CITY OF ELKO
Planning Department

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

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

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a regular session on Tuesday, October 5, 2021 beginning at 5:30 P.M., P.D.S.T. in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and by utilizing **GoToMeeting.com.**

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: https://global.gotomeeting.com/join/654165397. You can also dial in using your phone at **+1 (872) 240-3412.** The **Access Code** for this meeting is **654-165-397.** Comments can also be emailed to planning@elkocitynv.gov.

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

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801
Date/Time Posted: September 29, 2021 2:00 p.m.

Posted by: Shelby Knopp, Planning Technician Shelby Knopp
Name Title Signature

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

Dated this 29th day of September, 2021.

NOTICE TO PERSONS WITH DISABILITIES

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

Cathy Laughlin

Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, OCTOBER 5, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
HTTPS://GLOBAL.GOTOMEETING.COM/JOIN/654165397

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

September 7, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Variance No. 5-21, filed by Koinonia Construction on behalf of Lisa Turner, to allow required off street parking to be located within the interior side yard setback to within 3 ½' of the property line in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

   The property owner and applicant are proposing to build a single family dwelling on each of the parcels with parking located in the rear, adjacent to the alley. In order to accommodate the required off street parking, parking would encroach into the interior side yard setbacks.

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Special election of Vice-Chairperson for the remainder of 2021, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to Section 3-4-1 (E) of the City Code, vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term. With City Council appointing Mr. Puccinelli to the City Council, it leaves the Vice-Chairperson position vacant.

II. REPORTS

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

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

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

ADJOURNMENT

Respectfully submitted,

Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.D.S.T., TUESDAY, SEPTEMBER 7, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
https://global.gotomeeting.com/join/392925397

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CALL TO ORDER

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

ROLL CALL

Present: **Jeff Dalling**
Mercedes Mendive
Tera Hooiman
Stefan Beck
Gratton Miller
John Anderson (*Arrived at 6:00 p.m. via GoToMeeting***)**

Absent: **Vacancy**

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

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

August 3, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the minutes from August 3, 2021 as presented.**

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

****Motion passed unanimously. (5-0)***

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Conditional Use Permit No. 3-21, filed by Dharni Hotels, LLC., which would allow for the development of an apartment building within the C- General Commercial zoning district, and matters related thereto. **FOR POSSIBLE ACTION**

   Multi-family residential units within the C-General Commercial zoning district require approval of a conditional use permit. The subject property is located on the southeast side of Idaho Street, approximately 364' southwest of the intersection of Idaho Street and Manzanita Lane. (APN 001-590-010, 1930 Idaho Street)

***Gratton Miller disclosed that he was involved with the survey for the property and recused himself from the item.**

Jespal Sidhu, applicant's representative, said he was available for questions.

Cathy Laughlin, City Planner, went over the City of Elko Staff Report dated August 12, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report. Ms. Laughlin requested that the Planning Commission add an additional condition to address the long term effect of having the shared parking between the two uses, if they decided to approve the application, listed as follows:

- A revocable access and parking agreement must be filed with Elko County Recorder prior to Certificate of Occupancy.

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

Bob Thibault, Civil Engineer, explained that he had one condition that was listed in the Staff Report regarding the improvements along Manzanita Lane.

Jamie Winrod, Fire Marshal, had no additional comments or concerns.

Scott Wilkinson, Assistant City Manager, had no comment or concern.

Commissioner Mercedes Mendive asked if there would be access of the front road and if it would be a gated community, since it was going to be in the middle of an area where a lot of unfortunate activities take place.

Ms. Laughlin explained where the location of the existing hotel was, and pointed out the location of the proposed new apartment building. She explained that the existing 109-unit hotel would remain in its existing location. They will be tearing down the existing fence and developing the apartment building and both the buildings would be sharing a parking lot.

Mr. Sidhu said they were good with the Planning Commission's decision and agreed with the conditions of approval.

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*****Motion: Conditionally approve Conditional Use Permit No. 3-21 subject to the conditions in the City of Elko Staff Report dated August 12, 2021, with an additional condition from the Planning Commission, listed as follows:**

Planning Department:

1. **That Conditional Use Permit No. 3-21 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.**
2. **The Conditional Use Permit will expire within one (1) year of the date of approval if the Applicant is not actively engaged in developing the property.**
3. **The complex shall comply with the development standards as outlined in City Code Section 3-2-5(E)6.**
4. **The public improvements shall be installed, completed, and accepted prior to a certificate of occupancy.**
5. **That the development shall comply with City Code Section 3-2-17.**
6. **Exterior lighting for the complex shall be shielded and cutoff with minimal lighting spilling over into the neighboring properties. An illumination schedule is required to ensure lighting is adequate for safety with minimal impact to adjacent properties.**
7. **There shall not be any placement of any mail gang boxes, kiosks or signage in association with this complex placed in the city's right of way and shall remain internal to the complex.**
8. **The common area to be landscaped with a combination of trees and shrubs and shall be maintained by the property owner. A Landscaping Plan showing locations and quantities of all landscape materials will be submitted and approved during building permit submittal.**
9. **The property and the buildings to be maintained in an acceptable condition at all times.**

Development Department:

1. **Public improvements are required for Manzanita Lane along both frontages of the property.**

Engineering Department:

1. **Full frontage improvements are required along Manzanita Drive, to include, but not necessarily be limited to; curb and gutter, sidewalk, some asphalt, and possibly a water main, and are to be built per the design by High Desert Engineering.**

Public Works Department:

1. **All public improvements to be installed at time of development per Elko City Code.**

Planning Commission:

1. **A revocable access and parking agreement must be filed with Elko County Recorder prior to Certificate of Occupancy.**

Commissioner Beck's findings to support the motion were the proposed development is in conformance with the Land Use Component of the Master Plan. The proposed development with the recommended conditions is in conformance with the existing transportation infrastructure and the Transportation Component of the Master Plan. The

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site is suitable for the proposed use. The proposed development is in conformance with the City Wellhead Protection Program. The proposed use is in conformance with the Redevelopment Plan. The proposed use is in conformance with the City Code 3-2-10 (B) General Commercial with the approval of the Conditional Use Permit. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-8, and 3-2-18 of the Elko City Code.

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

Vote: Motion passed (summary: Yes = 4, No = 0, Abstain = 1).
Yes: *Chairman Jeff Dalling, Commissioner Mercedes Mendive, Commissioner Tera Hooiman, Commissioner Stefan Beck.*
Abstain: *Commissioner Gratton Miller.*

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible recommendation to City Council for Vacation No. 5-21, filed by Kenneth R. Moores Revocable Living Trust, for the vacation of the northwesterly portion of Deerfield Way, consisting of an area approximately 2,740 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

   The area requesting to be vacated was dedicated to the City of Elko with Tower Hill Unit 1 subdivision. It was intended originally as a pull out area for the local mailboxes but the design was later changed during construction. It is not being used for any purpose at this time. City Council accepted the petition for the vacation on August 10, 2021.

Ms. Laughlin went through the City of Elko Staff Report dated August 24, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Rambo had no additional comments or concerns.

Mr. Thibault recommended approval as presented by staff.

Ms. Winrod had no additional comments or concerns.

Mr. Wilkinson had no comments or concerns.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Variance No. 5-21, subject to the conditions listed in the City of Elko Staff Report dated August 24, 2021, listed as follows:**

1. **Approved conditions are to be included in the Resolution.**

2. **The applicant is responsible for all costs associated with the recordation of the vacation.**

3. **Written response from all non-City utilities is on file with the City of Elko with regard**

to the vacation in accordance with NRS 278.480(6) before the order is recorded.

Commissioner Miller's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation is in conformance with City Code 8-7.

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

Motion passed unanimously. (5-0)

2. Review, consideration and possible approval of Division of Large Parcels No. 2-21, a Final Map filed by Section Five Associates, LLC for the division of approximately 590.258 acres of property into eight lots for future development. Approximately 314.652 acres fall within an A (General Agriculture) Zoning District in the City of Elko and approximately 275.60 acres of property fall within Elko County, and matters related thereto. **FOR POSSIBLE ACTION**

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

Lana Carter, Carter Engineering, stated that she was available for questions.

Ms. Rambo went through the City of Elko Staff Report dated August 18, 2021. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Laughlin recommended conditional approval as presented by staff.

Mr. Thibault recommended conditional approval as presented.

Ms. Winrod had no comments or concerns.

Mr. Wilkinson had nothing further to add.

*****Motion: Forward a recommendation to City Council to accept, on behalf of the public, the offered drainage and utility easements; that the final map substantially complies with the tentative map; and conditionally approve Division of Large Parcels 2-21 with findings and conditions listed in the Staff Report dated August 18, 2021, listed as follows:**

Development Department:

1. **The Final Map for is approved for 8 lots for future development. Two of these lots fall within Elko city limits.**

2. **Site disturbance, including clearing and grubbing, shall not commence prior to the issuance of a grading permit by the City of Elko.**

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3. **Conformance with the conditions of approval of the Tentative Map is required.**

4. **Public improvements to be installed at time of development or further division of individual lots.**

Commissioner Beck's findings to support the recommendation were the Final Map for the Division of Large Parcels has been presented before expiration of the subdivision proceedings in accordance with NRS 278.472(2)(b). The Final Map is in conformance with the Tentative Map. The proposed map is in conformance with the Land Use and Transportation Components of the Master Plan. The proposed development conforms to Section 3-2-3, 3-2-4, and 3-2-13 of City Code.

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

Motion passed unanimously. (5-0)

3. Review, consideration and possible recommendation to City Council for the 2021 City of Elko Land Inventory update. **FOR POSSIBLE ACTION**

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

John Anderson arrived at 6:00 p.m. via GoToMeeting.

Ms. Laughlin went through the Memo included in the packet dated August 24, 2021 and the proposed changes listed on the spreadsheet, which was also included in the packet.

*****Motion: Forward a recommendation to City Council to update the City of Elko Land Inventory.**

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

Motion passed unanimously.(6-0)

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that Giovanni Puccinelli was selected as the City Council Member, which leaves a vacancy on the Planning Commission. On August 10th the City Council approved the tentative Map for the Division of Large Parcels filed by Section Five Associates, LLC. They also accepted the petition for the Moores Family Trust Vacation. The City Council has continued to table the DAG Appeal for the property on the corner of 5th & Idaho for their Variance application for the signs, which was denied by the Planning Commission. The property owners don't have the Boundary Line Adjustment recorded, so the item was tabled on August 10th and 24th and it will be on the agenda again on September 14th. The City Council approved the 2nd reading of Ord. 864. They also authorized staff to advertise for the vacancy on the Planning Commission. Staff has received one letter of

interest. The City Council will be considering that on the 14th. City Council denied a Curb, Gutter, and Sidewalk waiver for a sidewalk on 1st and Oak Street.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

Ms. Laughlin reported that she included a couple of training things in the agenda packet. One was an email from Garret with a link on YouTube for a presentation that talks about the Legislative actions that took place this year that have to do with Planning and Zoning and Redevelopment. She also included a Save the Date for Annual Conference for APA for anyone that is interested in attending.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

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Agenda Item # I.A.1.

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on Variance No. 5-21, filed by Koinonia Construction on behalf of Lisa Turner, to allow required off street parking to be located within the interior side yard setback to within 3 ½' of the property line in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **October 5, 2021**

3. Agenda Category: ***NEW BUSINESS, PUBLIC HEARINGS***

4. Time Required: **15 Minutes**

5. Background Information: **The property owner and applicant are proposing to build a single family dwelling on each of the parcels with parking located in the rear, adjacent to the alley. In order to accommodate the required off street parking, parking would encroach into the interior side yard setbacks.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information: **Application, Staff Report**

8. Recommended Motion: **Move to conditionally approve Variance 5-21 based on the facts, findings and conditions presented in Staff Report dated September 17, 2021.**

9. Findings: **See Staff report dated September 17, 2021.**

10. Prepared By: **Cathy Laughlin,** City Planner

11. Agenda Distribution: **Luke Fitzgerald**
521 Mountain City Hwy, #4
Elko, NV 89801
elkoluke@gmail.com

City of Elko
1751 College Avenue
Elko, NV 89801
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CITY OF ELKO STAFF REPORT

MEMO DATE: September 17, 2021
PLANNING COMMISSION DATE: October 5, 2021
APPLICATION NUMBER: Variance 5-21
APPLICANT: Koinonia Construction
PROJECT DESCRIPTION: APN 001-105-011 & 001-105-012

Variance from 3-2-17(D)(2)(a) to allow required residential off street parking to be in the interior side yard setback.

STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-105-011 & 001-105-012

EXISTING ZONING: R- Single Family and Multiple Family Residential

MASTER PLAN DESIGNATION: Medium Density Residential

EXISTING LAND USE: Undeveloped, adjacent to developed residential

BACKGROUND:

1. The applicant is not the property owner but the property owner has provided them permission to apply for the variance.
2. The property is undeveloped with a proposed residential land use.
3. The lots were created by First Addition File 5 in 25' wide lots.
4. Each lot area is approximately 2,500 square feet. With the exception of 3-2-5(G)(2)(a), it meets the lot area requirements stipulated in code.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:
North: R-Residential / Developed
East: R-Residential / Developed
South: R- Residential / Developed
West: R-Residential / Developed

PROPERTY CHARACTERISTICS:

The property is currently undeveloped.
The property is fairly flat.
The property has alley access in the rear.

MASTER PLAN AND CITY CODES:
Applicable Master Plans and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning – Section 3-2-5 Residential Zoning Districts
- City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning – Section 3-2-22 Variances
- 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 Medium Density Residential.
2. R- Single Family and Multiple Family Residential is a corresponding zoning district for

Medium Density Residential.
3. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.

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

MASTER PLAN - Transportation:

1. The area is accessed from Cedar Street as well as alley access.
2. Cedar Street is classified as a Residential collector.
3. Public alley in the rear of the lots.
4. The property has pedestrian connectivity along Cedar Street..

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

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 outside any capture zone for any City of Elko well.

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

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 property, as future development is proposed for the principal permitted use as a single family residence, conforms to Section 3-2-4 of city code.

SECTION 3-2-5(G) RESIDENTIAL ZONING DISTRICTS:

1. Minimum area stipulated for the district is five thousand five hundred (5,000) square feet for an interior lot in an existing platted subdivision characterized by twenty-five foot (25') wide lots and situation within a residential zoning district.

2. Minimum lot width stipulated for the district of sixty feet (60'), see ** below

3. Minimum lot depth stipulated for the district of one hundred feet (100')

4. Minimum setbacks stipulated for the district are as follows:
   Front Yard: A minimum setback of fifteen feet (15') (20') to a garage.
   Rear Yard: A minimum setback of twenty feet (20')
   Interior Side: For single family, a minimum setback of five feet six inches (5.5')

** A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling, provided all other requirements of this chapter are satisfied. Therefore, this variance is for setback consideration for the off street parking in the interior side yard only.

The proposed development for the principal permitted use of a single family residence, is in conformance with Elko City Code 3-2-5(G).

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

1. The proposed development is proposing two off-street parking spaces and a driveway access off the alley into the rear yard. The property is 25' wide and two parking spaces would be a total of 18' wide leaving 3'6" on each side.
2. Elko City Code 3-2-17(D)(2)(a) states that no required off street parking space shall be located in a required front yard or interior side yard.

The property does not conform to Section 3-2-17 of city code. Approval of variance 1-21 to allow parking in the interior side yard setback will be required to bring the proposed development into conformance.

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.

    - Applicant states: Narrow lots

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.

    - Applicant states: Because of their width the lot does not allow for the required 2 space off street parking. Variance will allow the 2 required stalls to be in the interior side yard setback.
    - Staff states: Because this is a legal parcel or lot created by map, File #5, the owner has the right to develop it with a single family residence. The proposed development does have special circumstances because it is proposed on a very narrow lot. The proposed principal permitted use of a single family residence is meeting all setbacks and sections of code. The parking could only meet the requirement of being outside the interior side yard setback if it was in tandem and that would create a very small footprint allowed for the home.

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

    Applicant states: The other properties not so narrow.

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.

    - Applicant states: The variance allows for more off street parking.

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.

    - Applicant states: Allows for compliance.

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

    - Applicant states: Only affects parking.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

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

FINDINGS

1. The proposed variance is in conformance with the Land Use Component of the Master Plan is consistent with existing land uses in the immediate vicinity.

2. The proposed variance is consistent with the Transportation Component of the Master Plan.

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

4. The proposed variance is consistent with City of Elko Wellhead Protection Plan.

5. The proposed development as a single family residence conforms to Section 3-2-4 of city code.

6. A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling. Therefore, the minimum lot width of 60' and lot area of 5,000 sq. ft. is not required based on this exception.

7. The proposed development is in conformance with Elko City Code 3-2-5(G) for the principal permitted use of a single family residence.

8. The proposed development does not conform to Section 3-2-17 of city code. A variance for the parking in the interior side yard setback would be required to be approved for the proposed development to be in conformance.

9. In accordance with Section 3-2-22, the applicant has demonstrated that the hardship is the narrow lots created by Elko First Addition File #5 and the required width of 18' for the 2 off street parking.

10. In accordance with section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on that fact that the lots are narrow and the width of 25' minus the 18' parking required is less than the required interior side yard setbacks.

11. Granting of the variance will not result in material damage or prejudice to other properties in the vicinity. This finding is based on other similar properties within City of Elko which were built within the last 15 years.

12. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Single family is listed as a principal use in the underlying zone.

13. Granting of the variance will not impair natural resources.

14. The parcel is not located within a designated Special Flood Hazard Area.

STAFF RECOMMENDATION:

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

1. Variance 5-21 from Elko City Code section 3-2-17(D)(2)(a) is for approval of required off street parking in interior side yard setback with access from the alley.
2. Commencement within one year and completion within eighteen (18) months.
3. Conformance to plans approved as a part of the variance.
4. Subject to review in two (2) years if determined necessary by the planning commission.

Variance No. 5-21 Koinonia Construction, Inc. / Turner, Lisa

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001105013	975 FIFTH ST-PROFESSIONAL BUILD		975 5TH ST	ELKO NV	89801-3201
001171005	ATKINS, DUSTIN RAY & MISTY D		1416 HUNTLEY ST	CARLIN NV	89822
001101007	BOYCE, FRANCIS D & JUDITH A TR		150 ASH ST	ELKO NV	89801-3018
001172005	BRUST, SHAWN B		477 OAK ST	ELKO NV	89801-3546
001105005	BYRAM, SAMANTHA & ROBERT IV		489 CEDAR ST	ELKO NV	89801-3223
001171015	CAMBRA, ANGELINA ROCHA		360 CEDAR ST	ELKO NV	89801-3124
001172010	CLARK, PATRICK A		432 CEDAR ST	ELKO NV	89801-3224
001102008	DARLING, WENDY		425 FIR ST	ELKO NV	89801-3229
001104005	DELSARTO, CARLEY M & DERRIK M		430 POPLAR DR	ELKO NV	89801-8464
001104007	DEMALINE, LYNDA ET AL		393 CEDAR ST	ELKO NV	89801-3123
001173001	DESERT ENTERPRISES LLC		PO BOX 71391	SALT LAKE CITY UT	84171-0391
001102005	DUGGAL, RAJ N TR ET AL		2682 OUTLOOK CT	ELKO NV	89801-7903
001171007	ESPEY, CODY & REBEKAH		371 OAK ST	ELKO NV	89445-4117
001172006	FRANZOIA, A T ANACABE		2000 RUBY VIEW DR	ELKO NV	89801
001172003	FRIAS, ALFONSO C		881 5TH ST	ELKO NV	89801-3503
001104006	GALLEGOS, FRANK & ISABEL C		388 FIR ST	ELKO NV	89801-3128
001171013	GONZALEZ-ARELLANO, GERARDO ETAL		336 CEDAR ST	ELKO NV	89801-3124
001171014	GRAVLEE, THOMAS E & ELAINE M		370 CEDAR ST	ELKO NV	89801-3124
001172004	JEFFRIES, STEPHANIE M		491 OAK ST	ELKO NV	89801-3546
001172002	LEWIS, ANTHONY S		454 CEDAR ST	ELKO NV	89801-3224
001104009	MCKINLEY, EDRA M & MILANI G		1009 SARATOGA WAY	CARSON CITY NV	89703-3658
001105002	MENDIVE, VERONICA J TR		450 FIR ST	ELKO NV	89801-3230
001105010	MEZA, J ABELINO & MARIA P		396 ROCKY RD	ELKO NV	89801
001106010	MIDDLE SEAS LLC		PO BOX 2050	ELKO NV	89803-2050
001105001	NELSON, DEBORAH J		408 FIR ST	ELKO NV	89801-3230
001105006	ORISON, JOSEPH ET AL		475 CEDAR ST	ELKO NV	89801-3223
001104004	PEARSON, BENJAMIN		346 FIR ST	ELKO NV	89801
001104013	QUINTERO, REFUGIO U } 1pc		2089 COLONIAL DR	ELKO NV	89801-8448
001104012	QUINTERO, REFUGIO U } 1pc		2089 COLONIAL DR	ELKO NV	89801-8448
001171006	RAY, JAMES C		PO BOX 2491	ELKO NV	89803-2491
001172008	REGAN, GREGORY J & BRUNELLA TR		421 OAK ST	ELKO NV	89801-3546
001172011	ROBLES, ANTONIO L & JESSICA V		890 4TH ST	ELKO NV	89801-3112
001104003	SAMPER, IVONE M		340 FIR ST	ELKO NV	89801-3128

001172009	SAMPER, MARQUITTA M TR	401 OAK ST	ELKO NV	89801-3546
001102006	SNOW, MICHAEL A	453 FIR ST	ELKO NV	89801-3229
001106011	SONORA LLC	PO BOX 1597	ELKO NV	89803-1597
001105008	TUCKER, BENJAMIN & PAULA	441 CEDAR ST	ELKO NV	89801-3223
001105012	TURNER, LISA } Applicant	2446 CRESTVIEW DR	ELKO NV	89803
001105011	TURNER, LISA } Applicant	2446 CRESTVIEW DR	ELKO NV	89803
001106001	VBLAIR PROPERTIES SERIES 1 LLC	1125 QUAID CT	ELKO NV	89801-4975
001102009	VEDIS, CHRISTOPHER S TR ET AL	1032 4TH ST	ELKO NV	89801-3116
001172007	VEGA, BARBARA J	441 OAK ST	ELKO NV	89801-3546
001102007	WEINER, WILLIAM F	441 FIR ST	ELKO NV	89801-3229
001105007	WHITMER, NEAL	457 CEDAR ST	ELKO NV	89801-3223
001101006	WOODBURY FAMILY 2013 TRUST	1053 IDAHO ST	ELKO NV	89801-3920

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Post Marked 9/24/21

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, October 5, 2021 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 these matters under consideration in person, by writing, by representative, or via Gotomeeting.com. https://global.gotomeeting.com/join/654165397.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at https://global.gotomeeting.com/join/654165397. You can also dial in using your phone at **+1 (872) 240-3412.** The **Access Code** for this meeting is **654-165-397.** Comments can also be emailed to planning@elkocitynv.gov.

The specific item to be considered under public hearing format is:

- **Review, consideration, and possible action on Variance No. 5-21, filed by Koinonia Construction on behalf of Lisa Turner, to allow required off street parking to be located within the interior side yard setback to within 3 ½' of the property line in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The property owner and applicant are proposing to build a single family dwelling on each of the parcels with parking located in the rear, adjacent to the alley. In order to accommodate the required off street parking, parking would encroach into the interior side yard setbacks. The subject property is located on the northwest side of Cedar Street, approximately 100' northeast of 4th Street. (427 & 433 Cedar Streets, APNs 001-105-011 & 001-105-021)**

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): Koinonia Construction/Luke Fitzgerald
MAILING ADDRESS: 521 Mountain City Hwy #4, Elko, NV 89801
PHONE NO (Home) 775-303-8492 **(Business)** _____
NAME OF PROPERTY OWNER (If different): Lisa Turner
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: Same
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001105011, 012 **Address** 427, 433 Cedar St
Lot(s), Block(s), &Subdivision Lots 15, 16 Block 72 First Addition
Or Parcel(s) & File No. _____

FILING REQUIREMENTS:

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

Fee: A $500.00 non-refundable fee must be paid. If in conjunction with a Rezone Application a $250.00 non-refundable fee must be paid.

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

Elevation Plan: Elevation profile of all proposed buildings or alterations in sufficient detail to explain the nature of the request must be provided.

Note: One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8½" 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:

3-2-17(D)(2)

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

   Narrow Lots

   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.

   Because of its width the lot dose not allow for the required 2 space off street parking

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

   Variance will allow for there to be 2 required off street parking stalls which encroach on the interior side yard setback

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

   other lots not so narrow

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.

Variance allows for more off street parking

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

Allows for compliance

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

only affects parking

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

only affects parking

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.:

Parking pad to be built with building permit

(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 Luke Fitzgerald
(Please print or type)

Mailing Address 521 Mountain City Hwy #4
Street Address or P.O. Box

Elko, NV 898901
City, State, Zip Code

Phone Number: 775-303-8492

Email address: elkoluke@gmail.com

SIGNATURE: _____

FOR OFFICE USE ONLY

File No.: 5-21 **Date Filed:** 08/27/2021 **Fee Paid:** $500 Ck# 10503

Shelby Knopp

From: Cathy Laughlin
Sent: Friday, August 27, 2021 8:01 AM
To: Shelby Knopp
Subject: FW: A few things

Cathy Laughlin
City Planner

(775)777-7160 ph
(775)777-7219 fax
claughlin@elkocitynv.gov

City of Elko
1751 College Avenue
Elko, NV 89801

From: Lisa Turner [mailto:lisat.lfg@gmail.com]
Sent: Thursday, August 26, 2021 9:57 PM
To: luke fitzgerald <elkoluke@gmail.com>; Cathy Laughlin <claughlin@elkocitynv.gov>
Subject: Re: A few things

Good evening,

To City of Elko Planning/Building Dept,
Please allow Koinonia Construction permission to apply for the variance at the Cedar St locations.

Do you prefer the check for the fee be from me directly or from Koinonia. We can get that tomorrow/Friday 9/27/2021

Let me know if this suffices or if I should drop a hard copy off.
Thank you,

Lisa Turner
The Luke Fitzgerald Group
EXP Realty
LisaT.LFG@gmail.com
775-340-0649

www.facebook.com/ElkoCityRealtor
www.rootedinelko.com

On Aug 26, 2021, at 3:48 PM, luke fitzgerald <elkoluke@gmail.com> wrote:

---------- Forwarded message ---------
From: **Cathy Laughlin** <claughlin@elkocitynv.gov>
Date: Thu, Aug 26, 2021, 3:19 PM
Subject: A few things
To: luke fitzgerald <elkoluke@gmail.com>
Cc: Shelby Knopp <sknopp@elkocitynv.gov>

Luke,

We don't consider the application a complete application until we get everything we need. We currently need the fee and an email or letter from Lisa stating that Koinonia has her permission to apply for this variance.

Thanks,

Cathy Laughlin

City Planner

(775)777-7160 ph

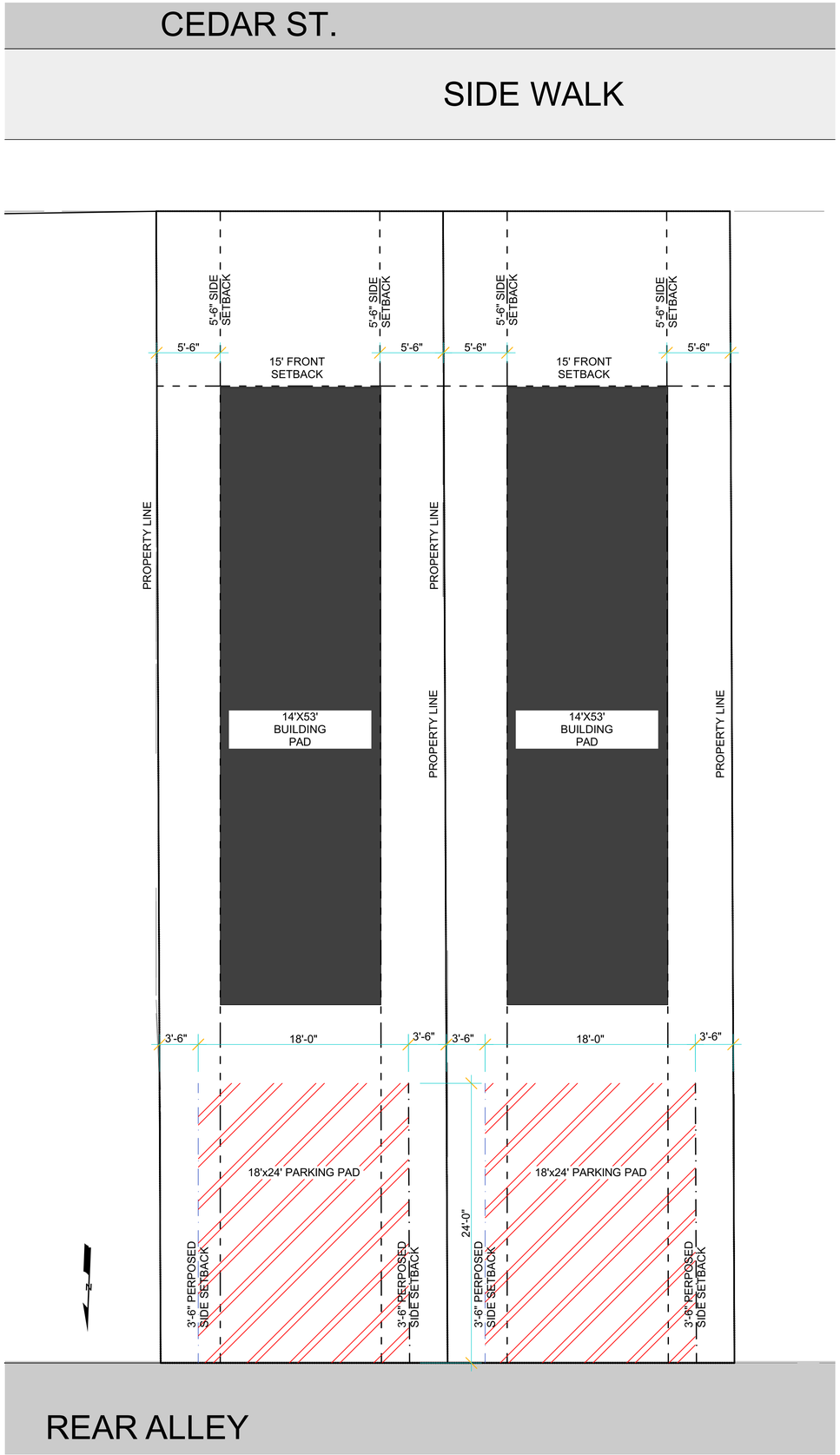
(775)777-7219 fax

claughlin@elkocitynv.gov

City of Elko

1751 College Avenue

Elko, NV 89801



PROPOSED DESIGN CRITERIA

PUBLIC UTILITIES AND DRAINAGE EASEMENTS AS FOLLOWS:

STREET FRONTAGE : 15' DAINAGE AND UTILITIES EASEMENT

SIDE LOT LINES: 5.5' DRAINAGE AND UTILITIES EASEMENT FOR HOUSE

SIDE LOT LINES: 3.5' DRAINAGE AND UTILITIES EASEMENT FOR PARKING PAD

REAR LOT LINES: ZERO LOT LINE SET BACK

PARCEL INFORMATION

ADDRESS	: 427 & 433 CEDAR ST
PARCEL	: 003
APN	: 001-105-011, 12
LOT SIZE	: .057

Legend

- 14'X53' BUILDING PAD
- REQUIRED SETBACK
- PROPOSED SETBACK
- 18'X24' PARKING PAD

THIS PLAN WAS PREPARD BY:
KOINONIA CONSTRUCTION
2446 CRESTVIEW DR.
ELKO, NV 89801
(775) 303-8492
NV. LIC. B-2 #0082378
LIMIT: $2,000,000

REVISIONS

Luke Fitzgerald, President

437 & 433 CEDAR ST
ELKO NEVADA
SITE PLAN

SITE PLAN

DATE	08.25.21
JOB NO.	452 WALNUT
FILE	

A1

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Special election of Vice-Chairperson for the remainder of 2021, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **October 5, 2021**

3. Agenda Category: *MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS*

4. Time Required: **10 Minutes**

5. Background Information: **Pursuant to Section 3-4-1 (E) of the City Code, vacancies occurring otherwise than through the expiration of term shall be filled for the unexpired term. With City Council appointing Mr. Puccinelli to the City Council, it leaves the Vice-Chairperson position vacant.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information:

8. Recommended Motion:

9. Findings:

10. Prepared By: **Cathy Laughlin, City Planner**

11. Agenda Distribution:

Shelby Knopp

From: Cathy Laughlin
Sent: Tuesday, September 28, 2021 12:25 PM
To: Shelby Knopp
Subject: FW: OML Workshop

Cathy Laughlin
City Planner

(775)777-7160 ph
(775)777-7219 fax
claughlin@elkocitynv.gov

City of Elko
1751 College Avenue
Elko, NV 89801

From: Neal Freitas [mailto:nealfreitas@poolpact.com]
Sent: Monday, September 27, 2021 12:56 PM
To: Susie Shurtz <sshurtz@elkocitynv.gov>; Cathy Laughlin <claughlin@elkocitynv.gov>
Subject: OML Workshop

Hi Cathy and Susie,
Below is the link and passcode to access the Board Governance and Open Meeting Law workshop that Wayne did. The "O" in the passcode is a letter and not a number. On the recording, the "Board Governance" doesn't begin until 00:15:30 into the recording. The "OML" begins around 01:31:19 into the recording.

Link:
https://zoom.us/rec/share/i8U5dkq3rTIK8Ne28QIQuZamhomGYM6jWrRNs9B1R8Uo6sNJD52TARsGMC5zwWNr.UMrhVJOC2WYOWzVg?startTime=1629402388000
Passcode: 9Z01?#UZ

Let me know if you need anything else.
Take care,
Neal

Neal Freitas, PHR, IPMA-SCP, SHRM-CP
Senior HR Business Partner

201 S. Roop Street, Suite 103
Carson City, NV 89701
Phone: 775.887.2240 (ext. 113)

Fax: 775.887.2581

"The information on this email transmission is general information regarding the management of various risks, including human resources issues. The documents have not been reviewed by an attorney and do not constitute legal advice. Persons with legal questions and specific problems are advised to consult an attorney knowledgeable in employment law."

QUINLAN™

July 10, 2021 | Volume 15 | Issue 13

Zoning Bulletin

in this issue:

RLUIPA

Monastic organization claims rights under RLUIPA when town halted its plans to construct a brewery

Citation: *St. Paul's Foundation v. Baldacci, 2021 WL 2043398 (D. Mass. 2021)*

St. Paul's Foundation and others filed suit against Richard Baldacci and the Town of Marblehead, Massachusetts (collectively, the town) alleging they violated their rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The parties each requested judgment without a trial.

DECISION: St. Paul's request for judgment without a trial denied; the town's request granted.

St. Paul's claim didn't fall under RLUIPA.

A CLOSER LOOK

St. Paul's Foundation was an Orthodox Christian monastic organization located in the town, and Father Andrew Bushell (Father Andrew) served as its executive director. Father Andrew and St. Paul's formed the Shrine of St. Nicholas in 2017, and he served as the Guardian of St. Nicholas.

Father Andrew, an Orthodox Christian monk, learned to brew beer, which Christian monks traditionally made and served as part of their religious mission. The beer would be served at religious meals to help evangelize others to the Orthodox Christian faith and would be sold to fund St. Paul's and St. Nicholas.

Up until 2017, St. Paul's property in the town consisted of the Annunciation House, which primarily served as Father Andrew's residence, but it was also used for religious gathering and services since 2012.

In August 2017, St. Paul's bought 124 Pleasant Street in Marblehead. Father Andrew intended to make the first floor into three distinct areas: 1) a beer brewing facility; 2) a chapel to religious services and activities; and 3) a fellowship hall for additional religious programs, communal meals, and where the public could consume and buy the beer.

In November 2017, Father Andrew emailed Baldacci, the town's building commissioner concerning the planned renovations. Following a meeting to discuss the intended use of the property and renovations, Baldacci wrote Father Andrew explaining the change of use, occupancy, and inspection and permitting requirements for the renovation under the building code.

St. Paul's hired an architect for the project. And in early 2019, Baldacci told Father Andrew because the property required a change of use classification

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Mat #42689122

(i.e., from retail to assembly use), St. Paul's would need a certificate of occupancy and certificate of inspection, otherwise it could not serve food or drink to the public or hold religious services. It could, however, continue to use the property according to its former retail and warehouse classification, which permitted it to sell prepackaged beer and other products.

In June 2018, St. Paul's applied for a building permit for internal first floor renovations in accordance with plans submitted by the architect and construction supervisor. The plans listed proposed work to include "chang[ing] the use of the first floor from a retail to an assembly A-2, add two bathrooms and A-2 hour fire rated ceiling, a bar area, with taps and dishwasher, commercial kitchen, walk-in cooler and concrete slab."

The plans also identified the chapel area as an Assembly A-3 use, which covered "[p]laces of religious worship," among other non-religious uses like arcades, galleries, courtrooms and fitness facilities, and the fellowship hall where beer would be served to the public as an Assembly A-2 use, which "include[d] assembly uses intended for food and/or drink consumption," such as banquet halls, bars and restaurants.

The town issued a building permit authorizing the renovations in July 2018. Shortly after that, St. Paul's relationship with the town began to sour. Baldacci issued three letters over a three-month period in late 2018 explaining that St. Paul's was not in compliance with the state building code, which included unauthorized work that had taken place and occupying the space and serving beer to the public prior to an inspection and without a proper certificate of occupancy.

With the last letter, Baldacci put St. Paul's on notice that he had issued a building code violation for its conduct. St. Paul's appealed the violation to the state Building Code Appeals Board (BCAB), which after a February of 2019 hearing, affirmed Baldacci's actions.

In its decision, the BCAB noted that Baldacci was justified in enforcing the building code to ensure the public's safety and that a finding in favor of St. Paul's would "compromise life safety in ways that would conflict with [Massachusetts law]."

In addition, the BCAB found that there wasn't any evidence of religious discrimination in the town's enforcement of the code.

Following this, St. Paul's relationship with its architect also went downhill, eventually leading to the architect's decision to step away from the project. Since St. Paul's no longer had a registered architect on the job, Baldacci told Father Andrew construction had to stop immediately.

Another architect came on board in February 2019, and Baldacci asked him to complete a code review to confirm use occupancy. Baldacci said that "[i]f the scope of work ha[d] changed or the occupancy requested [wa]s not identical [to what] was previously permitted, then the building department w[ould] close [the Permit] and a new application should follow."

The architect submitted the code review, which concluded the previous use designations made by the previous architect were "incorrect." He wrote it was his "intent to carry out the proposed work in accordance with the previously submitted plans," but that he believed the property should be classified as a residential monastery (R-2) with the entire first floor as an A-4 classification.

Baldacci and the architect couldn't agree on the use designation for the Fellowship Hall, which Baldacci maintained was A-2 (as stated in the first architect's original plans) and what construction would follow such designation (e.g., accessible toilet facilities).

Then, in June 2019, Baldacci told the new architect the town wouldn't reinstate the permit unless he submitted an updated set of plans for approval, agreed to the A-2 use designation for the Fellowship Hall, or obtained a BCAB variance allowing "accessory use" of an A-3 designation

Contributors

Laura Scott, Esq.

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(for service of food and drink). St. Paul's appealed Baldacci's decision to the BCAB, and following a hearing, the BCAB "generally agreed with [Baldacci's] conditions" and wrote "that Baldacci and [architect's] 'very different understandings' of the use determination 'would lead to very different requirements' for the renovation, since [the architect] 'concluded that a different Use Group [from the previously submitted plans] (R-2) was correct.' "

Then, St. Paul's agreed to follow the original renovation plans the first architect had submitted and the BCAB ordered the permit re-instated on the condition that all submissions made to the town after January 15, 2019 would be disregarded, and updated plans approved by the town's health department would be submitted to the building department prior to final inspection of the property.

The town reinstated the permit. Subsequently, it issued a temporary use and occupancy permit to St. Paul's but required that it refrain from serving beer to the public until renovations were completed and a plan submitted to the health department was approved.

BACK TO THE COURT'S RULING

When there was no question of material fact at issue and the undisputed facts showed the moving party was entitled to judgment without a trial, the court would grant their request as a matter of law. "A fact is material if it carries with it the potential to affect the outcome of the suit under applicable law," the court explained.

St. Paul's contended the town violated RLUIPA by "impos[ing] or implement[ing] a land use regulation in a manner that impose[d] a substantial burden on [its] religious exercise" and that there weren't any exceptions that would have justified this, that is being "in furtherance of a compelling governmental interest" and being "the least restrictive means of furthering that compelling governmental interest."

The court found the town's "conditional revocation of the [p]ermit was not pursuant to a zoning or landmarking law, but rather the state building code," so didn't fall under RLUIPA. "St. Paul's has not pointed to any authority within the First Circuit (or elsewhere) suggesting that issuance and revocation of building permits for renovations—so that the renovations accord with universal building codes—constitutes a 'land use regulation' or 'zoning law,' covered by RLUIPA," the court explained.

And, assuming that the town's revocation of the permit did fall under RLUIPA, the court found that St. Paul's "also failed to show that such action placed a substantial burden on its exercise of religion." Baldacci's decision wasn't arbitrary and capricious, either, the court found. "The undisputed factual record show[ed] . . . that Baldacci's rationale was that St. Paul's new architect's conclusion that the original plans were 'incorrect.' First, the Town agreed with St. Paul's own architect's initial use determination (i.e., A-2 for the fellowship hall) to issue the [p]ermit, which led to certain renovation requirements for minimum occupancy; but such work was not completed prior to St. Paul's occupying the space and serving beer to the public, which also required a building and health inspection and certificate of occupancy," the court noted.

Assuming that the town's revocation of the permit did fall under RLUIPA, the court found that St. Paul's "also failed to show that such action placed a substantial burden on its exercise of religion."

Also, "St. Paul's received no such certificate, did not complete inspection requirements, and was observed serving beer to the public, which resulted in St. Paul's receiving a building violation. The BCAB affirmed Baldacci's actions." And, after St. Paul's hired a new architect, the newly "proposed designations meant different renovations would follow because they 'would lead to very different requirements' for occupancy."

Inclusionary Zoning

Developer asks court to order town to return the $803,250 in payments it made under inclusionary zoning ordinance terms

Citation: *Epcon Homestead, LLC v. Town of Chapel Hill, 2021 WL 2138630 (M.D. N.C. 2021)*

Epcon Homestead LLC (Epcon) made a $803,250 payment under the terms of an inclusionary zoning ordinance (IZO) with the Town of Chapel Hill adopted in 2010. The IZO, was adopted as part of the town's Land Use Management Ordinance (LUMO) to meet its goal of "preserving and promoting a culturally and economically diverse population in [the] community."

The IZO's terms applied to development projects involving at least five single-family lots, and property owners were required to "set aside a certain number of 'affordable housing units,' " which could only be "offered for sale to low-income households at below-market prices."

Alternatively, an owner could provide a payment-in-lieu of selling the units at below-market values according to an amount per unit established by the town, which would be "reserved . . . for affordable housing purposes."

In October 2014, Epcon's predecessors in interest submitted a revised Special Use Permit (SUP) for the Courtyards at Homestead, a planned development consisting of 63 dwelling units and a clubhouse/pool on 18.2 acres. In the 2014 SUP, pursuant to the IZO, the town required 15% of the proposed dwelling units to be provided as affordable, which equated to 9.45 of the 63 units.

After discussions between Epcon's affiliates and the

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town, Epcon's affiliates opted instead for the payments-in-lieu at a rate of $85,000 per unit, bringing the total amount to $803,250, stating that "the substantial payment-in lieu would provide much greater opportunity [than setting aside units] for equal or greater units to be built or rehabbed in a more centrally located part of the [t]own where shopping, public transportation and job[s] [sic] are nearby." The payment-in-lieu was "a condition of the development with periodic payments" due prior to every seventh certificate of occupancy Epcon sought. And, the SUP also provided the stipulation that construction should begin by October 27, 2016 and be completed by October 27, 2019.

After the SUP was approved, Epcon acquired real property and moved forward with developing and selling the 63 units. The property did not have to be rezoned for the project, given that the existing zoning district already allowed for the residential density Courtyards at Homestead required.

Epcon made its first payment of $85,000 on July 5, 2017 and made further payments of the same amount every other month through October 2018 before a final payment of $38,250 was made on March 20, 2019 with the final certificate of occupancy.

Epcon filed suit against the county, seeking a return of the $803,250 under North Carolina law. The town asked the court to dismiss the case on the grounds that Epcon's claims were barred by the statute of limitations (SOL).

DECISION: Request for dismissed with prejudice.

The SOL had expired on Epcon's claims.

"Here, Epcon knew or had reason to know of the IZO's mandates, including the payment-in-lieu alternative, certainly by the time the SUP was issued in October 2014, when it—or its affiliates—agreed to abide by the [o]rdinance's terms," the court found. "Though Epcon had not paid the fees and could have opted not to continue the project, it had a complete cause of action at that time because it knew it had been injured by the payment-in-lieu mandate in the amount of $803,250.00. Further, there was no question that the IZO would apply to the Courtyards at Homestead development even before the SUP was issued."

Further, "[a] due diligence search prior to the parcels' initial purchase, acquisition, or even a project proposal would have revealed that 'practically all new residential developments in the [t]own's jurisdiction,' especially in an area already zoned for high residential density, would be encumbered or similarly impaired by the requirements of the IZO," the court added. "The [c]ourt does not need to reach a conclusion about the exact date of accrual: whether the limitations period began accruing when the SUP was issued in 2014, when Epcon acquired the real property beginning in 2015, or at an earlier date not articulated on the face of the Amended Complaint, the three-year statute of limitations expired prior to Epcon bringing its claims in October 2019," it ruled.

A CLOSER LOOK

Epcon also claimed the "continuing wrong doctrine" applied, meaning the SOL didn't start accruing "until the first payment-in-lieu was made." "While federal law governs accrual of a [section 1983] claim, state law—here, North Carolina law—governs principles of tolling including the continuing wrong doctrine," the court explained.

"A due diligence search prior to the parcels' initial purchase, acquisition, or even a project proposal would have revealed that 'practically all new residential developments in the [t]own's jurisdiction,' especially in an area already zoned for high residential density, would be encumbered or similarly impaired by the requirements of the IZO," the court added.

In that state, a court would "toll the statute of limitations in [section 1983] cases when a plaintiff suffer[ed] from a continuing violation of their underlying constitutional right giving rise to the action." "Epcon's argument regarding the continuing wrong doctrine fails in part because of how the fees were structured. [T]he IZO provided that a developer could choose to either sell a prescribed number of units at below-market values or provide payments-in-lieu of a roughly equivalent value. In the SUP, Epcon—or its affiliates—opted to make 10 payments-in-lieu, totaling $803,250 . . . , which the [t]own approved. Epcon made those incremental payments towards the agreed-upon total according to the timeline in the SUP . . . to receive certificates of occupancy for its completed homes. These were not separate and distinct fees required by an ordinance; rather, these were partial payments towards a predetermined total that operated as an alternative option under the terms of the IZO."

THE BOTTOM LINE

"The payments were exactly what the continuing wrong doctrine [wa]s not: the 'continual ill effects from an original violation' laid out in the SUP."

Rezoning

After plans to rebuild apartments following destruction from Hurricane Dolly died, housing authority filed suit against city

Citation: *Cameron County Housing Authority v. City of Port Isabel, 997 F.3d 619 (5th Cir. 2021)*

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The Fifth U.S. Circuit has jurisdiction over Louisiana, Mississippi, and Texas.

Hurricane Dolly severely damaged a public housing development in Port Isabel, Texas. The Cameron County Housing Authority (CCHA) operated the complex and received conditional grant money to rebuild it, but when the grant fell through it sued the city under the Fair Housing Act (FHA).

A CLOSER LOOK AT THE FACTS

According to the CCHA's executive director, nearly all of the residents in the complex, which the Community Housing & Economic Development Corporation (CHEDC), a wholly owned CCHA public facility corporation, were Hispanic/Latino tenants. Before 2008, CHEDC owned and CCHA operated the 16-unit Neptune Apartment Complex in Port Isabel. But, when Hurricane Dolly rendered the complex uninhabitable, it sat vacant for several years because CCHA didn't have the funds to redevelop the property.

In April 2014, CCHA applied for a federal disaster-recovery grant through the Lower Rio Grande Valley Development Council (LRGVDC) to rebuild the Neptune Apartments as a 26-unit complex. LRGVDC approved the project and authorized more than $1.7 million in grant money. The funds were conditioned on CCHA's ability to begin construction by December 1, 2015. CCHA didn't perform due diligence to determine if the project complied with Port Isabel's zoning requirements.

As a result, it eventually discovered that the project didn't meet zoning requirements. By this time, it was February 2015, and CCHA then asked the city for rezoning.

Rezoning requests were subject to a two-step process. This meant CCHA had to submit the rezoning request to the city's planning and zoning commission (P&Z Commission), which would make a preliminary recommendation and send the matter to the City Commission (CC) for a final decision. And, only the CC could make the requested zoning changes.

The P&Z Commission held a public hearing on CCHA's rezoning request in March 2015. Several Port Isabel residents expressed their opposition because the construction of the multi-family, mixed-income housing complex would be near their single-family homes.

The P&Z Commission ultimately decided to unanimously deny CCHA's request. The commission's secretary stressed that the decision was "absolutely not" based on discrimination and that most of the commission's members were Hispanic. She said the commission's recommendation concerned "safety, congestion, density, [and] parking" and said the proposed 26-unit apartment design "wasn't a good plan for th[e] neighborhood."

CCHA then spent several months addressing the public's opposition directly. They knocked on doors, handed out flyers, and met with resident and local leaders. Based on feedback gleaned, door knocking, CCHA revamped the plan for the Neptune Apartments, which reduced the number of housing units from 26 to 16.

CCHA then brought this plan before the P&Z Commission. The Commission told CCHA, whose new plan didn't require rezoning, it would consider it if CCHA reduced the number of units from 16 to 10.

CCHA obliged and presented the new plan for approval. LRGVDC responded by saying the funding for the project would be reduced by $400,000 "and must have closed and have permitting approved by 12/1/15." LRGVDC said that it "w[ould] need to withdraw [all] funds" if CCHA failed to comply.

The 10-unit plan was submitted to the city's building inspector in October 2015. In November, the city told CCHA it wouldn't "issue any permits for any multi-family buildings" and "would only issue permits for four single-family houses." At this point, CCHA returned to LRGVDC, which stated it would stand by the original approval of the 10-unit project and the December 1 permitting deadline.

CCHA responded there wasn't any way it could close the grant award by December 1 because the city had indicated it would only approve building permits for four single-family homes. At this point, once the December 1 deadline passed, the Neptune project was dead.

THE LAWSUIT

CCHA filed suit against the city, the CC, and the P&Z Commission. It claimed they had violated the Fair Housing Act (FHA).

The lower court granted the CC and the P&Z Commission judgment without a trial on the grounds that they weren't independent entities that could be sued. The lower court also granted the city judgment after finding CCHA lacked standing to bring the FHA claim. CCHA appealed.

DECISION: Affirmed.

CCHA didn't have standing because the "asserted injury wasn't fairly traceable to the city."

To assert federal jurisdiction required a showing of "standing." "The familiar elements of standing are (1) an injury in fact that (2) is fairly traceable to the challenged conduct of the defendant and (3) is likely to be redressed by a favorable judicial decision," the Fifth U.S. Circuit Court of Appeals explained. And, at the judgment-without-a-trial phase, CCHA had to " 'set forth by affidavit or other evidence specific facts' that create[d] a genuine dispute as to . . . standing."

The court started with the issue of "injury in fact." "To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical."

Here, CCHA described the injury as the inability to use federal grant funds to rebuilding the Neptune Apartments. It claimed the FHA claim wasn't "ripe" until December 2015, when it lost the federal grant funding. Therefore, CCHA didn't "claim injury from the reduction in LRGVDC funding that would [have] occurred had the [c]ity approved their alternative 16- or 10-unit plans. [It]

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assert[ed] instead that [it] 'did not have a complete and present cause of action' until *all* the funds disappeared on December 1, 2015."

Here, CCHA described the injury as the inability to use federal grant funds to rebuilding the Neptune Apartments.

In the court's view, CCHA "had a reason to frame their injury this way: [it] needed a theory that would make [its] November 2017 lawsuit timely under the FHA's two-year statute of limitations." And the complained of injury in fact was "the total elimination of federal funding that occurred on December 1, 2015" and "[c]ompetent summary judgment evidence support[ed] that asserted injury."

This meant the court moved on to the second step in the analysis as to whether standing existed: Was there a causal link between the injury and the conduct of which CCHA complained?

"This connection is lacking where 'the challenged action of the defendant [is] . . . the result of the independent action of some third party not before the court,' " the Fifth Circuit wrote. And, if a plaintiff's injury was "self-inflicted" standing would not be present.

Here, CCHA lost the federal funding due to "the combined result of third-party actions and self-inflicted harm." It was "LRGVDC, not the [c]ity, [that] set the December 1 deadline . . . to begin construction. [CCHA] let half of th[e] allotted time evaporate before . . . request[ing] rezoning. That was not the [c]ity's fault," the court found.

Also, "[w]hen the P&Z [c]ommission recommended denying [CCHA's] request, [it] did not pursue a favorable ruling from the [CC]." Instead, CCHA "opted instead to conduct a community-engagement effort and submit a new plan to the P&Z Commission three months later. On the day of the P&Z Commission's scheduled hearing to consider the revised plan, [CCHA] withdrew it. Then [it] waited until September 2015 to present a new 16-unit plan to [c]ity officials. At that point, 17 months had passed since LRGVDC conditionally granted funding . . . . And three months remained until the December 1 deadline. [CCHA was] in a pinch—but it was a pinch of [its] (and LRGVDC's) own making."

THE BOTTOM LINE

The city had "assumed a more active role during the last few months of [CCHA's] scramble to secure funding: [c]ity officials rejected the 16-unit plan in September and rejected a subsequent 10-unit plan in November. But it's also irrelevant," the court ruled. CCHA had "repeatedly disclaimed any injury predating the complete loss of funds that occurred on December 1. And when we focus on that December 1 injury, it's clear the [c]ity had nothing to do with it. In fact, the [c]ity took steps to help [CCHA] avoid the[] asserted injury by agreeing to approve a four-unit project. It was LRGVDC that sank the four-unit proposal, and it was LRGVDC that enforced the December 1 deadline," the court added. Therefore, CCHA's "injury is not fairly traceable to the [c]ity," so it was entitled to judgment.

Permanent Easement

Lawsuit follows government's eminent domain action to impose permanent easement on undeveloped land near military base

Citation: *United States v. 269 Acres, More or Less, Located in Beaufort County South Carolina, 995 F.3d 152 (4th Cir. 2021)*

The Fourth U.S. Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

A lower court awarded landowners $4.4 million after the government took a permanent easement on their land located near a U.S. Marine Corps airbase in Beaufort, South Carolina. The court also apportioned attorney's fees and court costs.

The government challenged the amount the court awarded in compensation and the attorney's fee award. The landowners cross-appealed disputing the apportionment of the attorney's fees.

DECISION: Affirmed in part; reversed in part.

While the Fourth U.S. Circuit Court of Appeals concluded it "might have decided" the case differently if reviewing it on the merits, it owed the lower court "deference" and found its award to be just compensation. However, the court had "legally erred in awarding attorney's fees to the [l]andowners as the 'prevailing party' in this litigation."

A CLOSER LOOK

The Fourth Circuit found that:

- The lower court had not clearly erred by crediting the testimony of the landowners' expert appraiser regarding comparable land sales for purposes of determining just compensation; and
- It also didn't clearly err in finding the landowners had shown a non-speculative basis for valuing the land at the highest and best use as residential and industrial development.

But, the landowners weren't entitled to attorney's fees. Generally, each party was responsible for its own litigation costs.

However "the Equal Access to Justice Act deviate[d] from this rule by rendering 'the United States liable for attorney's fees for which it would not otherwise be liable.' " "Under the Act, the court must award attorney's

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fees and other litigation costs to the private party if: (1) the claimant is an eligible individual with a net worth of less than '$2,000,000 at the time the civil action was filed' and (2) the claimant is the 'prevailing party' in the litigation unless (3) the district court finds that the government's position was 'substantially justified' or 'special circumstances make an award unjust.' "

Here, the parties agreed that only one of the landowners was eligible to receive attorneys' fees and costs given the other landowners' net worth. The dispute, instead, focused on whether the landowners were the prevailing party.

"In an eminent-domain proceeding, the 'prevailing party' is 'the party whose highest trial valuation of the property is closest to the final judgment,' " the court explained.

THE BOTTOM LINE

The landowners had claimed the just compensation would have been around $9.6 million. But, "the government's $937,800 value [wa]s closer to the district court's final award of $4.4 million, [so] the government, not the [l]andowners, [wa]s the 'prevailing party' in this litigation," the court noted. Therefore, the court reversed this part of the lower court's judgment awarding attorneys' fees and costs to the landowners.

CASE NOTE

"Determining 'just compensation' often turns on highly factual determinations, such as the identification of comparable land sales, the state and growth potential of the local economy, and the credibility of dueling experts and various reports. Comparing and weighing this mountain of evidence can be difficult," the court explained.

The landowners had claimed the just compensation would have been around $9.6 million. But, "the government's $937,800 value [wa]s closer to the district court's final award of $4.4 million, [so] the government, not the [l]andowners, [wa]s the 'prevailing party' in this litigation," the court noted.

"Those closest to the ground, who live near the relevant areas and can hear the witnesses' testimony firsthand, are in the best position to evaluate the evidence. Commissions and district courts are there. We are not," the Fourth Circuit added.

Zoning News From Around The Nation

Georgia

Local diversity and inclusion task force to recommend zoning ordinance requiring affordable housing

Sandy Springs, Georgia's Diversity and Inclusion Task Force recently said it planned to recommend a zoning ordinance amendment requiring affordable housing for new construction, the *Sandy Springs Reporter* reported.

In 2017, Sandy Springs' city council had excluded an inclusionary zoning update from code amendments, the news outlet reported. The task force was forced following Black Lives Matter protests in the city in 2020, and through its subcommittees, recommendations to expand distribution of local newspapers to renters and to add translation services to city meetings and its documents have also been made, the *Reporter* noted.

Elsewhere in Georgia, a change has been approved for the Dunwoody Planned Development (PD) special zoning district, which permits development that would otherwise be banned under the local zoning code, the Reporter explained. It's a step meant to streamline the zoning process, a city official told the news outlet, which noted there will be a 4.5-acre minimum land requirement for PD within Dunwoody's areas including suburban neighborhoods.

Source: *reporternewspapers.net*

Iowa

Ames' new zoning tool promotes housing development

Recently Ames, Iowa's City Council was close to approving a new planned unit development zone focused on promoting housing development, the *Ames Tribune* reported. The change would decrease slot sizes and lowers setbacks for some development projects in the city.

In other news, the City of Ames' planning division recently announced it was accepting applications for a Downtown Façade Grant. "Businesses and building owners within the Downtown Service Center could qualify for a dollar-for-dollar matching grant of up to $15,000 for façade improvements. In addition, businesses and building owners who improve their façades and are within the Downtown Urban Revitalization Area may be eligible for abatement of property taxes on the assessed value of new improvements," it stated.

Sources: *amestrib.com*; *cityofames.org*

Massachusetts

Newton city council approves measure restricting where firearms businesses can operate

Restrictive zoning rules have been approved in Newton that will place stricter operational limits on gun stores in that city, *The Boston Globe* reported recently.

City councilors, with a 23-1 vote, approved the mea-

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sure following a push to block a firearms store called Newton Firearms from opening at a location close to homes, restaurants, and schools, the news outlet reported.

The measure means that firearms businesses will be subject to buffer zones so they cannot be immediately adjacent to hospitals, libraries, schools, and playgrounds, *The Globe* reported.

Source: *bostonglobe.com*

New Mexico

The New Mexico Regulation & Licensing Department (NMRLD) recently announced a rule hearing would be taking place on proposed draft rules on "the processing, approval, and denial of license applications for cannabis producers in New Mexico." "The rule hearing will also consider the regulation of cannabis licensees, proposed fees for corresponding license types, the plant count, canopy or square footage limit for each license type, and per-plant fees applied to licensees that are growing more than 200 cannabis plants," NMRLD stated.

According to the notice of proposed rulemaking, the hearing was also going to be an opportunity to "consider the plant count, canopy or square footage limit for each license type (excluding licenses for integrated cannabis microbusinesses or cannabis producer microbusinesses), as well as per-plant fees applied to licensees growing in excess of 200 plants."

To view the proposed draft rules, visit ccd.rld.state.nm.us/wp-content/uploads/2021/05/May-25-2021-Cannabis-Control-Division-Proposed-Rules.pdf. For the notice of proposed rulemaking, visit ccd.rld.state.nm.us/wp-content/uploads/2021/05/Notice-of-Proposed-Rulemaking-and-Hearing-Cannabis-Regulation-Act.pdf. And, for more information on the reference materials NMRLD used in drafting the proposed rules, visit ccd.rld.state.nm.us/wp-content/uploads/2021/05/NMAC-2019-MCP-FK-Report.pdf.

Source: *ccd.rld.state.nm.us*

Pennsylvania

Swimming pools, hedges, and off-street parking some of the recommendations Williamsport's economic revitalization committee is focused on

The Williamsport economic revitalization committee recently recommended zoning ordinance amendment concerning off-street parking, hedges, and swimming pools affecting Pennsylvania College of Technology and Lycoming College, the *Williamsport Sun-Gazette* reported. Pool setbacks, obstructed views, and line of sight concerning motorists and bikers in the areas where hedges have been proposed.

Source: *sungazette.com*

Tennessee

Zoning ordinance amendment being considered in Livingston

At a recent municipal planning commission meeting in May 2021, the city of Livingston, Tennessee discussed whether its zoning ordinance should be updated concerning multi-family use in its Local Commercial (C-1) district. The discussion of an amendment centered around a contradiction found in the original language of the ordinance, *The Livingston Enterprise* reported recently.

The news outlet said confusion stems from the fact that multi-family use in the C-1 district is a permitted use but also a use permitted on appeal.

Source: *livingstonenterprise.net*

Wisconsin

Some residents of Madison opposed to zoning code changes

To address housing gaps, the City of Madison is considering zoning code amendments that would make it faster and easier for developers of smaller-scale affordable housing projects to get the green light, *The Cap Times* reported recently. But, some neighborhood associations and residents are opposed to it, the news outlet noted. In their view the amendments would take away their right to voice concerns on development impacting the places they live.

In other news out of Madison, the city's mayor, Satya Rhodes-Conway announced the launch of a policy to curb traffic congestion and related emissions. The draft policy, Transportation Demand Management (TDM), was introduced to the city's plan commission in May 2021, the press release stated. "TDM refers to a range of strategies that can help support people to travel by means other than a single-occupant vehicles. Examples of TDM strategies include adding bike lockers and showers to an office building, giving every resident or worker a free bus pass, organizing a vanpool program for workers, and many others. Madison's current proposal is to require new developments to make investments in TDM strategies through a clear, flexible and predictable path," it stated.

To learn more about Madison's TDM, visit cityofmadison.com/transportation/initiatives/transportation-demand-management. There, it explains that "[u]nder the city's current land use ordinances, TDM measures are sometimes required for conditional uses, planned developments, big box stores, and 'employment campus' and 'mixed use center' districts." "Current TDM requirements in the city help limit the traffic impacts from development, but some mitigation of those impacts might still be required. City staff and partners are considering reforms to standardize this process and implement more consistent requirements through a city-wide TDM program."

The landing page also includes links to data sources concerning proposed measurements, weights and triggers for TDM development inclusion, project documents related to the development of Madison's TDM program, and an outline of the proposed TDM process timelines.

Sources: *madison.com*; *cityofmadison.com*

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QUINLAN™

July 25, 2021 | Volume 15 | Issue 14

Zoning Bulletin

in this issue:

Code Enforcement

Resident sues city and its officials after being denied the right to park modular classrooms on his property

Citation: *Singleton v. City of Georgetown, 2021 WL 1929366 (D.S.C. 2021)*

Willie Singleton filed suit against the City of Georgetown, South Carolina, alleging constitutional violations stemming from a code-enforcement violation. The U.S. District Court for the District of South Carolina was tasked with determining whether the city was entitled to judgment without a trial.

DECISION: Request for judgment granted.

There wasn't evidence to support Singleton's claims.

The case involved five modular classrooms that Singleton had bought from the Johnsonville School District and moved them to lots he owned in the city. Before moving them over, he and the city administrator (CA) discussed modular building requirements.

The CA told Singleton that he had to provide a site plan from an engineer, so he acquired and presented a plan from an engineer to "join the two buildings as required by the [c]ity official."

Then, Singleton proceeded with placing two of the buildings on his property. The CA issued a stop-work order after determining the project was in violation of the local code, and Singleton claimed the CA wouldn't tell him which provision had been violated and that he would have to "look it up."

Subsequently, the city provided Singleton with a copy of a state law provision. He responded by providing a copy of another state law provision and stating that the building was constructed prior to January 1, 2005, and therefore not subject to the law the city had cited.

The CA reached out to Singleton and let him know what would be needed before a building permit could be issued. Thereafter, he learned that Singleton had placed a couple of the modular buildings on a corner lot. This, he surmised was a code violation.

In May 2018, a code enforcement officer issued a letter stating that Singleton was in violation and that property needed to be cleaned due to overgrowth. He claimed he was the only landowner called out for this and that several other lots in the area were currently overgrown but those residents were given an ultimatum to cut back or be fined.

The CA then reached out to the state's Building Code Commission requesting guidance on the situation, and, in response, he was instructed to treat the modular buildings as "site built buildings." After that, the CA forwarded Singleton a letter again setting out the requirements for the issuance of a building permit. And,

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after the city denied Singleton's request for a building permit, he was given the opportunity to appeal but never did.

Eventually, the parties reached an agreement about one of the lots and Singleton was granted a permit based on compliance with city requirements.

That didn't stop Singleton from filing suit against the city, or the CA, though, claiming his rights under the Equal Protection Clause of the Constitution had been violated.

THE COURT'S RATIONALE

Singleton claimed he was the victim of selective enforcement of the city's ordinances and zoning laws, which violated his equal protection rights under the Fourteenth Amendment. The CA and the city contended they were entitled to judgment without a trial because there was at least one instance "where a property owner brought in a modular building which had previously been used a classroom and . . . [Singleton] had been treated the same as these individuals." The CA testified that the individual, who was of the same race as Singleton, had been required to provide engineered drawings for the foundations.

THE BOTTOM LINE

"The Equal Protection Clause of the Fourteenth Amendment provide[d] that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' " "Its central mandate is racial neutrality in governmental decision making," the court explained.

Therefore, to bring "a viable equal protection claim, the plaintiff must establish 'that the defendant's actions had a discriminatory effect and were motivated by a discriminatory purpose.' " Here, Singleton couldn't show any "requisite discriminatory intent with more than mere conclusory assertions" let alone that discrimination was the city and the CA's "sole motive."

CASE NOTE

Singleton also claimed that several city officials were liable for constitutional violations under the doctrine of "respondeat superior." For instance, he claimed the CA's conduct could be imputed to the mayor who knew he had been giving him a hard time. He also claimed city councilors could be held liable because they didn't take any action after hearing his complaints about the CA.

To bring "a viable equal protection claim, the plaintiff must establish 'that the defendant's actions had a discriminatory effect and were motivated by a discriminatory purpose.' "

But, the court found, Singleton didn't present any evidence that these officials' "actions or inactions rose to the level of deliberate indifference or that there was a causal link between [their] inaction and [his] alleged constitutional injury."

The court also noted that a section 1983 claim couldn't be based on respondeat superior. But it noted, "a supervisory official c[ould] be held liable in certain circumstances for the constitutional injuries inflicted by their subordinates." To establish supervisory liability required a showing that:

- "the supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed 'a pervasive and unreasonable risk' of constitutional injury to citizens like the [Singleton]";
- "the supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices' "; and

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POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

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P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084
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ISSN 0514-7905
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- "there was an 'affirmative causal link' between the supervisor's inaction and the particular constitutional injury suffered by [Singleton]."

Here, the officials were entitled to judgment because "no reasonable juror could find that, generally speaking, [they] w[ere] personally engaged in conduct that posed 'a pervasive and unreasonable risk' of constitutional injury to citizens like [Singleton]."

Practically Speaking:

Singleton's equal protection clause claim failed because to state a valid claim, he had to "set forth specific factual allegations that are probative of an improper motive," which he failed to do.

Permitted Use

State appeals court weighs in on whether proposed cannabis cultivation and manufacturing facilities should be allowed

Citation: *Valley Green Grow, Inc. v. Town of Charlton, 99 Mass. App. Ct. 670, 2021 WL 2345585 (2021)*

Should one of the country's biggest proposed cannabis cultivation and manufacturing facilities be permitted to operate in a town of about 12,000 residents? That's the question the Appeals Court of Massachusetts took on in a recently decided case.

THE FACTS

The Town of Charlton, Massachusetts' planning board found a proposed marijuana facility constituted "light manufacturing" as the term was used in the town's zoning bylaw. As a result, it was not allowed use in the agricultural and commercial business districts where the proposed development site was located.

The Massachusetts Land Court (MLC) concluded the proposed use was "an indoor commercial horticulture/floriculture establishment (e.g., greenhouse) use allowed by right" in the two zoning districts. As a result, it granted judgment without a trial to the plaintiff, Valley Green Grow Inc. (VGG). The town appealed.

DECISION: Affirmed.

The planning board exceeded its authority "by denying site plan review on the ground that the proposed use was not permitted as of right," the appeals court ruled.

The zoning enforcement officer (ZEO) had concluded on three occasions that VGG's proposed use would be permitted by right. "That opinion, though not controlling, carrie[d] weight, as the bylaw charges the ZEO with enforcing the bylaw," the court explained. "The ZEO's affidavit specifically state[d] that '[t]hese types of accessory uses,' including the cogeneration facility, '[we]re similar to other ancillary uses accessory to agricultural uses in [the town].' " And, there wasn't any evidence to the contrary.

THE BOTTOM LINE

While it was true that "the bylaw direct[ed] the planning board, in the ordinary course, to ensure compliance with the bylaw," it was "clear that neither the town nor VGG, in executing the development agreement and agreeing to site plan approval by the planning board, intended to have the planning board revisit whether the proposed use was allowed as of right." The board of selectmen on advice of town counsel and the ZEO had made that determination.

It was "clear that neither the town nor VGG, in executing the development agreement and agreeing to site plan approval by the planning board, intended to have the planning board revisit whether the proposed use was allowed as of right."

"The circumstances suggest[ed] that the project was referred to the planning board for site plan review of a use permitted as of right," the court wrote. This was a case where "the town [wa]s speaking with two competing voices, one of which, the ZEO, [wa]s the party charged with enforcing the bylaw," the court noted, "In these unique circumstances it is difficult to see why we would defer to the planning board's contrary conclusion. We are quite comfortable concluding that we need not defer to the planning board's opinion," it ruled.

A CLOSER LOOK

The site in controversy consisted of about 95 acres of land that for decades had been used as a commercial fruit orchard. The orchard's operations traditionally included cultivating apples for sale and processing apples to produce alcoholic and food products on the site. The site also housed production facilities, buildings, and equipment to juice, press, bake, process, ferment, and bottle the fruit for sale as wine, cider, juice, pies, jellies, and jam.

VGG proposed a one-million square foot indoor marijuana growing and processing facility, which included:

- an 860,000 square feet closed greenhouse;
- a 130,000 square foot postharvest processing facility; and
- a 10,000 square foot cogeneration facility.

According to the site plan application, in total, buildings wound cover about 23 of the approximate 95-acre parcel. And the MLC had found that 86% of the proposed project would "be . . . dedicated to . . . indoor commercial horticulture."

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Permitting

Residents sue village after their basements flood, they claim it shouldn't have granted the construction permits

Citation: *Craig Billie, et al, Plaintiffs, v. Village of Channahon, et al, Defendants. Additional Party Names: Andrew Kittl, Chantal Host, David Silverman, Dawn Billie, Donald Mladic, Donna Sabo, Edward Dolezal, Gerard Sabo, James Bowden, Janet Hopman, Janet Schumacher, Jeffrey D. Corso, Joseph Cook, Jr., Mark Scaggs, Patricia Perinar, Rebecca Stonitsch, Samuel Greco, Sara DeLucio, Scott McMillian, Scott Slocum, Jr., Sharon Kittl, Susan Mladic, Thomas Durkin, Thomas, 2021 WL 2311966 (N.D. Ill. 2021)*

Several residents alleged the Village of Channahon, Illinois (the village) violated their constitutional rights by passing Ordinance 703 in 1992, which required the village to "comply with the rules and regulations of the National Flood Insurance Program" (NFIP). Thomas Pahnke, the village's building and zoning officer, was tasked with enforcing this ordinance by "[e]nsur[ing] that all development activities within the [flood-prone areas] of the jurisdiction of the [v]illage met the requirements" of the ordinance. He was also responsible for inspecting all development projects before, during, and after construction to confirm the proper elevation of the structure and overall compliance with the ordinance.

Also in 1992, the village's board of trustees (board) approved construction of the Indian Trails North subdivision. Months later, the village's attorney either drafted or approved an agreement annexing the subdivision to the village, and on November 16, 1992, the board approved that annexation.

Between September 1993 and August 1994, building permit applications were filed for each of the plaintiffs' homes. Neither the village nor any of its officials required any hydrological analyses, any special inspection, permitting, or certification for construction in flood-prone areas, and the plaintiffs asserted that their actions were not in compliance with the federal regulations that Ordinance 703 was designed to implement.

Each of the plaintiffs was granted a building permit. And in 1996, the basements of the Indian Trails dwellings flooded for the first time.

Representatives from the Federal Emergency Management Agency (FEMA) visited the flood site, who the plaintiffs alleged said the basement floor elevations on the dwellings may have been too deep.

In 1998, the village asked FEMA to remove several empty Indian Trails lots from the Special Flood Hazard Area (SFHA) so they could be developed. FEMA approved the request in part for certain lots, but it denied the request with respect to others—which the plaintiffs contended put the village on notice that lots 11 through 17 had basement floor elevations that were too deep and violated Ordinance 703. They also claimed that the village and its officials, therefore, knew that their homes "would continue to have basement flooding" and that despite having this knowledge, the village and its officials engaged in a "conspiracy of silence" and failed to alert them or their predecessors in interest of the danger of continued flooding.

After flooding occurred in 2001, 2007, and 2008, Indian Trails residents asked the village to look into the problem. It hired an engineering firm to root out the cause of their "significant basement flooding" and to "propose potential solutions."

The report indicated that the flooding was due to a combination of factors including the low elevations of the basements, downstream impediments to water flow at the Channahon Dam, and porous soil were responsible for the flooding. The report did not, however, investigate the permitting process or the conduct of any village officials. It merely recommended that the village work with the Illinois Department of Natural Resources (IDNR) to divert water from the dam and that the village should construct a concrete barrier to stop surface runoff from reaching the water table.

In October 2009, the board voted to have the engineering firm create a hydraulic model of these proposed solutions. Also, that month, one of the residents wrote to the village president asking the village to buy their home on the grounds that it had approved construction of a basement that was deeper than 524 feet base flood elevation. The president replied that to the best of his knowledge the lot had only been subject to state regulations at the time of construction, but the plaintiff claimed these assertions were fraudulent.

Then, in 2012, another resident contacted the president to ask about the status of the proposed Channahon Dam project. The president responded that the project, a collaboration with the IDNR, would "increase the level of protection for the study area basements." He also noted that the purpose of the 2009 report was to "determine the cause and the feasibility of mitigating the problem." And he noted that the village had granted permits to the IDNR for the construction of dam improvements but the IDNR had not made any improvements and the permits had lapsed. He also stated the village would reissue them "without delay" upon the IDNR's request.

Following flooding in 2013 and 2017, residents complained that the village hadn't made any progress toward addressing the basement-flooding issue. After another flood occurred in 2018 and the Army Corps of Engineers released a multi-year study within which it concluded it would not build the proposed concrete barrier to protect the Indian Trails subdivision because it did not meet certain cost-benefit requirements, the residents filed suit. They claimed the village hadn't complied with federal flood-plain management regulations (44 C.F.R. section 60.3) when permitting the construction of their homes.

The village and its officials (collectively, the village) requested dismissal of the lawsuit.

DECISION: Request for dismissal granted.

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The plaintiffs failed to assert valid claims under the Takings Clause.

The Fifth Amendment's Takings Clause "caution[ed] that 'private property [shall not] be taken for public use, without just compensation.' " The clause was meant to "bar [the] [g]overnment from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole," the court noted, citing *Arkansas Game & Fish Commission v. United States*, which the Supreme Court had decided in 2012.

In *Arkansas*, the Court acknowledged "that certain government actions [we]re always a taking, such as the 'permanent physical occupation of property' and the implementation of 'a regulation that permanently require[d] a property owner to sacrifice all economically beneficial uses of his or her land.' " However, "most takings claims turn on situation-specific factual inquiries."

Here, the plaintiffs argued that under *Arkansas*, they adequately pleaded a Fifth Amendment taking. They contended that because the Court had ruled in Arkansas "that recurrent floodings, even if of finite duration, [we]re not categorically exempt from Takings Clause liability," they had a valid claim. "But it does not necessarily follow that [they] state[d] a plausible claim against the [village]," the court concluded.

This case could be differentiated from *Arkansas* because the government in that case *"caused* the flooding: first by constructing the dam then by altering the release of water from the dam." Here, while the "flooding was arguably foreseeable when . . . Pahnke granted them the permits they requested without following Ordinance 703," the village did "not induce the flooding." "They permitted the[m] and their predecessors in interest to build on their own property."

This case could be differentiated from Arkansas because the government in that case "caused the flooding: first by constructing the dam then by altering the release of water from the dam."

Since the government in this case didn't induce a "taking," the plaintiffs failed to state a claim and their case was dismissed.

The case cited is Arkansas Game and Fish Com'n v. U.S., 568 U.S. 23, 133 S. Ct. 511, 184 L. Ed. 2d 417, 75 Env't. Rep. Cas. (BNA) 1417 (2012).

Case Note:

The residents requested a buyout in 2020 but the village denied it. At that point they filed suit against the village and its officials.

RLUIPA

Religious corporation claims county unlawfully suspended its expansion due to residential zoning requirement violation

Citation: *Friends of Lubavitch v. Baltimore County, Maryland, 2021 WL 2260287 (D. Md. 2021)*

Friends of Lubavitch (FoL) was a religious corporation formed to support the global Orthodox Jewish Chabad-Lubavitch movement in Maryland and to establish Chabad centers, a rabbinical school, and a primary school. Its religious leaders administered one of those centers, the Towson Chabad House (CH), located at 14 Aigburth Road in Towson, Maryland, which FoL purchased in September 2008 and served Orthodox Jewish students and alumni of the nearby Towson University and Goucher College in Baltimore County, Maryland.

FoL sought to expand CH in 2011. But, the Baltimore County, Maryland, Baltimore County Department of Planning, and Baltimore County Board of Appeals (collectively, the county) temporarily suspended the expansion after finding it had violated residential zoning requirements.

The county, however, eventually granted FoL a building permit to begin construction in 2016. But, construction stalled when a neighbor and neighborhood organization sued FoL in a county court to enforce a covenant contained in the CH deed that imposed a "setback" requirement that would prohibit the expansion.

After a bench trial in 2017, a judge ordered the removal of the expansion insofar as it violated the covenant. In a subsequent proceeding the judge ordered the expansion be "razed."

FoL sued the county, alleging violations under the Religious Land Use and Institutionalized Persons Act (RLUIPA) (Counts I-V) as well as constitutional violations.

The county court dismissed FoL's complaint, and it filed a request for reconsideration.

DECISION: Request denied.

FoL's request to amend the complaint to add generalized allegations that "no secular organization ha[d] been subjected to the treatment they experienced in conjunction with attempting to build the [e]xpansion," didn't fly with the court. "To prevail on an equal terms claim, . . . a plaintiff 'must identify a similarly situated comparator,' " the court noted.

Here, FoL failed to do just that. "Accordingly, [its] . . . proposed Amended Complaint [wa]s futile to the extent it continue[d] to assert equal terms RLUIPA claims against [the c]ounty."

A CLOSER LOOK

Under RLUIPA, it was unlawful for the government to "impose or implement a land use regulation that discrimi-

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nate[d] against any assembly or institution on the basis of religion or religious denomination." And that provision "incorporate[d] elements of an equal protection analysis." This meant, FoL would have needed to show that "the government decision was motivated at least in part by discriminatory intent, which [wa]s evaluated using the 'sensitive inquiry' established in" a case the Supreme Court decided in 1977—*Village of Arlington Heights v. Metropolitan Housing Development Corp.*

THE BOTTOM LINE

A court could analyze several factors before deciding whether a decision-making body had a discriminatory intent, including:

- "evidence of a 'consistent pattern' of actions by the decision-making body disparately impacting members of a particular class of persons";
- "historical background of the decision, which [could] take into account any history of discrimination by the decision-making body or the jurisdiction it represent[ed]";
- "the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures"; and
- "contemporary statements by decisionmakers on the record or in minutes of their meetings."

A court could analyze several factors before deciding whether a decision-making body had a discriminatory intent.

Here, FoL didn't plead "facts to support a prima facie claim of religious discrimination," the court found. It hadn't pleaded "any consistent pattern of actions disparately impacting FoL or similarly situated groups."

A CLOSER LOOK

FoL argued that one of the county officials had made a discriminatory statement when referencing the church, specifically telling a local attorney not to call those affiliated with the FoL "Jewish" because they weren't "like [him]." In his view, they were akin to "evangelical Christians." But, the proposed amended complaint didn't "meaningfully address . . . [any] consistent pattern of actions disparately impacting FoL or similarly situated groups . . . disparate treatment or impact that identify similarly situated comparators, . . . a history of discrimination by [the c]ounty, . . . or . . . what the [c]ounty's normal procedures [we]re and the alleged deviations from those procedures."

The case cited is Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977).

Church files suit after village denies request to build in light industrial zone

Citation: *Wesleyan Methodist Church of Canisteo v. Village of Canisteo, 792 F. Supp. 2d 667 (W.D. N.Y. 2011)*

Recently, the U.S. District Court for the Western District of New York took up the issue of whether the Village of Canisteo, New York (the village), violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by denying a church's request for a building permit in an area zoned as light industrial.

The village asked the court to dismiss the lawsuit for failure to state a claim.

DECISION: Request for dismissal granted.

The church didn't state a claim on which relief could be granted under RLUIPA.

A CLOSER LOOK

This case involved the Wesleyan Methodist Church of Canisteo (WMCC), a religious corporation that owned property in the village, on which it operated a church and conducts church-related activities. Its current facilities weren't adequate for its needs, though. Specifically, the parking lot was too small, and the main worship facility was overcrowded.

WMCC came up with three potential ways to address the overcrowding:

1) construct new buildings at its current location;
2) buy properties adjacent to the current church, demolishing them, and constructing new buildings; and
3) purchase vacant land to construct new church facilities, which is the option it chose.

After identifying a parcel of land to build its new facilities on, WMCC reached out to the village to request a rezoning so it could operate in the light-industrial zone. The village generally permitted use there to manufacturing, food industries, laundry and dry cleaning, warehousing, and automotive services.

The planning board initially denied WMCC's request for a rezoning/special use permit, explaining that it needed to conduct a map and site-plan review. It also said it needed to address potential environmental issues.

In 2008, WMCC obtained a "Site Feasibility Study" for the proposed church project, which it presented to the planning board. The planning board still recommended denying WMCC's request to re-zone the property, citing its concerns that re-zoning the area would "ultimately change . . . the entire Light Industrial District," and observing that there was a "very small amount of suitable land within village limits for light industrial use."

The village told WMCC while it wouldn't re-zone the property, it could apply for a variance, which it went ahead and did. But, following a public hearing the Zoning Board of Appeals denied the request for a variance because WMCC hadn't shown an unavoidable "hardship." In the

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ZBA's view the hardship WMCC faced was of its own creation in that it sought to build in an area that wasn't zoned for churches. In denying the variance, the ZBA suggested WMCC could see if the village board would re-zone the area.

In 2009, WMCC requested a special-use permit from the village's code enforcement officer (CEO). The CEO denied the request, stating "the property is not properly zoned for what you want to use it for and the Zoning Board of Appeals has denied you once already."

In 2010, WMCC's attorney wrote to the ZBA to appeal the CEO's decision on the ground that the finding violated RLUIPA. The ZBA nonetheless denied the appeal, so WMCC filed suit.

BACK TO THE COURT'S RULING

The ZBA's final denial didn't "cause [WMCC] to suffer a substantial burden under RLUIPA."

"There are several factors which indicate whether a zoning decision imposes a substantial burden on a religious institution," the court wrote. "For example, an adverse decision that is final or absolute is more likely to impose a substantial burden than a conditional denial."

And while a "conditional denial" might impose "substantial burden if the condition itself [wa]s a burden on free exercise, the required modifications [we]re economically unfeasible, or where a zoning board's stated willingness to consider a modified plan [wa]s disingenuous," here, all WMCC alleged was that "it suffered a substantial burden because its present facilities [we]re inadequate, and because [the village] . . . refused to grant permission for [it] to build a church in a light industrial zone."

While WMCC contended the village's "denial was final and absolute, . . . in the [i]nstant case that [wa]s not enough to plausibly plead a substantial burden," the court ruled. Here's why:

- "[i]t appear[ed] clear from the [c]omplaint that the light industrial zoning requirements [we]re a generally applicable burden that [wa]s neutrally imposed on churches and secular organizations";
- WMCC "acknowledged, in its communications with the [v]illage, that it had several other alternatives available to it, including building new structures on its existing property"; and
- it hadn't bought the property—and it knew "all along that the zoning code does not permit churches in the light industrial zone."

CASE NOTE

The court noted that the Seventh U.S. Circuit Court of Appeals had previously found that facts similar to those above didn't establish a substantial burden.

The case cited is Petra Presbyterian Church v. Village of Northbrook, 489 F.3d 846 (7th Cir. 2007).

The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

A Closer Look:

The local "zoning code permitted churches in several other districts within the village, including the Low Density Residential (LDR) Zone, the Medium Density Residential (MDR) Zone, and the General Commercial (GC) Zone," the court explained.

Zoning News From Around The Nation

California

Pasadena's city council to decide if zoning code amendment should be passed to address parking for ADUs

In June 2021, the Pasadena City Council was set to vote on whether to approve a zoning-code amendment that would delete a requirement that an accessory dwelling unit (ADU) over 150 square feet to an existing single-family residence must have two covered parking spaces, *Pasadena Now* reported.

If the change goes through, the covered aspect of the parking spot requirement would be removed, the news outlet reported. This would free up homeowners to build up to a 1,200 square foot ADU without enclosed parking, a staff report noted, the news outlet reported.

Source: *pasadenanow.com*

Colorado

Lakewood gets sued over 'student living' zoning

Colorado Christian University (CCU) has filed suit against the city of Lakewood, Colorado for a zoning ordinance that bars colleges from owning and renting housing for students in residential zones that aren't located on its main campus, *Business Den* reported recently.

The lawsuit, which was filed with the Jefferson County District Court, alleges the city violated the rights of the private university under both the federal and Colorado constitutions, the news outlet reported. The controversy arose after Lakewood's city council, with a 6-5 vote, defined "student living unit" as a unit owned that a college or university owns or controls that's inhabited by students who are enrolled in studies, with the definition taking effect May 27, 2021, *Business Den* reported. The news outlet noted that one city councilor said following the vote, the idea behind the definition was to ensure the integrity of the residential neighborhoods.

For more information about this issue in Lakewood, including links to a staff memo and the ordinance's text, visit lakewoodspeaks.org/items/619.

Source: *businessden.com*

Massachusetts

Local town rejects bid to build housing for 55+ residents

Voters in the town of Westford, Massachusetts have

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rejected a zoning proposal that would have meant a 55-plus housing development could proceed with construction, *Wicked Local* reported recently.

In June 2021, by a vote of 88 to 79, a proposal to extend the town's senior residential multifamily overlay district was defeated.

Source: *wickedlocal.com*

New York

Possible new storage facility construction project under review by city planning department

The city planning department is currently reviewing zoning text amendments and an environmental assessment statement that could give the green light for a storage facility construction project in Rockaway Beach in New York's Queens borough, *New York Yimby* reported recently. If the proposal goes through the current manufacturing district would be converted to a mixed use with commercial retail overlay district, it noted.

Source: *newyorkyimby.com*

South Carolina

Charleston to look at elevation and hydrology in developing land-use maps for the future

Charleston, South Carolina, which sits on the coast of the Atlantic Coast and is prone to flooding due to hurricanes and sea-level rise is looking at how elevation and hydrology should impact the way its zoning maps are drawn, the Post and Courier reported recently.

Visit charleston-sc.gov/DocumentCenter/View/20521/Flooding-and-Sea-Level-Rise-Strategy-2019-printer-friendly?bidId to download Charleston's *Flooding and Sea Level Strategy Special Report* (Second Edition), which outlines the city's primary goals with respect to addressing concerns over flooding and seal level changes:

- **Protect the citizens and neighborhoods**—"It is imperative that we ensure, through innovative policies, that we are building future neighborhoods resilient to flooding that will maintain their value in spite of future challenges," the report notes;
- **Safeguard and enhance Charleston's infrastructure**—"We must ensure that critical lifesaving resources such as hospitals, fire stations, police substations and the transportation corridors first responders use to connect our citizens to the services they provide remain as flood free and accessible as possible";
- **Preserve the businesses' and organizations' economic viability**—"[O]ur city of the future needs to be designed and built, in partnership with these important institutions, with resilience and adaptability at the forefront to ensure our future economic viability";
- **Ensure that vital resources are protected**—In treating the "environment as both a natural and economic resource" the city noted it "must promote natural floodplain function and increase [its] natural systems' ability to mitigate effects of sea level rise while enjoying the co-benefits of improving the place we live"; and
- **Collaborate more with strategic partners**—"[W]e recognize and acknowledge that water knows no boundaries. . . . [F]or us to be successful we will need to work with our neighbors, both public and private," the report stated.

Elsewhere in South Carolina, Richland County is making a series of graphics, pamphlets, and videos available to help the public understand what zoning, zoning districts, and rezoning mean, the *Columbia Regional Business Report* reported recently.

The county's first video entitled *Zoning 101: What is Zoning?* is available at youtube.com/watch?v=ETC_FTLQpr4.

The campaign is part of the county's "Land Development Code Rewrite," which according to the county's website will shape growth for its future. "The purpose of the Rewrite is to develop 21st Century regulations that implement the County's vision for where and how it grows, are user-friendly for all citizens, align with current best practices, allow for development in different contexts, provide for higher-quality development, and support a more sustainable Richland County," the website stated.

Richland county explained that its land development code "is the adopted law of the county that regulates land use, growth, and development. It governs everything from the types of uses, location, and size of a development within various zones, as well as establishes the procedures for how development proposals are reviewed, including approvals and denials." And, the LDC "controls various development and subdivision standards such as parking, landscaping, signs, addressing, building form, and open space within a development, and the division and platting of land as well as road layout and other infrastructure requirements."

To learn more, visit richlandcountysc.gov/Government/Departments/Planning-Development.

Sources: *charleston-sc.gov*; *postandcourier.com*; *columbiabusinessreport.com*; *richlandcountysc.gov*

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