

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

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

**CALL TO ORDER**

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

**ROLL CALL**

**Present:**      **Jeff Dalling**  
                 **John Anderson**  
                 **Stefan Beck**  
                 **Tera Hooiman**

**Excused:**      **David Freistroffer**  
                 **Evi Buell**  
                 **Ian Montgomery**

**City Staff Present:**   **Scott Wilkinson, Assistant City Manager**  
                                 **Cathy Laughlin, City Planner**  
                                 **Bob Thibault, Civil Engineer**  
                                 **Shelby Archuleta, Planning Technician**

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

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

**APPROVAL OF MINUTES**

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

**\*\*\*Motion: Approve the August 7, 2018 Minutes as presented.**

**Moved by Tera Hooiman, Seconded by John Anderson.**

*\*Motion passed unanimously. (4-0)*

**I. NEW BUSINESS**

## **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 Giammalvo 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).

Cathy Laughlin, City Planner, explained that this existing CUP 4-86 was conditionally approved by the Planning Commission on September 16, 1986. There were two conditions that were stated in the Conditional Use Permit, and they have been satisfied. Kathy Stringfield is the current permittee of Conditional Use Permit 4-86, she is the owner of the property and is selling the property and the business to the applicant. They stated that they were proposing that the transfer would be done around Oct 1, 2018. CUP 4-86 was recorded with the Elko County Recorder's Office. It is specific to being a child care center and at the address of 1737 Sewell Drive. The proposed transfer is not conflicting with the approved use or the specific property. The property is currently being ran as Noah's Ark Daycare Center, and the existing structure was permitted on April 22, 1988. Ms. Laughlin continued to go over the City of Elko Staff Report dated July 31, 2018. Staff recommended approval with the conditions listed in the Staff Report. One additional condition was added, which was that the transfer of Conditional Use Permit 4-86 shall be recorded with the Elko County Recorder's Office after the recordation of the Deed of Sale to Cristina Giammalvo. This is to occur within one year of approval of the Conditional Use Permit Transfer by the Planning Commission, or the transfer will automatically lapse and be of no effect.

Bob Thibault, Civil Engineer, had no comments and recommended approval.

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

Ms. Laughlin stated that the Fire Department did not have any conditions or requirements.

**\*\*\*Motion: Approve the transfer of Conditional Use Permit No. 4-86 subject to the conditions in the City of Elko Staff Report dated July 31, 2018, listed as follows:**

### **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.

**Commissioner Beck's findings to support his recommendation was the existing conditional use permit is consistent with the Land Use Component of the Master Plan. 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. The transfer of Conditional Use Permit is in conformance with the Wellhead Protection Plan. The transfer of the existing conditional use permit is in conformance with Section 3-2-3 of City Code. The existing conditional use permit is in conformance with Section 3-2-5(E)(3) of City Code. 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. The property as developed is in conformance with City Code 3-2-17 as legal non-conforming.**

**Moved by Stefan Beck, Seconded by Tera Hooiman.**

***\*Motion passed unanimously. (4-0)***

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).

Robert Capps, 1706 Flagstone Drive, stated that he was ok with the conditions as presented. The Final Plat complies exactly with the Preliminary Plat.

Ms. Laughlin went over the City of Elko Staff Report dated August 23, 2018. Staff recommended conditional approval based on the findings and conditions listed in the staff report.

Mr. Thibault recommended approval as presented by Ms. Laughlin.

Ms. Laughlin stated that the Fire Department had no concerns.

Mr. Wilkinson recommended approval as presented by staff.

**\*\*\*Motion: Forward a recommendation to City Council to conditionally approve Final Plat No. 11-18 subject to the conditions in the City of Elko Staff Report dated August 23, 2018, listed as follows:**

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.

Commissioner Beck's findings to support his motion was that 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. The Final Plat is in conformance with the Preliminary Plat. The proposed subdivision is in conformance with the Land Use Component of the Master Plat. Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms with Sections 3-3-20 through 3-3-27 (inclusive). The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-40 of City Code. The Subdivider has submitted civil improvement plans in conformance with Section 3-3-41 of City Code. The plans have been approved by City Staff. The Subdivider has submitted plans to the City and State agencies for review to receive all required permits in accordance with the requirements of Section 3-3-42 of City Code. The Subdivider has submitted civil improvement plans which are in conformance with Section 3-3-43 of City Code. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-44 of City Code. The Subdivider will be required to provide a Performance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-45 of City



**Code. Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G) and 3-2-17 of City Code. The proposed development is in conformance with Section 3-8 of City Code. The subdivision is in conformance with 3-8 Floodplain Management.**

**Moved by Stefan Beck, Seconded by John Anderson.**

***\*Motion passed unanimously. (4-0)***

## **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)

Ms. Laughlin went over the City of Elko Staff Report dated August 23, 2018. Staff had two different recommendations, if it is denied why, or if it is conditionally approved there are conditions listed in the Staff Report. She then she showed some photos and explained them. The property owner did put in a drain between the shed and the fence to capture any drainage, but the roof of the shed does shed water towards the property owner's property and the Peace Park. She explained that there were two windows on the rear of the house, that if the shed was located within the setbacks they would be blocked, restricting egress.

Commissioner Stefan Beck asked if it was enough of a violation of any codes that that could not be allowed.

Ms. Laughlin explained that that's why there was a Variance application. A Variance would bring the property into conformance with the Elko City Code, if approved. If the Variance is denied the applicant will be required to remove the shed. The setback of the rear, towards the Peace Park, is 10 feet, and side setback is 5 ½ feet. The Fire Department recommended denial and had the same concerns that the rest of staff had. If approved the shed would be required to comply with fire rating standards.

Mr. Thibault recommended denial based on the shed being on an existing easement. There can't be structures on easements. Alternatively, if the Planning Commission were to approve the Variance, the applicant would be required to vacate the easement.

Mr. Wilkinson stated that the City Manager had a recommendation for denial based on staff report findings.

Commissioner Tera Hooiman asked if the applicant turned the shed to face the back of the house if he would lose the two bedrooms.

Ms. Laughlin explained that there would be two feet between back of the house and the front of the shed.

Commissioner Hooiman said that wouldn't work.

Ms. Laughlin explained that the windows were bedroom windows, they are required to have an egress out of the bedroom, and there is a clearance required by Building Code. If the applicant were to build the shed on the other side of the property it would be close to the flood zone. She stated that it was unfortunate that lot is 6,600 square feet. The minimum lot size in the R Zone is 6,000 square feet. The lot is a little more than the minimum lot size and it's a large size house, so it is built setback to setback. There was a different application not too long ago for a shed and there were other locations on the property that the shed could have been place. This one they are built out to the setbacks. The only difference is accessory buildings can be as close as 10 feet from the rear property line.

Mr. Wilkinson added that a smaller shed could always be built to meet the setbacks.

Commissioner Beck suggested changing the geometry of the shed.

Ms. Laughlin explained that there was 20 feet between the back of the house and the back lot line. If we are requiring a 10 foot setback, and there needs to be room for the egress from the bedroom windows, that would leave about 6 feet.

Commissioner Beck said the shed could be 6 feet deep and then the length could be expanded.

Mr. Wilkinson said then the question would be if a narrow shed would be practical. That would be something to take into consideration.

Vice-Chairman Jeff Dalling added that there was always the option for a storage unit.

Ms. Laughlin pointed out that the applicant had arrived. She thought that the applicant needed to answer questions and discuss the six items that a Variance needs to be in conformance with.

Vice-Chairman Dalling explained to the applicant that he had missed most of the discussion on his item, and that they had moved his item to the end to try to help him out on time. He asked if the applicant would like to come and address the Commission.

Moises Luna, 927 Benti Way, explained that he didn't know it was going to be a problem putting his shed there, because he looked around and everyone has sheds like that. He explained that when he did his awning he called the Building Department and asked if he needed permits. They told him as long as the awning wasn't touching the house he didn't need it. He sees sheds all over town like this, so he didn't think it would be a problem. To meet the setbacks, like the Commission said, it would have to be about 5 feet wide, and take up the yard, and he wouldn't have any yard for his kids to play in. He stated if he could meet the requirements he would, but where ever he sets the sheds he couldn't meet the setbacks.

Commissioner Beck asked if the applicant didn't know there were certain rules and regulations. He asked if the applicant put a lot of time and effort into building the shed.

Mr. Luna stated that he put a lot of time, money, and work into it. He even put extra drainage on the side, so that when the water would come off the shed it would go down into the grading. He never knew there was setbacks, because when you look around town everyone has sheds against their fences, because everyone wants to take advantage of their small lots.

Vice-Chairman Dalling said it made sense that he built it in the corner. Mr. Dalling stated that he liked big lots better, especially in Elko, because everyone has toys. Unfortunately, the City does have setback requirements. The last one the Commission denied already had stucco on it.

Mr. Luna explained that he stopped construction as soon as he got the stop work notice. He said he wanted to do everything right.

Vice-Chairman Dalling asked Mr. Luna if he had considered having a storage shed, if the Commission denied his request.

Mr. Luna said the thing was he had already put a lot of money into the shed. It made it hard on him, and he would have to tear it all down.

Reece Keener asked if the shed was sitting on a concrete slab.

Mr. Luna said he put the corner posts in with cement, so he can't move it. He stated he would have nowhere to put his stuff if this was denied, because it's all in his garage now and he doesn't have very much room to park his cars. He said he was breaking the off-street parking code, because he couldn't park his cars in the garage.

Commissioner Beck said he was going to have to side on the rule and the Zoning Ordinance. In the Staff Report under Findings it states that granting the variance will substantially impair intent or purpose of the Zoning Ordinance. He asked if it would be a big deal if they made an exception here, would it open a can of worms. Would it be a real issue to make an exception? Would that make things more difficult down the road?

Mr. Luna added the he spoke with his neighbors, and they are ok with him leaving the shed where it is. He said the shed is not blocking his next door neighbor's view, because his lot is lower.

Mr. Wilkinson thought, in this circumstance, they probably had enough information that they've determined, the other corner of the property is not a suitable location. This is a normal size lot. People build big homes on lots that create these issues. The Commission has heard testimony that we have this across the community. Typically they are purchased from Home Depot, across the street on Idaho, they move them in and no one even knows and you don't have to have a building permit. Here you are having one constructed, which is a little different. He thought the Commission could also determine that meeting the setbacks would result in a shed configuration that would not be practical. That's another finding. Whether or not that gets the Commission to a hardship would be up to the Commission as they deliberate. Asking for forgiveness after you

start something probably isn't a hardship, but the applicant did call the Building Department and asked if he needed a building permit, so he made an effort to do that. Technically, he didn't need a permit because of the size. What didn't get conveyed was that it couldn't put it in the setbacks. These sheds that are purchased at Home Depot don't need a building permit. People just have them delivered and set in the backyard. Those are a little different because they could be relocated pretty easily if there were any complaints. Setbacks are important. They address safety issues, such as fire and things like that. Maintaining setbacks maintain the integrity of neighborhoods and they address the fire issues.

Commissioner Beck read the findings listed in the Staff Report. The applicant did make a good faith effort to at least contact the Building Department.

**\*\*\*Motion: Conditionally approve Variance No. 9-18 based on the facts, findings, and conditions in the City of Elko Staff Report dated August 23, 2018.**

**Moved by Stefan Beck.**

After the motion Mr. Wilkinson explained that to grant a variance you have all six findings. On the fourth finding, Mr. Wilkinson thought the Planning Commission would have to have a finding that states granting of the variance will not substantially impair. Staff has a finding that they believe it will impair the intent and purposed of the Zoning Ordinance. He thought if the Commission was going to consider a conditional approval of the variance, you have to state for the record that the Planning Commission has determined that granting the variance will not substantially impair the intent or purpose of the Zoning Ordinance. If you have a finding that it will, you should not grant a variance.

Commissioner Beck asked, specific to Mr. Luna's situation, how it was going to impair the general concept of the Zoning Ordinance.

Mr. Wilkinson explained that was what the Commissioners were deliberating. If you have a finding that it will impair, you shouldn't grant the variance. You have to have these six findings, but one of them can't be that you're going to impair the intent of the Zoning Ordinance. You will have to reconsider staff's finding No. 4. If you are recommending a conditional approval your finding should be based on that granting of the variance will not substantially impair the intent of the Zoning Ordinance.

Commissioner Beck said that the Zoning Ordinance was a broad brush.

Mr. Wilkinson said to grant the variance the Commission would have a finding that by granting this variance it will not substantially impair the Zoning that applies under the broad brush that Commissioner Beck has talked about. If granting this variance impairs the broad brush zoning, then we shouldn't grant the variance. All he was saying was that the finding needed to be adjusted to be consistent with the recommendation.

Commissioner Beck thought that was why they had these meetings, to address each individual situation.

Mr. Wilkinson stated that he wasn't disputing that, he was just stating that there needed to be a different finding than what was read into the record before.

**\*\*\* Commissioner Beck amended finding No. 4 to state that granting of the variance will not impair the intent or purpose of the Zoning Ordinance.**

*The motion died for lack of second.*

**\*\*\*Motion: Recommend denial of Variance No. 9-18 based on findings that not all six of the findings are met, and including the findings listed in the City of Elko Staff Report dated August 23, 2018, listed as follows:**

**It does not appear that granting the variance will result in material damage or prejudice to other properties in the vicinity. 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. Granting of the variance does not appear to be detrimental to the interest, health, safety and general welfare of the public. Granting of the variance will substantially impair the intent or purpose of the zoning ordinance. Granting of the variance will not impair natural resources. 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.**

**Moved by Tera Hooiman, seconded by John Anderson.**

*\*Motion passed (3 - 1, Commissioner Beck voted no).*

Vice-Chairman Dalling informed Mr. Luna that he had the right to an appeal and to see Ms. Laughlin for information on how to file an appeal.

Mr. Luna asked if it was denied.

Vice-Chairman Dalling explained that it was denied at the Planning Commission level, if appealed it would go to the City Council for their review.

Mr. Thibault explained that Ms. Laughlin was checking to see if a majority of the Planning Commission members was required to approve, or deny, or if it was just a majority of the quorum.

Mr. Wilkinson stated that staff would double check with the City Attorney and the NRS to see what decision was made. If this action doesn't stand then another hearing will need to be set up.

Vice-Chairman Dalling explained to Mr. Luna that at the moment the variance request was denied, but staff was going to look into if there would need to be another hearing with more members present.

Mr. Luna asked if he would have to wait until the next Planning Commission Meeting.

Vice-Chairman Dalling explained that Ms. Laughlin would get in touch with him on the official decision and what his rights are on an appeal.

Mr. Luna asked if he could start reporting people that have their sheds right next to their fences.

Mr. Wilkinson explained that he could make those complaints to the City.

Mr. Luna said he was going to start reporting people and he wanted to see someone start doing something about it.

## II. REPORTS

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

*Ms. Laughlin reported that there would be an RDA Meeting on Tuesday at 3pm.*

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.

*Commissioner John Anderson said when the 8 Mile Subdivision housing development was first put in this room was packed. One group wanted the Peace Park, and the other group wanted this development. The main argument was the fence line. One group said the Peace Park would fill up with little kids and they would be putting holes in the fence getting in the Peace Park destroying it. The other people said no, because of the setbacks. The setback was a big deal they put in to keep stuff away from the fence. That is what the Planning Commission stood for. They can't come in now and say despite trying you made an honest mistake. The Planning Commission has stood for that original decision throughout the town, they can't go through now and change their minds. The applicants argument that there are so many like that, most of them were built before there were setbacks in place. If anyone comes in now and wants another one they will get denied, just like Mr. Luna did. He said the shed could have been cut in half and each one would be in compliance.*

*Ms. Laughlin said no, that the shed would have to be 10 feet away from the fence, no matter what.*



*Commission Anderson said if there was one shed and it would fit within the one you put up against the fence.*

*Ms. Laughlin explained that you can't put a shed up against a fence, no matter what size it is.*

*Commissioner Beck said what turned him was when the applicant said he had tried to get a building permit.*

*Vice-Chairman Dalling thought the applicant had only tried to get a permit for the canopy.*

*Ms. Laughlin explained that the applicant had tried to get a permit for both the shed and the canopy structure. The canopy structure was not required a building permit because it wasn't attached to the house. The Building Department asked him how big the shed was, it was under 200 square feet, so it didn't require a building permit. There has been some turnover in the Building Department, so it could have been an error, but they are now aware that accessory structures need to meet the setback requirements even if they aren't required a building permit. The applicant came in a got an electrical permit for the awning. The applicant has complied with our requirements, just when we told him to stop and come in for a variance he did.*

*Commissioner Beck said he learned a lesson. He sees why the rules are in place and why they need to be followed.*

*Reece Keener said they were small lots. He asked if there were any CC&R's that prohibit accessory structures.*

*Mr. Wilkinson explained that this area was not under a Development Agreement. The lot actually exceeds the minimum lot size required in Code. The issue we have, that is across the City, is that builders are building homes from setback to setback, and it's not leaving anyone any room for storage. People should understand when they are buying a property like that, they are buying a house with very small yard area. Setbacks are intended to preserve yard areas, it has to do with the clutter and density of neighborhoods; more importantly, especially with storage sheds where you store gasoline, if they aren't fire rated and a fire breaks out, it will encroach into the neighbor's property readily. It's really important from that perspective that people are truly meeting a hardship when we look at variances. 98 or 99% of variance applications are not justified. A Variance is meant to get someone the same use of their property as everyone else in that Zoning District, it is not to get them more use than everyone else.*

*Mr. Keener said it was a tough call, but he thought the Board made the right decision. He thought if they would have approved it they would have set themselves up for the same exact scenario in every one of the yards in the area.*

*Commissioner Hooiman felt as a board they try to be super consistent with stuff like this, because they don't want to open a can of worms for everyone else. She felt that if they approved one it would open Pandora's Box.*



*Vice-Chairman Dalling said it was a tough call and he thought they did the right thing. He felt as a property owner you should look into options.*

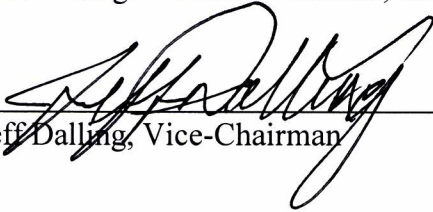
G. Staff.


#### **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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Jeff Dalling, Vice-Chairman

  
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Tera Hooiman, Secretary