preserve, public housing, or place of

religious worship located in that area of Cook County outside of the City of Chicago.” (See 65 Ill. Comp. Stat. Ann. 5/11-5-1.5.) The court noted that Illinois statutes preempt conflicting ordinances by non-home-rule municipalities—such as the Village here. The Property at issue here—on which Chicago Joe’s sought a special-use permit to operate a strip club—was within one mile of a cemetery, two schools, three parks, and a church. Thus, by its terms, the state statute foreclosed Chicago Joe’s attempt to operate a strip club at the Property, or, in fact to operate a strip club anywhere in the Village. Accordingly, the Seventh Circuit concluded that Chicago Joe’s claims for injunctive relief were moot.

Chicago Joe’s argued that it had a vested right to use the Property in accordance with the law that existed at the time that it submitted the special-use permit application (i.e., when the prior version of the state statute, which was less restrictive, required only a 1,000-foot setback). The Seventh Circuit disagreed. The court explained that Illinois courts have “made clear that a property owner who claims a vested right must proceed according to the law as it existed at an earlier time, by ‘attempting to comply with an ordinance as written.’” Here, the court concluded that Chicago Joe’s did not have a vested right because its proposal to use the property would have violated at least one Village ordinance. The court found that Chicago Joe’s application proposed a use with sales of alcoholic beverages, which would have violated a Village ordinance that expressly forbade adult businesses to “sell, distribute, or permit beer or alcoholic beverages on the premises.”

In summary, the Seventh Circuit agreed with the district court that Chicago Joe’s claims for injunctive relief were moot because Illinois’ “adult entertainment facility” statute now prohibited Chicago Joe’s from opening anywhere in the Village. The court concluded that the current state statute would effectively prohibit a court from granting effective relief to Chicago Joe’s even if Chicago Joe’s prevailed on its federal constitutional challenges to the Village ordinances.

## **Zoning News from Around the Nation**

### **ILLINOIS**

The DeWitt County Zoning Board of Appeals is reportedly looking to amend its wind farm ordinance governing such facilities. Among the changes being considered are the following: adding a requirement that wind farms have aircraft detection lighting systems; lowering the acceptable noise level limit from a turbine from 50 dBA to 37 dBA; set-

ting a standard for shadow flicker caused when rotating blades cast moving shadows on the ground; mandating an analysis verifying turbines will not interfere with public communication; and establishing setbacks from property lines instead of from existing homes for turbine locations.

Source: *Herald & Review*; <https://herald-review.com>

## MASSACHUSETTS

State Attorney General Maura Healey is allowing municipalities to extend temporary bans on recreational marijuana for another year—through June 2019 “without having to ask their residents about the decision.” This extension is reportedly intended to “give communities more time to create [related] zoning rules.”

Source: *WBUR*; [www.wbur.org](http://www.wbur.org)

## TEXAS

A Travis County Judge has ruled that the Austin City Council must put a petition ordinance related to CodeNEXT, the city’s rewrite of the land development code, on the November ballot. If the ordinance were to pass, it would require voter approval to implement CodeNEXT—if CodeNEXT is ultimately approved by the city council. The City of Austin reportedly has acknowledged the court’s order, but questions “whether zoning is an appropriate subject for election.”

Source: *KVUE*; [www.kvue.com](http://www.kvue.com)