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 6, 2020 beginning at 5:30 P.M., P.D.S.T. utilizing GoToMeeting.com:
https://global.gotomeeting.com/join/223862189

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 30, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician
Name Title Signature

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

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: https://global.gotomeeting.com/join/223862189. You can also dial in using your phone at **+1 (312) 757-3121**. The **Access Code** for this meeting is **223-862-189.** Comments can also be emailed to cityclerk@elkocitynv.gov

Dated this 30th day of September, 2020.

NOTICE TO PERSONS WITH DISABILITIES

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

Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.D.S.T., TUESDAY, OCTOBER 6, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
https://global.gotomeeting.com/join/223862189

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 1, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible recommendation to City Council for Parcel Map 8-20, filed by Gallagher Family Trust. The parcel map creates one parcel from two existing parcels and contains an offer of dedication for right-of-way for a portion of Norco Lane. Due to the dedication, it is referred to the Planning Commission with recommendation to the City Council, and matters related thereto. **FOR POSSIBLE ACTION**

   The parcel map creates one parcel from two parcels owned by the applicant, Gallagher Family Trust. The map will be dedicating a portion of Norco Lane to the City of Elko.

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 1, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
GOTOMEETING.COM
https://global.gotomeeting.com/join/472220037

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**
Tera Hooiman
John Anderson
Gratton Miller
Giovanni Puccinelli

Excused: **Stefan Beck**
Vacancy

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

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

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

*****Motion: Approve the minutes from the August 4, 2020 Meeting.**

Moved by Gratton Miller, seconded by Giovanni Puccinelli.

Motion passed unanimously. (5-0)

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Tentative Map 6-20, filed by Legion Construction and Development, LLC for the development of a subdivision entitled Jarbidge Estates involving the proposed division of approximately 2.16 acres of property into 18 lots for residential development and 1 common lot within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

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

Mike Shanks, Shanks Engineering, explained that they were proposing an 18 lot townhome subdivision and that he was available to answer questions.

John Smales, Legion Construction and Development, stated he was available for questions.

Michele Rambo, Development Manager, went through the City of Elko Staff Report dated August 18, 2020. Staff recommended approval with the findings and conditions listed in the Staff Report, with a modification to Condition No. 2 from the Development Department to add "Prior to City Council consideration of Tentative Map No. 6-20."

Cathy Laughlin, City Planner, recommended conditional approval as presented.

Bob Thibault, Civil Engineer, went over the Engineering Department conditions that were listed in the Staff Report, and recommended conditional approval.

Jamie Winrod, Fire Department, had no concerns and recommended conditional approval.

Scott Wilkinson, Assistant City Manager, recommended conditional approval as presented by staff.

Paulette Harrison, Quail Circle, stated that she had some concerns regarding this proposal. Currently, the Monte Carlo Apartments and the Copperwood Apartments are on 5th Street, which present some parking issues. They seem to have quite a bit of traffic coming up and down the street. She wasn't sure at this time it would be wise to add to that burden of traffic. As a property owner, they have had their fence hit twice, and taken out by traffic on 5th Street. They would oppose any townhomes, or small residential lots, being added to the 5th Street congestion that they already experience. Ms. Harrison mentioned that she spoke to a couple of other people, some who didn't receive a notice in the mail. She hoped that the City Council would consider their feelings or stipulations that they would like to speak to. The traffic is a problem here. Also, they have quite a few people walking on 5th Street. She didn't see that it was wise to congest the area any more than already is. There is a parking issue on 5th Street in the morning and evening. She had witnessed two occasions where a vehicle had been hit because of the traffic. Ms. Harrison stated that she opposed this project.

Chairman Jeff Dalling asked Ms. Laughlin if she could address some of Ms. Harrison's concerns.

Ms. Laughlin explained that the Planning Department does the public hearing notices based on the Nevada Revised Statutes requirements. We don't go any further or beyond what the requirement by the law is. The agenda packet has the list of people that were notified. Ms. Rambo has addressed the traffic counts.

Ms. Rambo stated that she could elaborate on some of the other issues. She said they were looking at 105 average daily trips for this townhouse development. 5th Street in that area will be widened to its ultimate right-of-way width, which would include curb, gutter, and sidewalk. That would make the pedestrian traffic safer, and provide additional space for the traffic. The applicant is also proposing not only two parking spaces per townhome, but additional guest parking as well. The parking shouldn't be on 5th Street for this particular project.

Ms. Harrison asked if she was to assume that there would be no parking on the side of 5th Street from these town homes.

Ms. Rambo explained that the City couldn't restrict parking on the street, but the people inhabiting the townhouses, and their guests, should have plenty of parking within the development.

Patricia Ellefsen, Quail Circle, stated that she found out about this about 5 minutes before the meeting started from Paulette. She said she didn't know what the requirements were about letting people know, but she had no idea this was proposed. Ms. Ellefsen stated that she lives on same street as Ms. Harrison and has lived there for 27 years. She has gradually watched the traffic and safety on 5th Street be compromised by so much development. She really did think, even though the City was saying that this was an ok thing to do, the people that were the most impacted, like the people in her neighborhood and the people on Rolling Hills, didn't even know anything about this. Ms. Ellefsen said that she hasn't had a chance to look at anything, or to see what the developers are proposing. Just to know that there is talk of additional development on 5th Street when there are already so many safety and traffic issues is worrisome.

Mr. Smales wanted to mention that the access to the development would come down off of Rolling Hills Drive into the subdivision. There is going to be a good size ramp that will go down into the development. He didn't think they would get a lot of on street parking along the sidewalk, like Monte Carlo or Copperwood Apartments. There is going to be a pretty steep hill, and Mr. Smales didn't think people were going to want to walk down it. It is also going to be rip-rapped with rock or vegetation of some sort. In addition, each unit will have a two car garage and a driveway, as well as 9 guest parking stalls. There is also some additional undeveloped area, which is not designated as parking, but could be used for parking. There is still a lot of undeveloped land on N. 5th Street and it will develop more traffic over the years. Mr. Smales thought this was a much needed project, which would offer more affordable housing to the area.

Ms. Ellefsen asked Mr. Smales if he was planning to wall off the development between 5th Street and the property.

Mr. Smales said no, it wouldn't be walled off. He suggested emailing the proposed plans to Ms. Ellefsen, so she could see the proposed development.

Ms. Ellefsen thought everyone in her development and everyone that lives on Rolling Hills would like to know how this is going to go down, because it would impact everybody. You are all voting to give them a conditional approval. She assumed it was just conditional on the items that Engineering has requested. She asked if there would be any future opportunities for public comment on this item.

Chairman Dalling explained that this was just the first step. The Planning Commission is just an advisory board to the City Council. The Planning Commission gives an opinion, which goes to City Council. This item will go to City Council next, and the public will be able to give comments there as well. The City Council gives the final say.

Ms. Ellefsen asked if the Planning Commission forwarded recommendations to the City Council.

Chairman Dalling explained that the Planning Commission can recommend approval or denial. He asked Ms. Archuleta to pull up the list of property owners that received a notice for the meeting. Chairman Dalling said the notices were driven on the NRS, for how far out the notices have to go.

Ms. Ellefsen asked how many residents were actually notified.

Shelby Archuleta, Planning Technician, explained that for a Tentative Map only the direct adjacent property owners were required to be noticed. For this subdivision there were six property owners that were notified.

Ms. Harrison read off the list of property owners that were notified and asked if that was correct.

Ms. Archuleta said yes, and added that this notice was a little different, because there was also a Rezone Application and a Conditional Use Permit Application for the same property that were included in the notifications. She pulled up the list of property owners that were notified for the Rezone and Conditional Use Permit.

Mr. Wilkinson clarified that the noticing requirements are set forth in the NRS, so the City of Elko follows those noticing requirements.

Ms. Harrison still wanted to voice her concern on the density that is being put in this area. There are some nicer homes in Brookwood and that has been developed quite nicely. She wondered how they would feel if they were notified of this. She asked if there was an option to notify them and have another hearing.

Mr. Wilkinson reiterated that the noticing requirements that the City follows are specified in the NRS and City Code. There is no logical process, or assumptions, that the City can make to work outside of those noticing requirements. Neighbors can inform neighbors. There will be another Public Hearing on this item with the City Council, so if additional neighbors want to comment on the proposed project they can do that. The Planning Commission, tonight, has a public hearing before them and they can take certain action based on the evidence presented to them. It

is a recommendation from the Planning Commission to the City Council. Any final action rests with the City Council.

Ms. Laughlin added that in additional to the 26 notices that went out, the Planning Department is also required to publish the notices in the Newspaper.

Commissioner Gratton Miller wanted to clarify that 5th Street was a main Arterial road. He asked how many cars it could handle on a daily basis, and what the maximum that the road could hold was.

Chairman Dalling asked Ms. Rambo if she could answer those questions.

Ms. Rambo said she would have to look it up.

Commissioner Giovanni Puccinelli said he had a question for Mr. Smales and Mr. Shanks. He asked where the extra parking was that they were talking about.

Mr. Shanks explained that the darker shade on the map was asphalt. In the middle there is a '3' and a '1', in between that there is a wide area. That area could be enhanced for additional parking, and the stuff to the left of the '3' as well. Anything in the white area, if it's flat enough, can be expanded into parking. There are nine spaces in the common area, and every unit has a driveway that is 24' wide and fairly deep with a two car garage. They believe they have great parking. It is a long, tough walk to get from 5th Street down to the development, so they didn't see that there would be much parking encouraged on 5th Street.

Chairman Dalling thought that the developers definitely met the parking requirements. He then asked Ms. Rambo if she had the answers to Commissioner Miller's questions.

Ms. Rambo said she had some numbers. The current traffic count on that portion of N. 5th Street is 4,400 to 4,500 trips total, as of 2019. The City bases the street performance off of Level of Service. Right now, that portion of 5th Street is at a Level of Service 'B', which can hold a total of 8,000 trips until it moves to up to Level 'C'. Usually, at Level 'D' the City starts looking to upgrade the road. On a Minor Arterial, such as this, it would need to have 22,000 trips per day for the City to look at upgrading it. Right now with the 4,500 trips per day it is well below the ultimate capacity for that street.

Ms. Rambo reminded the Commission about the change she requested to Condition No. 2.

Commissioner Puccinelli asked for clarification on the change.

Ms. Rambo explained that they would need to add "prior to City Council consideration of the Tentative Map."

***__Motion: Forward a recommendation to City Council to conditionally approve Tentative Map No. 6-20 subject to the conditions found in the City of Elko Staff report dated August 18, 2020, with modifications from the Planning Commission listed as follows:__**

Development Department:

1. **Conditional Use Permit 4-20 must be approved and all conditions be met.**
2. **Rezone 5-20 must be approved and in place and any/all conditions be met prior to City Council consideration of Tentative Map 6-20.**
3. **The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.**
4. **Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.**
5. **The Tentative Map and construction plans must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval to the City of Elko.**
6. **Tentative Map approval does not constitute authorization to proceed with site improvements.**
7. **The applicant must submit an application for Final Map within a period of four (4) years in accordance with NRS.360(1)(a). Approval of the Tentative Map will automatically lapse at that time.**
8. **A soils report is required with Final Map submittal.**
9. **A hydrology report is required with Final Map submittal.**
10. **Final Map construction plans are to comply with Chapter 3-3 of City code.**
11. **The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.**
12. **The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.**
13. **Submit CC&Rs prior to approval by the City Council.**
14. **Add a note to the map restricting access to individual townhomes from N 5th Street.**

Engineering Department:

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

Fire Department:

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

Public Works Department:

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

Commissioner Puccinelli's findings to support the motion were the proposed subdivision and development is in conformance with the Land Use and Transportation Components of the Master Plan. The proposed subdivision and development does not conflict with the Airport Master Plan, the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012, or the Wellhead Protection Program. The property is not located within the Redevelopment Area. A zoning amendment is required for the proposed subdivision. The application has been submitted to the Planning Department. In accordance with Section 3-3-5(E)(2), the proposed subdivision and development will not result in undue water or air pollution based on the following: a. There are no obvious considerations or concerns which indicate the proposed subdivision would not be in conformance with all applicable environmental and health laws and regulations. b. There is adequate capacity within the City's water supply to accommodate the proposed subdivision. c. The proposed subdivision and development will not create an unreasonable burden on the existing water system. d. There is adequate capacity at the Water Reclamation Facility to support the proposed subdivision and development. e. The proposed subdivision and development will be connected to the City's programmed sanitary sewer system. Therefore, the ability of soils to support waste disposal does not require evaluation prior to Tentative Map approval. f. Utilities are available in the immediate area and can be extended for the proposed development. g. Schools, fire and police, and recreational services are available throughout the community. h. The proposed subdivision and development will not cause unreasonable traffic congestion or unsafe conditions with respect to existing or proposed streets. i. The area is not located within a designated flood zone. Concentrated storm water runoff has been addressed as shown on the grading plan. j. The proposed subdivision and development is not expected to result in unreasonable erosion or reduction in the water-holding capacity of the land thereby creating a dangerous or unhealthy condition. The proposed subdivision is in conformance with Sections 3-3-6, and 3-3-9 through 3-3-15 of City Code. The proposed subdivision and development is in conformance with Section 3-2-3 through 3-2-5, and 3-2-17 of City Code. The proposed subdivision and development is not located in a designated flood hazard area and is in conformance with Section 3-8 of City Code. The proposed subdivision design shall conform to Title 9, Chapter 8 of City Code.

Moved by Giovanni Puccinelli, seconded by Tera Hooiman.

Motion passed unanimously. (5-0)

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

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

Mr. Shanks and Mr. Smales said they were available for questions.

Ms. Laughlin went over the City of Elko Staff Report dated August 12, 2020. Staff recommended approval with the findings in the Staff Report.

Ms. Rambo had no comments or concerns.

Mr. Thibault recommended approval as presented.

Ms. Winrod had no comments or concerns and recommended conditional approval.

Mr. Wilkinson recommended approval as presented by staff.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 5-20.**

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

Moved by Gratton Miller, seconded by Giovanni Puccinelli.

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

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

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

Ms. Laughlin went through the City of Elko Staff Report dated August 12, 2020. Staff recommended approval with the findings and conditions in the Staff Report.

Ms. Rambo had no comments or concerns.

Mr. Thibault recommended approval as presented

Ms. Winrod recommended approval as presented.

Mr. Wilkinson recommended approval as presented. He wanted the applicant to discuss what the exterior material would be on the proposed townhomes. Mr. Wilkinson thought the Planning Commission should consider adding that as a condition. He didn't see that level of detail in the application.

Chairman Dalling asked Mr. Shanks and Mr. Smales to discuss that and also the exterior colors.

Mr. Smales explained that they would be doing a nice architectural roof, aluminum soffit and fascia, and stucco with pop outs around the windows and doors. There are going to be two colors that will be earth tones.

Mr. Wilkinson thought a condition along the lines that the colors would be earth tones, composite shingle roof, and stucco exterior. He thought that would get them pretty close to where they need to be, so if it develops and moves forward they can have that expectation.

Chairman Dalling asked Mr. Smales and Mr. Shanks if they were ok with that condition.

Mr. Smales said it sounded excellent.

*****Motion: Conditionally approve Conditional Use Permit No. 4-20 subject to the conditions in the City of Elko Staff Report dated August 12, 2020 with an additional condition from the Planning Department, listed as follows:**

1. **The CUP 4-20 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.**
2. **Landscaping shall be installed and not obstruct the view of oncoming traffic at the intersection with North 5th Street.**
3. **CUP 4-20 to be recorded with the Elko County Recorder within 90 days after commencement of work.**
4. **The permit shall be personal to the permittee, Legion Construction and Development, LLC and applicable only to the specific use of townhomes and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.**
5. **Guest parking to be for guest vehicles only, no RV parking allowed on site.**

6. **There shall not be any placement of any mail gang boxes or kiosks in association with this complex placed in the city's right of way and shall remain internal to the complex**
7. **The exterior of the building shall be compatible with surrounding areas and shall be similar to what is presented in the application.**
8. **The common areas are to be landscaped and maintained in an acceptable manner at all times.**
9. **Zone Change 5-20 to be approved and in effect prior to any construction activity.**
10. **Jarbidge Estates Subdivision TM 6-20 be approved.**

Planning Commission:

1. **Stucco siding, composite roofing, and earth tone colors**

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

Moved by Giovanni Puccinelli, seconded by Gratton Miller.

Motion passed unanimously. (5-0)

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

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

Ms. Laughlin went over the City of Elko Staff Report dated August 14, 2020. Staff recommended approval with the findings listed in the Staff Report. She explained that Condition No. 1 had been met, so that condition could be removed.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 1-20 with the conditions listed in the City of Elko Staff Report dated August 14, 2020 with modifications from the Planning Commission, listed as follows:**

1. **Variance 4-20 is approved for street line setback from South 9th Street.**

Commissioner Puccinelli's findings to support the motion were the proposed zone district is in conformance with the Land Use Component of the Master Plan with the approval of

Master Plan Amendment 2-20. The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the future transportation infrastructure. The property is not located within the Redevelopment Area. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B) with the approval of Variance 4-20. The proposed zone district is not in conformance with Elko City Code Section 3-2-8 and requires approval of Variance 4-20 to be in conformance. The application is in conformance with Elko City Code 3-2-21. The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA). Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety.

Moved by Giovanni Puccinelli, seconded by Tera Hooiman.

Motion passed unanimously. (5-0)

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

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

Ms. Laughlin went through the City of Elko Staff Report dated August 13, 2020. Staff recommended approval with the findings and conditions listed in the Staff Report.

*****Motion: Conditionally approve Variance No. 4-20 subject to the condition in the City of Elko Staff Report dated August 13, 2020, listed as follows:**

1. **Approval of Rezone 1-20.**

Commissioner Puccinelli's findings to support the motion were the proposed variance approval is in conformance with the Land Use Component of the Master Plan. The property is not located within the Redevelopment Area. The property, as developed, does not exceed the thirty-five percent of the net site area lot coverage. Approval of Variance 4-20 will bring the existing property into conformance with Section 3-2-8 of City Code. The special circumstance is directly related to the property as it is developed as a City of Elko Fire Station. The special circumstance of a fully developed property not meeting the street line setback for 9th Street with the proposed zone amendment to PQP. This circumstance does not generally apply to other properties in the district. 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. The granting of the variance is directly related to the zoning of the property and will not impair the intent or purpose of the zoning and will not change the use of the land or zoning classification. The granting of the variance will not impair natural resources.

Moved by Giovanni Puccinelli, seconded by Gratton Miller.

Motion passed unanimously. (5-0)

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

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

Ms. Laughlin went through the City of Elko Staff Report dated August 18, 2020. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Rezone No. 4-20 with the condition listed in the City of Elko Staff Report dated August 18, 2020, listed as follows:**

1. **Parcel map to create the 2,800 sq. ft. parcel and easements as needed.**

Commissioner Puccinelli's findings to support the motion were the proposed zone district is not in conformance with the Land Use Component of the Master Plan. The proposed zone district is compatible with the Transportation Component of the Master Plan. The property is not located within the Redevelopment Area. The proposed zone district and resultant land use is in conformance with the City Wellhead Protection Plan. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B). The proposed zone district is in conformance with Elko City Code Section 3-2-12. The application is in conformance with Elko City Code 3-2-21. The proposed zone district is located in a designated Special Flood Hazard Area (SFHA). Development under the proposed zone district will not adversely impact natural systems or public/federal lands such as waterways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety.

Moved by Giovanni Puccinelli, seconded by Tera Hooiman.

Motion passed unanimously. (5-0)

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that there was a very busy City Council Meeting last week. They approved the Tentative Map for Tower Hill Unit 4. They also approved Resolution 8-20 for the rezone for City of Elko to sell 15 acre to the VA. City Council approved the Master Plan Amendment and Resolution 19-20 for the vacation on Fir St., There was a Public Auction for a land sale for a 3,000 square feet parcel off of Sage & Sewell. There was only

one bidder for that. There was also a public auction for the lease of 8 acres at the airport. There was one bidder. The City Council initiated a zone amendment for the Anthem Broadband of Nevada property. They also did the land sale for the Safelink parcel, which was two different resolutions; one to accept the fair market value based on the appraisal and the other to sell the property pursuant to the exception for economic development that the NRS allows.

Ms. Laughlin reported that the City had received an appeal for CUP 3-20 for Acton Academy, which was denied by Planning Commission at last month's meeting. The Attorney that filed the appeal requested it not be on the City Council Agenda until September 22nd. She also mentioned that she received a letter of resignation from Evi Buell. We will be taking to City Council on the 8th to accept the resignation and authorize staff to fill the vacancy.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

   1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible recommendation to City Council for Parcel Map 8-20, filed by Gallagher Family Trust. The parcel map creates one parcel from two existing parcels and contains an offer of dedication for right-of-way for a portion of Norco Lane. Due to the dedication, it is referred to the Planning Commission with recommendation to the City Council, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **October 6, 2020**

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

4. Time Required: **15 Minutes**

5. Background Information: **The parcel map creates one parcels from two parcel owned by the applicant, Gallagher Family Trust. The map will be dedicating a portion of Norco Lane to the City of Elko.**

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

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

8. Recommended Motion: **Forward a recommendation to City Council to conditionally approve Parcel Map 8-20 based on the facts, findings and conditions as presented in the Staff Report dated September 22, 2020.**

9. Findings: Findings: **See Staff Report dated September 22, 2020**

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

11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 10/6
Do not use pencil or red pen, they do not reproduce

Title: Parcel Map 8-20
Applicant(s): Gallagher Family Trust
Site Location: 1650 30th Street - APN 001-560-045
Current Zoning: C Date Received: 9/15 Date Public Notice: N/A
COMMENT: This is to combine Parcels A + C of File # 202347 and Exhibits A + B of File # 335918 into one parcel, with a dedication to Norco Lane.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 9/23/20
Recommend approval as presented by staff

SAW
Initial

City Manager: Date: 9/23/20
No comments/concerns.

Initial

CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

To: Cathy Laughlin, City Planner
From: Michele Rambo, AICP, Development Manager
Re: Parcel Map 8-20, 30th/Norco, Gallagher Ford
Date: September 22, 2020

The City of Elko, Development Department has reviewed the proposed parcel map under existing conditions. Applicable Master Plan Sections, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Code – Section 2-13-3 Sidewalk, Curb and Gutter Construction
- City of Elko Code – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Code – Section 3-2-10 (B) General Commercial
- City of Elko Code – Section 3-8 Flood Plain Management
- City of Elko Code – Section 3-3-24 Parcel Maps
- City of Elko Code – Section 3-3-28 Mergers and Resubdivision of Land

The City of Elko, Development Department finds the parcel map is in general compliance with the above referenced Master Plan Components and Sections of City Code. The parcel map was evaluated based on the existing conditions and current development of the property.

BACKGROUND INFORMATION

1. The proposed map is merger of two parcels, Parcels A and C of Parcel Map 202347 into one new parcel.
2. The proposed parcel has an area approximately 4.90 acres
3. The area is zoned (C) General Commercial.
4. The property is currently developed with a car dealership.
5. The area lies at the northwest corner of 30th Street and Norco Lane.
6. Public improvements appear to be in place along both frontages with the exception of sidewalk along a portion of 30th Street near the southeast corner of the site.

MASTER PLAN:
Land Use:

- The land use is identified as Commercial General.
- The General Commercial zoning district is a corresponding district for this Master Plan designation.
- Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.

Transportation:

- The proposed parcel has access to Idaho Street via 30th Street.
- Access to the property will be from existing points on 30th Street and Norco Lane.

ELKO REDEVELOPMENT PLAN:

- The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

- The majority of the property falls within the 20-year capture zone, while a small portion falls within the 30-year capture zone. Any new buildings constructed on the site will be required to tie into existing sewer lines located in 30th Street or Norco Lane.

SECTION 2-13-3 SIDEWALK, CURB AND GUTTER CONSTRUCTION

- This section of code states sidewalks, curbs, and gutters shall be required on all vacant lots or parcels of land which are hereafter … merged or divided.
- Curb, gutter, and sidewalk are in place along both frontages, with the exception of sidewalk along a portion of 30th Street near the southeast corner of the site. A condition of approval has been added requiring this portion of sidewalk be installed with any future development or site improvement.

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS

- Section 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS states that no yard or lot area can be reduced below the minimum requirements set forth in Title 3 (zoning).
- The proposed parcel conformd to the minimum requirements.

Section 3-2-10 (B) GENERAL COMMERCIAL:

- Compliance with this section of code is required.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

- The site is located outside of any flood hazard area.
- This Parcel Map and any future development of the project site will not increase the potential of flooding above what already exists.

SECTION 3-3-24 PARCEL MAPS

Parcel Maps (A) – The proposed Parcel Map has been submitted as required.

Parcel Maps (B) – Curb, gutter, and sidewalk are in place along both frontages, with the exception of sidewalk along a portion of 30th Street near the southeast corner of the site. A condition of approval has been added requiring this portion of sidewalk be installed with any future development or site improvement.

Parcel Maps (C) – The map includes the dedication of a portion of Norco Lane to the City of Elko. All improvements are in place along the Norco Lane frontage.

Parcel Maps (D) – The map includes the dedication of a portion of Norco Lane to the City of Elko.

Parcel Maps (E) – The map complies with all zoning requirements.

Parcel Maps (F) – No site improvements are proposed at this time.

Parcel Maps (G) – This section does not apply because this is not a subsequent Parcel Map.

Parcel Maps (H) – Application has been made through the Planning Department to be processed as required by this section.

Parcel Maps (I) – No exceptions apply to this site. A Parcel Map is required.

Parcel Maps (J) – A survey was done as part of the Parcel Map preparation.

Parcel Maps (K) – The required filing fee was paid to the Planning Department.

Parcel Maps (L) – All required information has been shown on the Parcel Map.

Parcel Maps (M) – The applicant is responsible for recording the Parcel Map within the required timeframe. A condition of approval has been included.

Parcel Maps (N) – None of the listed prohibitions apply to the proposed Parcel Map.

SECTION 3-3-28 MERGERS AND RESUBDIVISIONS OF LAND

Mergers (A) – All lots are owned by the applicant.

Mergers (B) – The map shall be recorded in accordance with NRS 278.320 - .4725

Mergers (C) – All easements are clearly identified on the map.

Mergers (D) – No security is being held by the city.

RECOMMENDATION

The City of Elko **Development Department** recommends conditional approval of the parcel map with the following conditions.

1. Prior to map recordation, a note shall be added to the map requiring the completion of sidewalk improvements along 30th Street with any future development or site improvement.

2. The Parcel Map shall be recorded by Elko County within two (2) years of this approval.

3. Revise the Parcel Map to show original property lines prior to City sign-off.

CITY OF ELKO
Planning Department

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

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

September 25, 2020

Gallagher Ford
Attn: Casey Gallagher
650 30th Street
Elko, NV 89801
Via Email: ctgalla@gmail.com

Re: Parcel Map No. 8-20

Dear Applicant/Agent:

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

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

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: https://global.gotomeeting.com/join/223862189. You can also dial in using your phone at **+1 (312) 757-3121.** The **Access Code** for this meeting is **223-862-189.**

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

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC: Summit Engineering, Nitin Bhakta, 1150 Lamoille Highway, Elko, NV 89801
Via Email: Nitin@summitnv.com

CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR PARCEL MAP APPROVAL

APPLICANT(s):	Gallagher Ford - Casey Gallagher
MAILING ADDRESS:	650 30th Street
PHONE NO (Home)	775-738-3147 **(Business)** 775-738-3147
NAME OF PROPERTY OWNER (If different):	Michael & Tana Gallagher
(Property owner's consent in writing must be provided.)	
MAILING ADDRESS:	PO BOX 281366, Lamoille, NV 89828
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):	
ASSESSOR'S PARCEL NO.:	001-560-045 **Address** 650 30th St, Elko, NV
Lot(s), Block(s), &Subdivision	Parcel A & C of PM 202347 and Exhibit A & B of Vacation Doc. 335918
Or Parcel(s) & File No.	
APPLICANT'S REPRESENTATIVE OR ENGINEER:	Summit Engineering Corporation

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. A complete application must include the following:

1. One .pdf of the entire application, and one (1) copy of a 24" x 36" sized parcel map provided by a properly licensed surveyor as well as one (1) set of reproducible plans 8 ½" x 11" in size of the site drawn to scale showing proposed division of property prepared in accordance with Section 3-3-60 of the Elko City Code along with any supporting data to include:
    a. Name, address and telephone number of the person who prepared the parcel map.
    b. Proposed use of each parcel.
    c. A certificate of execution (signature block) for the Elko City Planning Commission or duly authorized representative.
    d. Source of water supply and proposed method of sewage disposal for each parcel.
    e. A copy of all survey computations
    f. A vicinity map.
2. If the property is improved, a plot plan depicting the existing conditions drawn to scale showing proposed property lines, existing buildings, building setbacks, parking and loading areas and any other pertinent information.

Fee: $400.00 + $25.00 per lot for Planning Commission and City Council Review; dedication of street right of way or modification of subdivision ordinance standards or regulations. $200.00 + $25.00 per lot for administrative review only; no dedications or modifications. Fees are non-refundable.

Other Information: The applicant is encouraged to submit other information and documentation to support this Parcel Map application.

RECEIVED

SEP 15 2020

1. Identify the existing zoning of the property: C - Commercial

2. Explain in detail the type and nature of the use proposed on each parcel:

Gallagher Ford automobile dealership

Half street of Norco being dedicated for public road purposes

3. Explain the source of water supply and proposed method of sewerage disposal for each parcel:

City of Elko

This area intentionally left blank

By My Signature below:

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

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

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

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

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

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

Applicant / Agent Gallagher Ford /Casey Gallagher
(Please print or type)

Mailing Address 650 30th Street
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: 775-738-3147

Email address: ctgalla@gmail.com

SIGNATURE: _____

FOR OFFICE USE ONLY

File No.: 8-20 **Date Filed:** 9/15/20 **Fee Paid:** $425 CK# 82130

```
================================================================================
GALLAGHER FORD PM
FILE NAME = N:\DWGS\J82055_GallagherFord\Ph321_PM\GallagherFordBMap
================================================================================
================================================================================
EXTERIOR BOUNDARY
================================================================================
START
          ....................................28479308.53   612330.03
INV             N 31°31'50" E       346.34
          ....................................28479603.73   612511.15
INV             S 58°28'10" E       100.00
          ....................................28479551.44   612596.38
INV             S 89°48'36" E       409.21
          ....................................28479550.08   613005.59
RADIUS POINT (NON TANGENT CURVE LEFT)
          ....................................28479414.90   613382.06

             41°19'16" DELTA
                  400.00 RADIUS
                  288.48 LENGTH
                  282.26 CHORD
                  150.83 TANGENT
TANGENT BRG
                S 19°45'06" W
                S 21°34'10" E
P.C. TO P.T.    S 00°54'32" E       282.26
          ....................................28479267.85   613010.07
INV             S 21°34'10" E        20.00
          ....................................28479249.25   613017.42
INV             N 90°00'00" E         0.00
          ....................................28479249.25   613017.42
INV             S 68°25'50" W       301.40
          ....................................28479138.45   612737.13
RADIUS POINT (TANGENT CURVE RIGHT)
          ....................................28479296.54   612674.64

             53°06'00" DELTA
                  170.00 RADIUS
                  157.55 LENGTH
                  151.97 CHORD
                   84.94 TANGENT
TANGENT BRG
                S 68°25'50" W
                N 58°28'10" W
P.C. TO P.T.    N 85°01'10" W       151.97
          ....................................28479151.64   612585.74
INV             N 58°28'10" W       300.00
          ....................................28479308.53   612330.03
```

```
AREA     222789.6  SQUARE FEET     5.115 ACRES
TOTAL DISTANCE              1922.98
CLOSING VECTOR S 35°32'26" E 0.009
Closure precision = 1 in 224837
================================================================================
NORCO DEDICATION
================================================================================
START
          ....................................28479550.19   612973.89
INV             S 89°48'36" E        31.70
          ....................................28479550.08   613005.59
RADIUS POINT (NON TANGENT CURVE LEFT)
          ....................................28479414.90   613382.06

             41°19'16" DELTA
                  400.00 RADIUS
                  288.48 LENGTH
                  282.26 CHORD
                  150.83 TANGENT
TANGENT BRG
                S 19°45'06" W
                S 21°34'10" E
P.C. TO P.T.    S 00°54'32" E       282.26
          ....................................28479267.85   613010.07
INV             S 21°34'10" E        20.00
          ....................................28479249.25   613017.42
INV             S 68°25'50" W        50.00
          ....................................28479230.87   612970.93
RADIUS POINT (NON TANGENT CURVE LEFT)
          ....................................28479249.47   612963.57

             90°00'02" DELTA
                  20.00 RADIUS
                  31.42 LENGTH
                  28.28 CHORD
                  20.00 TANGENT
TANGENT BRG
                N 68°25'50" E
                N 21°34'12" W
P.C. TO P.T.    N 23°25'49" E        28.28
          ....................................28479256.82   612982.17
RADIUS POINT (TANGENT CURVE RIGHT)
          ....................................28479414.90   613382.06

             39°54'26" DELTA
                  430.00 RADIUS
                  299.50 LENGTH
                  293.48 CHORD
                  156.11 TANGENT
TANGENT BRG
```

```
               N 21°34'12" W
               N 18°20'14" E
P.C. TO P.T.   N 01°36'59" W       293.48
         .....................................28479550.19   612973.89

AREA     9505.3  SQUARE FEET     0.218 ACRES
TOTAL DISTANCE              721.10
CLOSING VECTOR S 68°02'27" E 0.002
Closure precision = 1 in 303530
================================================================================
PARCEL 1
================================================================================
START
         .....................................28479551.44   612596.38
INV            S 89°48'36" E       377.51
         .....................................28479550.19   612973.89
RADIUS POINT (NON TANGENT CURVE LEFT)
         .....................................28479414.90   613382.06

            39°54'26" DELTA
                 430.00 RADIUS
                 299.50 LENGTH
                 293.48 CHORD
                 156.11 TANGENT
TANGENT BRG
               S 18°20'14" W
               S 21°34'12" E
P.C. TO P.T.   S 01°36'59" E       293.48
         .....................................28479256.82   612982.17
RADIUS POINT (TANGENT CURVE RIGHT)
         .....................................28479249.47   612963.57

            90°00'02" DELTA
                 20.00 RADIUS
                 31.42 LENGTH
                 28.28 CHORD
                 20.00 TANGENT
TANGENT BRG
               S 21°34'12" E
               S 68°25'50" W
P.C. TO P.T.   S 23°25'49" W        28.28
         .....................................28479230.87   612970.93
INV            S 68°25'50" W       251.40
         .....................................28479138.45   612737.13
RADIUS POINT (TANGENT CURVE RIGHT)
         .....................................28479296.54   612674.64

            53°06'00" DELTA
                 170.00 RADIUS
                 157.55 LENGTH
```

```
                  151.97 CHORD
                  84.94 TANGENT
TANGENT BRG
                S 68°25'50" W
                N 58°28'10" W
P.C. TO P.T.    N 85°01'10" W       151.97
          ....................................28479151.64   612585.74
INV             N 58°28'10" W       300.00
          ....................................28479308.53   612330.03
INV             N 31°31'50" E       346.34
          ....................................28479603.73   612511.15
INV             S 58°28'10" E       100.00
          ....................................28479551.44   612596.38

AREA     213284.2  SQUARE FEET     4.896 ACRES
TOTAL DISTANCE              1863.71
CLOSING VECTOR S 24°30'41" E 0.007
Closure precision = 1 in 279318
```

PRELIMINARY, FOR REVIEW ONLY

OWNER'S CERTIFICATE

KNOWN OF ALL MEN BY THE PRESENTS THAT THE UNDERSIGNED, MICHAEL H. GALLAGHER AND TANA M. GALLAGHER, AS TRUSTEES OF THE GALLAGHER FAMILY TRUST, DATED NOVEMBER 19, 1998 BEING THE OWNERS OF THE PARCELS SHOWN ON THIS MAP DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP. THE PUBLIC UTILITY EASEMENTS SHOWN AND NOTED HEREON ARE HEREBY GRANTED. THE PUBLIC ROADWAYS SHOWN AND NOTED HEREON ARE HEREBY DEDICATED.

MICHAEL H. GALLAGHER AND TANA M. GALLAGHER, AS TRUSTEES OF THE GALLAGHER FAMILY TRUST, DATED NOVEMBER 19, 1998

_____

BY: MICHAEL H. GALLAGHER, TRUSTEE DATE

_____

BY: TANA M. GALLAGHER, TRUSTEE DATE

STATE OF NEVADA }
COUNTY OF } S.S.

ON _____, 2020. PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, MICHAEL H. GALLAGHER AND TANA M. GALLAGHER, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

_____

(SIGNATURE OF NOTARIAL OFFICER)

(MY COMMISSION EXPIRES_____)

SECURITY INTEREST HOLDER'S CERTIFICATE

THIS IS TO CERTIFY THAT FORD MOTOR CREDIT COMPANY, A DELAWARE CORPORATION, CONSENTS TO THE PREPARATION AND RECORDATION OF THIS MAP

BY SEPARATE DOCUMENT BEING RECORDED AS DOCUMENT NO. _____ OFFICIAL RECORDS OF ELKO COUNTY, NEVADA (REFERENCE DEED OF TRUST RECORDED APRIL 23, 1998, IN BOOK 1042, PAGE 498, AS DOCUMENT No. 425824).

COUNTY ASSESSOR'S CERTIFICATE

I, JANET IRIBARNE, CERTIFY THAT THE PARCEL SHOWN ON THIS PARCEL MAP IS ASSESSOR'S PARCEL NO. 001-560-045.

_____ _____

ELKO COUNTY ASSESSOR DATE

CITY OF ELKO - APPROVAL

ON THE _____ DAY OF _____ 2020, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 478.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES. I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT. THE PUBLIC UTILITY EASEMENTS SHOWN AND NOTED HEREON ARE HEREBY GRANTED. THE PUBLIC ROADWAYS SHOWN AND NOTED HEREON ARE ACCEPTED FOR PUBLIC USE.

_____ _____

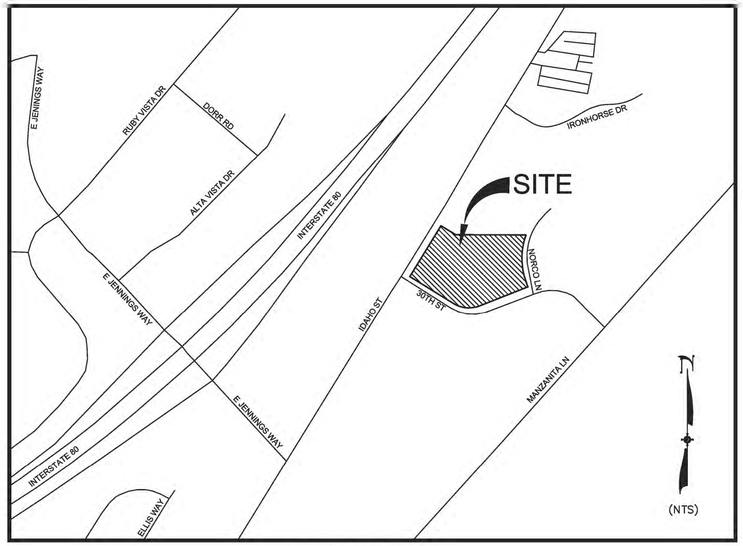
CITY ENGINEER OR ENGINEERING REPRESENTATIVE *DATE*

_____ _____

CITY PLANNER OR PLANNING DEPARTMENT REPRESENTATIVE *DATE*

PROFESSIONAL LAND SURVEYOR - STATE OF NEVADA
RYAN G. COOK
EXPIRES 12/31/20
No. 15224

9-14-2020



VICINITY MAP
(NOT TO SCALE)

SURVEYOR'S CERTIFICATE

I, RYAN G. COOK, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

1) THIS PLAT WAS PREPARED AT THE INSTANCE OF CITY OF MICHAEL H GALLAGHER AND TANA M. GALLAGHER.
2) THE LANDS SURVEYED LIE WITHIN THE NE 1/4 OF SECTION 11 & THE SE 1/4 OF SECTION 2, T34N, R55E, M.D.M. AND THE SURVEY WAS COMPLETED ON _____ 2020.
3) THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
4) THE MONUMENTS ARE OF THE CHARACTER SHOWN, OCCUPY THE POSITIONS INDICATED, AND ARE OF SUFFICIENT DURABILITY.

PROFESSIONAL LAND SURVEYOR - STATE OF NEVADA
RYAN G. COOK
EXPIRES 12/31/20
No. 15224

RYAN G. COOK NEVADA PLS 15224

NOTES

1) THE TOTAL AREA EQUALS 5.11± ACRES.
2) THE TOTAL NUMBER OF PARCELS = 1. THE TOTAL PARCEL AREA = 4.90± ACRES.
3) THE TOTAL NUMBER OF DEDICATIONS = 1. THE TOTAL DEDICATION AREA = 9,503± SQUARE FEET.
4) THE BASIS OF BEARINGS: NATIONAL SPATIAL REFERENCE SYSTEM 2007 (NSRS2007) EPOCH 2007.00 HOLDING THE CITY OF ELKO BROADCAST LATITUDE, LONGITUDE AND ELLIPSOID HEIGHT OF N40° 51' 38.57413", W115° 45' 09.58441" AND 5047.334 FEET FOR THE CITY OF ELKO CORS. COORDINATES ARE PROJECTED USING THE NEVADA STATE PLANE COORDINATE SYSTEM, EAST ZONE AND SCALED TO GROUND USING A COMBINED GRID-TO-GROUND FACTOR OF 1.000357. ORTHOMETRIC ELEVATIONS ABOVE MEAN SEA LEVEL ARE DERIVED USING GEOID 12.
5) A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY TO NV ENERGY WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT PARCEL. WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY.
6) A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY TO SOUTHWEST GAS CORP., WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT PARCEL. WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY.
7) REFERENCE #4 (BOOK 814, PAGE 370, FILE No. 335918), STATES THAT THE 100.00'X346.34' PORTION OF FORMER IDAHO STREET THAT WAS VACATED IS "SUBJECT TO ALL EXISTING POLES, LINES, CABLES, PIPES, DRAINS, UTILITY INSTALLATIONS, EASEMENTS, RIGHTS-OF-WAY AND LICENSES NOW EXISTING."

CITY OF ELKO CITY COUNCIL - APPROVAL

AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF ELKO, STATE OF NEVADA, HELD ON THE _____ DAY OF _____, 2020, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES AT THE TIME OF APPROVAL, AND ANY OFFERS OF DEDICATION SHOWN HEREON WERE ACCEPTED FOR PUBLIC USE.

_____ _____

MAYOR DATE

_____ _____

CLERK: ATTEST DATE

UTILITY COMPANIES CERTIFICATE:

THE UTILITY EASEMENTS SHOWN ON THIS PLAT HAVE BEEN CHECKED, ACCEPTED, AND APPROVED BY THE UNDERSIGNED CABLE TV AND PUBLIC UTILITY COMPANIES.

_____

SIERRA PACIFIC POWER COMPANY D/B/A NV ENERGY DATE

BY:
ITS:

_____

SOUTHWEST GAS CORPORATION DATE

BY:
ITS:

_____

FRONTIER DATE

BY:
ITS:

_____

ZITO MEDIA DATE

BY:
ITS:

COUNTY TREASURER'S CERTIFICATE

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL No. 001-560-045 HAS BEEN PAID FOR THE FISCAL YEAR OF 2020/2021.

_____ _____

ELKO COUNTY TREASURER DATE

FILE NO._____
FILED AT THE REQUEST OF
SUMMIT ENGINEERING CORP.
DATE:_____,2020
TIME:_____ __M.

_____
ELKO COUNTY RECORDER
MIKE SMALES

MERGER & RESUBDIVISION PARCEL MAP
FOR
GALLAGHER FAMILY TRUST,
DATED NOVEMBER 19, 1998
OF PARCEL A & PARCEL C OF PM 202347,
AND EXHIBIT "A" & "B" OF RESOLUTION & ORDER VACATING A PORTION OF IDAHO ST, DOCUMENT NO. 335918, BOOK 814 PAGE 370

ELKO ELKO COUNTY NEVADA

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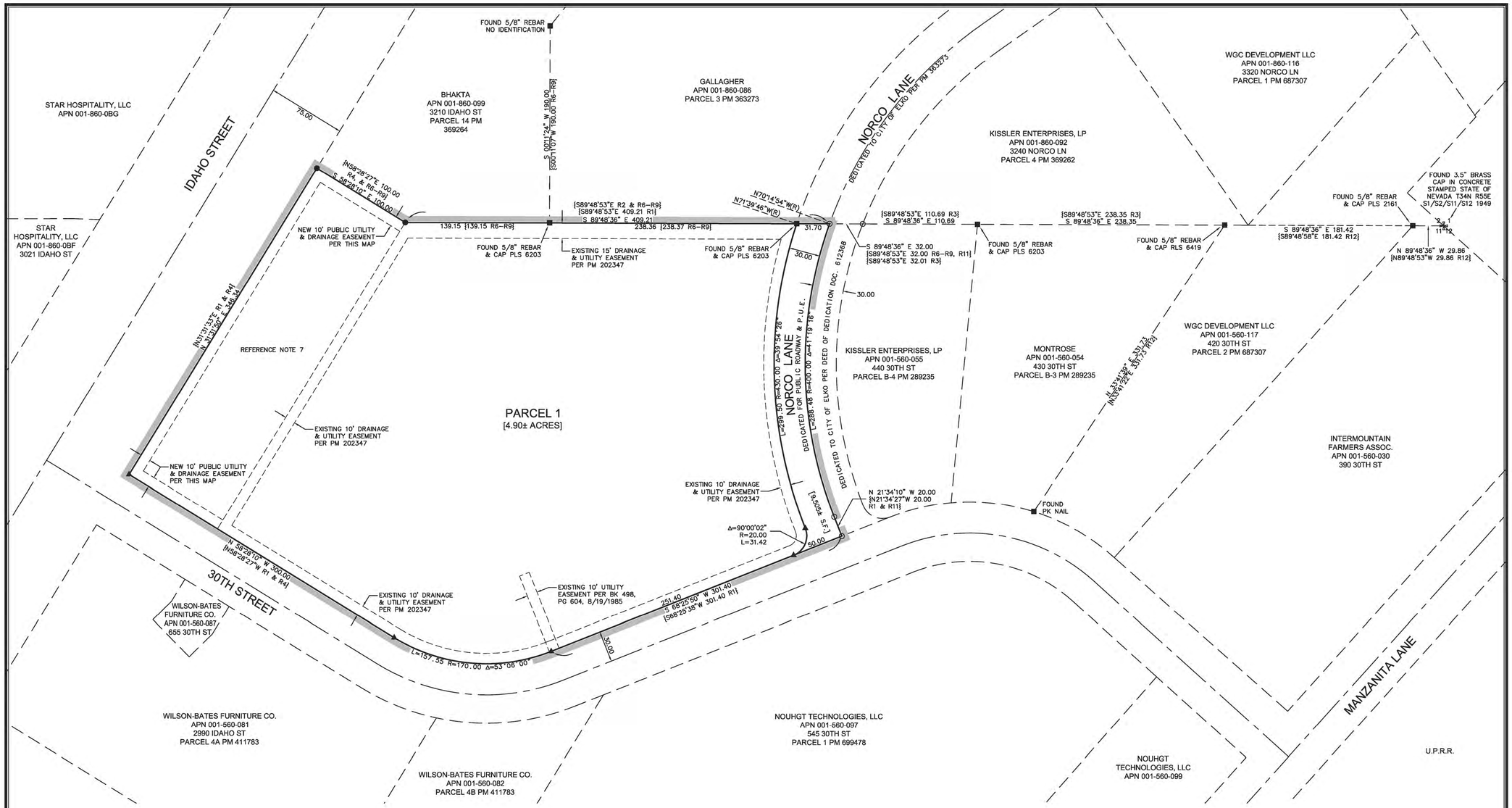
SUMMIT ENGINEERING CORPORATION
5405 MAE ANNE AVENUE, RENO, NV 89523 PH:(775) 747-8550 FAX:(775) 747-8559

SHEET 1 OF 2

PRELIMINARY, FOR REVIEW ONLY



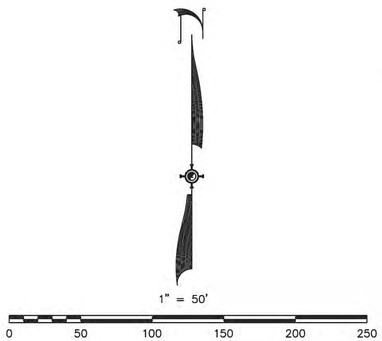
REFERENCES

1) PARCEL MAP NO. 202347, RECORDED ON FEBURARY 21, 1985.
2) PARCEL MAP NO. 217903, RECORDED ON AUGUST 18, 1986.
3) PARCEL MAP NO. 289235, RECORDED ON MARCH 15, 1990.
4) RESOLUTION AND ORDER VACATING A PORTION OF IDAHO STREET DOCUMENT NO. 335918, BOOK 814, PAGE 370, RECORDED ON MARCH 16, 1993.
5) PARCEL MAP NO. 337295, RECORDED ON APRIL 30, 1993.
6) PARCEL MAP NO. 363273, RECORDED ON JANUARY 10, 1995.
7) PARCEL MAP NO. 369262, RECORDED ON JUNE 21, 1995.
8) PARCEL MAP NO. 369263, RECORDED ON JUNE 21, 1995.
9) PARCEL MAP NO. 369264, RECORDED ON JUNE 21, 1995.
10) DEED OF DEDICATION DOCUMENT NO. 612368, RECORDED MAY 6, 2009
11) RECORD OF SURVEY MAP NO. 637804, RECORDED ON MARCH 10, 2011.
12) PARCEL MAP NO. 687307, RECORDED ON JUNE 12, 2014.

ALL RECORDED IN THE OFFICIAL RECORDS OF ELKO COUNTY, NEVADA.

LEGEND

■	FOUND MONUMENT AS NOTED
●	5/8" REBAR & CAP PLS 15224 TO BE SET
▲	NAIL & TAG PLS 15224 TO BE SET
2 1 11 12	FOUND SECTION CORNER AS NOTED
○	COMPUTED POINT; NOTHING FOUND OR SET
PM	PARCEL MAP
P.U.E.	PUBLIC UTILITY EASEMENT
[R#]	RECORD BEARING & DISTANCE PER REFERENCE
———	EXTERIOR BOUNDARY
— — —	ADJACENT PROPERTY BOUNDARY
- - - - -	EASEMENTS
—— – ——	CENTERLINE



9-14-2020

MERGER & RESUBDIVISION PARCEL MAP
FOR
GALLAGHER FAMILY TRUST,
DATED NOVEMBER 19, 1998
OF PARCEL A & PARCEL C OF PM 202347,
AND EXHIBIT "A" & "B" OF RESOLUTION & ORDER VACATING A PORTION OF IDAHO ST, DOCUMENT NO. 335918, BOOK 814 PAGE 370

ELKO | ELKO COUNTY | NEVADA

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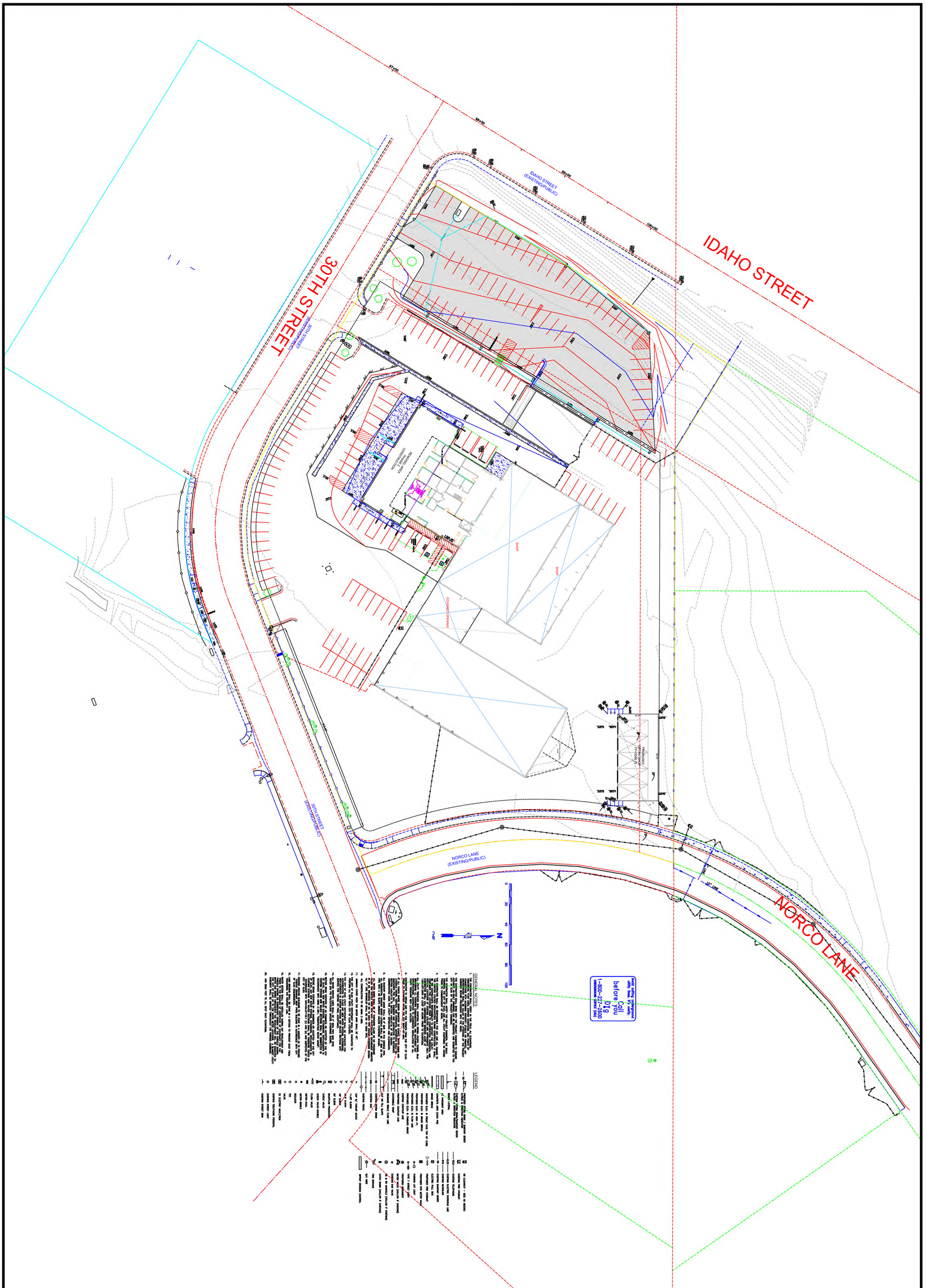
SHEET 2 OF 2



SHEET	SCALE	REV.	DATE	DESCRIPTION	BY	APP'D
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OF 1	VERT:					
	JOB NO: 82040					

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CIVIL IMPROVEMENT PLANS FOR GALLAGHER FORD PARKING ADDITIOIN SITE PLAN

ELKO ELKO NEVADA

DESIGNED BY:	NIB
DRAWN BY:	bjuzek
CHECKED BY:	NIB

SUMMIT ENGINEERING CORPORATION
5405 MAE ANNE AVE. RENO, NV. 89523
PHONE: (775) 747-8550 FAX: (775) 747-8559

Applicable Standards and Criteria

Statutes require a land use decision to be based on approval criteria. The decision must apply the approval criteria to the facts. The decision-maker must apply the adopted criteria for approval that are contained in the zoning code. If the applicant demonstrates compliance with these criteria, the application must be approved even if the decision-maker disagrees with the criteria, or believes that additional, un-adopted criteria should be applied. Conversely, if the applicant fails to demonstrate compliance with the applicable criteria, the decision-maker must deny the application even if it believes that the applicable criteria are unreasonable.

Regarding interpretation of criteria, if the wording is clear and unambiguous, it must be followed regardless of legislative intent. A hearing body may not insert what has been omitted or omit what has been inserted. If two provisions conflict, the more specific provision controls. For example, if a property is located in a zone that allows certain uses, but is subject to an overlay zone that restricts several of those uses, the overlay zone restrictions will control.

Findings

Findings are statements of the relevant facts as understood by the decision-maker and a statement of how each approval criterion is satisfied by the facts. A brief statement that explains the criteria accompanies approval or denial and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision.

The purposes of findings are to:

- Ensure that the hearings body applied the criteria prescribed by statute, administrative rule, and its own regulations and did not act arbitrarily or on an ad hoc basis.
- Establish what evidence the reviewing body relied on in making the decision
- Inform the parties why the hearings body acted as it did and explain how the conclusions are supported by substantial evidence.
- Demonstrate that the reviewing body followed proper procedures.
- Aid careful consideration of criteria by the reviewing body.
- Keep agencies within their jurisdictions.

Statutes require:

- An explanation of the standards considered relevant to the decision.
- A statement of the facts supporting the decision.
- An explanation of how the standards and the facts dictate the decision.

The words "brief statement" indicates the legislative intent that the statement need not be exhaustive, but rather that it contain a summary of the relevant facts. No particular form is required, and no magic words need be employed. Judicial review will look for:

A clear statement of what the decision-making body found, after hearing and considering all of tbe evidence, to be the relevant and important facts upon which its decision is based and

The reasons these facts support the decision based on the relevant criteria. Conclusions alone are not sufficient.

The findings must address all of the applicable criteria. Failure to make a required finding creates a void in the record and renders the order legally insufficient. It is a defect that alone will result in a remand.

A remand takes time and adds expense because it generally requires gathering more evidence, mailing additional notice, and holding another hearing. In addition, the local government may decide to change the decision after a remand if the record cannot be developed to support the original decision. Such delays or reversals are costly. The best course of action is to determine whether the criteria can be satisfied before the initial hearing is held. This requires the applicant to submit a complete application.

The best way to prepare findings is to:

1. Identify all of the applicable criteria
2. Start with the first criterion and deal with each element separately; for example, "The criterion is that the property is not subject to landslides, floods, or erosion."
3. State the criterion as a conclusion; e.g., "The property is not subject to landslides because…"
4. State the fact that leads to the conclusion the property is not subject to landslides; e.g., "…because the topography on the property has a 0% grade and the property is located on a lava bed."
5. Repeat the process for each element of every applicable criterion.
6. Where there is a criterion or element of a criterion that is not applicable, state why it is not applicable.
7. Where there is conflicting evidence, the safest course is to state there was conflicting evidence, but the hearings body believed certain evidence for certain reasons. This however, is not required.

Common problems with findings include:

- Failure to identify all applicable standards and criteria.
- Failure to address each standard and criterion.
- Deferring a necessary finding to a condition of approval.
- Generalizing or making a conclusion without sufficient facts.
- A mere statement that the criteria have heen met.
- Simple restatement of the criterion.
- Failure to establish causal relationship (direct observation, reports from other people), between facts and ultimate conclusions.

To survive a legal challenge, keep these tips in mind:

- State all assumptions.
- Articulate the link between the project impact and the conditions being imposed.
- If project is modified, add new findings.
- Make sure findings address criteria.
- Avoid findings that restate the law.
- Put in clear, understandable language.
- Make sure it is not class-specific discrimination (or PC may be liable).

Past Decisions as Precedent

A planning commission is not bound by an interpretation of a provision made in a prior case, as a matter of law, unless the particular provision has been construed by LUBA or the courts. As a matter of policy, however, consistent application of the same rules is desirable. Be mindful of the need to be consistent, but do not let consistency blind you to arguments that a clearly erroneous past interpretation should be corrected. Do not perpetuate a mistake!

Although the governing body also is not bound by its past interpretations of a provision, the planning commission should heed interpretations by the elected officials and let the disagreeing party argue to the governing body that it should change its mind.

Evidence

The applicant has the burden of proof. The applicant must introduce evidence that shows that all of the approval criteria are satisfied. The opponents, on the other hand, have the duty to show that the applicant's facts are incorrect or that the applicant has not introduced all of the facts necessary to satisfy the burden of proof. The questions that arise are:

- What is relevant evidence in the record?
- How much evidence is required to support a finding; that is, what does substantial evidence mean?
- How does the reviewing body address conflicting evidence in the findings?

The decision must be based on **relevant evidence** in the record. Evidence in the record is evidence submitted to the reviewing body. The reason for limiting the basis for the decision to evidence in the record is to assure that all interested persons have an opportunity to review the evidence and to rebut it.

A reviewing body may support an application in concept or members may have personal knowledge of facts that would satisfy the approval criteria, but it cannot approve the application on that alone. There must be substantial evidence in the record. Personal knowledge is not evidence in the record. In reality, such applications are approved but they will be remanded if appealed to LUBA. It is also important to note that an application cannot be denied on the basis of facts not in the record.

Relevant evidence is evidence in the record that shows an approval criterion is or is not satisfied. Testimony about effects on real estate values is not relevant unless the approval criteria require a finding on the effect on real estate values.

A statute provides that LUBA may reverse or remand a local government decision when the local government has "made a decision not supported by **substantial evidence** in the records as whole." The term "substantial evidence" does not go to the volume of evidence. Substantial evidence consists of evidence that a reasonable mind could accept as adequate to support the conclusion.

Where the evidence is such that reasonable persons may fairly differ as to whether it establishes a fact, there is substantial evidence to support the decision. In other words, what is required is enough evidence to show that an approval criterion is satisfied. If two people agree that there is not substantial evidence, there is not enough evidence.

When the applicant's evidence is countered by the opponents, there is **conflicting evidence**. Where there is conflicting testimony based on different data, but any of the data is such that a reasonable person might accept it, a conclusion based on any of the data is supported by reasonable evidence. That is, the hearings body may select any of the information for its decision provided it is reasonable that a person would accept the data as correct. The best course of action is for the hearings body to state what evidence it believes and why when it prepares its findings of fact.

The Decision

The job of the reviewing body is to ascertain the facts and to apply the approval criteria to the facts. The decision (due

QUINLAN™

August 10, 2020 | Volume 14 | Issue 15

Zoning Bulletin

in this issue:

Planned Unit Development

Neighbors oppose development project claiming planned buildings are too big

Citation: *Cummins v. District of Columbia Zoning Commission, 2020 WL 3467979 (D.C. 2020)*

The District of Columbia (D.C.) Zoning Commission (ZC) approved a planned unit development (PUD), its Housing Authority, The Community Builders, and Dantes Partners (collectively, the development team) had envisioned. Specifically, the development team wanted to construct 273 affordable housing units at the site of a park where D.C.'s Columbia Road and Georgia Avenue converged.

In 2017, the development team secured zoning approval. Half of the planned units were set aside to replace 174 units being torn down a Park Morton. The development team hoped that its new "Bruce Monroe" project would mean that Park Morton residents could be relocated to their new mixed-income community, which was contemplated under D.C.'s "New Communities Initiatives (NCI)" and was designed "to revitalize severely distressed subsidized housing and redevelop neighborhoods into vibrant mixed-income communities," NCI's website stated.

Three neighbors opposed the project. They contended that the planned structures were too big. They asserted that the ZC had improperly interpreted D.C.'s land use documents in granting the project's approval and appealed its decision to the District of Columbia Court of Appeals.

DECISION: Commission's order vacated; case sent back for further proceedings.

The ZC had applied old regulations in considering the development team's application, but its hearing was conducted pursuant to the procedural requirements of new regulations.

"The PUD application in this case was submitted in May 2016 by . . . Park View Community Partners LLC and the District of Columbia government. The zoning regulations were amended effective September 2016," the court wrote.

PROPOSED APARTMENT BUILDING'S HEIGHT AN ISSUE

The proposed apartment building would rise 90 feet into the air, and "would protrude substantially into a Neighborhood Conservation Area," the court found. "That raises a significant issue, because the Generalized Policy Map states that new development in Neighborhood Conservation Areas 'should be compatible with the existing scale and architectural character of each area.' "

In the court's view, the ZC had "not acknowledge[d] that a substantial part of

the [90]-foot-high building would be in a Neighborhood Conservation Area, nor did [it] analyze the consequences of that fact," the court added. "To the contrary, the Commission's order was written as though only the new row houses and [a] [60]-foot-high senior building would be in a Neighborhood Conservation Area."

Also, "[i]n assessing whether the density and height of the buildings in the PUD [we]re consistent with the Comprehensive Plan, the zoning in adjacent areas, and the character of the adjacent neighborhood, the Commission repeatedly stated that the areas adjacent to the western portion of the site [we]re designated on the FLUM [Future Land Use Map] as medium-density residential," the court added. "It appears to be undisputed, however, that this was an error, and that in fact those areas are designated as moderate-density residential. That is an important error, because the two designations are significantly different," it found.

The bottom line: The "Commission relied heavily on th[e] mistaken premise in explaining its conclusion that the PUD was consistent with both the FLUM and the character of the surrounding areas." Also, its conclusion had "explicitly and unambiguously rest[ed] on the incorrect premise that the adjacent areas were designated medium-density residential."

The ZC's order had indicated that a senior building "mimic[ed] many other apartment houses that ha[d] been built as infill developments in the area." A statement the ZC made "about comparable infill development appear[ed] to be unsupported by the record, and that inaccuracy [wa]s relevant to whether the PUD should or should not have been approved."

Also, the ZC's conclusion that the 90-foot building was consistent "with a FLUM designation of moderate-density commercial and the [60]-foot-high senior building was consistent with a FLUM designation of moderate-density residential" was not reasonable, the court found.

The FLUM stated that buildings in areas designated as moderate-density commercial "generally d[id] not exceed five stories in height." "Assuming that the average story would be [10] feet high, the Commission concluded that the FLUM [wa]s internally inconsistent, on one hand generally limiting buildings to no more than five stories but on the other hand authorizing buildings of up to [90] feet (and thus nine stories). The Commission appears to have resolved that perceived inconsistency by concluding that buildings of up to nine stories are generally permissible in areas designated in the FLUM as moderate-density commercial," the court explained. "We conclude that the Commission's analysis . . . is foreclosed by prior decisions of this court," the court ruled.

The FLUM stated that buildings in areas designated as moderate-density commercial "generally d[id] not exceed five stories in height."

For instance, in *Durant v. District of Columbia Zoning Commission*, the court had found that "[j]ust because the FLUM's description of moderate-density commercial refer[red] to the C-2-B zone, and a PUD in the C-2-B zone in turn c[ould] include a building up to [90] feet high (and thus presumably nine stories tall), that d[id] not mean that such buildings [we]re generally appropriate in a moderate-density commercial area."

POINTS TO REMEMBER

Here, the ZC had "failed to appreciate . . . that the FLUM designations of the surrounding areas weigh[ed] against the proposed PUD." "The Commission must take that consideration into account when deciding whether the PUD in this case is on balance consistent with the Compre-

Contributors

Corey E. Burnham-Howard

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hensive Plan and whether the benefits of the PUD outweigh the PUD's adverse effects," the court ruled.

The case cited is Durant v. District of Columbia Zoning Com'n, 139 A.3d 880 (D.C. 2016).

Want More Information?

For more on D.C.'s NCI, visit dmped.dc.gov/page/new-communities-initiative-nci.

Due Process

Property owner claims county officials violated his constitutional rights after issuing "stop work" order

Citation: *Mendes v. Beahm, 2020 WL 3473656 (W.D. Va. 2020)*

Nelson Mendes was embroiled in a zoning dispute with Warren County and several county officials concerning his farming property. Specifically, he alleged that four county officials had deprived him of property rights protected under the Constitution: David Beahm of the Warren County Building Inspection Department (BID); Matthew Wendling, the Warren County Planning Department's floodplain manager; Joseph Petty, the planning department's previous zoning administrator; and Taryn Logan, the Planning Department's planning director for the Planning Department.

The case arose after Mendes bought a waterfront property on the South Fork of the Shenandoah River. He planned to open a tree nursery and eventually build a home on the land.

After Mendes hired contractors to clear the property of existing trees and other obstructions and erected a greenhouse, the building department issued a "stop work order" and instructed Mendes to obtain a Land Disturbance Permit before proceeding.

Apparently, a neighbor had seen the contractors removing vegetation along the river and toss it into the river, which prompted the Department of Environmental Quality (DEQ) to visit, inspect, and take pictures of the property. The neighbor later recanted her story and admitted she had falsely reported Mendes "because she was upset by the clearing of trees near her land."

DEQ eventually determined there weren't any issues with the property, but when Mendes contacted Beahm to request the permit, Beahm accused him of violating several DEQ regulations, including failing to submit a full erosion and sediment control plan since his clearing project "exceeded 10,000 square feet per Warren County regulations."

A DEQ official overruled Beahm's position and confirmed that DEQ would take no further action against Mendes. Beahm eventually acquiesced to the DEQ's decision, and Mendes continued with the project from March 2018 to January 2019 without incident.

On January 16, 2019, Mendes received a Notice of Violation from the Planning Department's Deputy Zoning Administrator citing Mendes for several zoning ordinance violations, including:

- failing to obtain a zoning permit for "any and all" structures on the property;
- having "multiple accessory structures" on the property; and
- having part of a six-foot by 16-foot ramp protruding into the Shenandoah River in violation of Virginia Marine Resource Commission (MRC) regulations.

The planning department's letter stated that it had been conducting county-wide observations of properties along Warren County's Special Flood Hazard Area (SFHA) following a record rainfall in 2018. Mendes contacted Petty to express concern because he suspected that Beahm encouraged an investigation into his property "given their prior history."

On February 8, 2019, several building and planning department members visited Mendes' property at his request. He later learned that all structures on the property would need to be inspected for compliance with National Flood Insurance Program (NFIP) and Federal Emergency Management Administration (FEMA) standards.

And then, in March 2019, Petty told Mendes to obtain a residential building permit for a deck. Following a March 28, 2019 FEMA site visit, Mendes installed FEMA-compliant flood vents on the property and submitted applications for agricultural exemptions for the deck, greenhouse, and two metal garages.

In May 2019, Mendes received a "Zoning Determination" from the Planning Department requiring Mendes to obtain residential building permits for all structures within the flood plain area, including the deck, greenhouse, and garages to support his agricultural exemption application. Mendes appealed this determination to the Zoning Board of Appeals (ZBA). The ZBA ultimately required Mendes to comply with a Planning Department recommendation to pay a $10.00 permit fee.

THE LAWSUIT

Mendes filed suit against the individual defendants and the county. He alleged they had violated his section 1983 constitutional rights in how they handled the zoning disputes concerning his farming property.

The defendants asked the court to dismiss the lawsuit for failure to state a claim on which relief could be granted.

DECISION: Request for dismissal granted in part.

Mendes didn't have valid due process and conspiracy claims under Section 1983.

To survive a request for dismissal, Mendes' complaint had to "state a claim to relief that [wa]s plausible on its face." "A claim [wa]s facially plausible if the plaintiff plead[ed] factual content that allow[ed] the court to draw a

'reasonable inference that the defendant [wa]s liable for the alleged misconduct.' " "In determining whether Mendes ha[d] satisfied this plausibility standard, the court [had to] accept as true all well-pleaded facts in the complaint and 'draw[] all reasonable factual inferences from those facts in [Mendes'] favor,' " the court explained.

"A claim [wa]s facially plausible if the plaintiff plead[ed] factual content that allow[ed] the court to draw a 'reasonable inference that the defendant [wa]s liable for the alleged misconduct.'"

The court did not, however, have to " 'accept the legal conclusions drawn from the facts' or 'accept as true facts or unwarranted inferences, unreasonable conclusions, or arguments.' "

DUE PROCESS

The court dismissed Mendes' procedural and substantive due process claims.

Procedural due process—Mendes had to show that he had a protected property interest, which the defendants deprived him of without due process of law. But, the court noted, he wasn't able "to identify a property interest that was abridged by the actions of the defendants." He also hadn't taken advantage of "the available process in state court," so he had failed to exhaust the available remedies.

Substantive due process—Mendes had to show he had a property or a property interest that the state deprived him of and that the state's action "f[ell] so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency." In his view, the defendants "deprived him of 'substantive due process protections from arbitrary and capricious government action both in terms of the Planning Department's interpretation of the Warren County Zoning Ordinance and its procedures for enforcing such regulations,' " the court explained. "Specifically, Mendes claim[ed] that defendants 'singled' him out, constantly changed positions on a number of alleged zoning violations, aggressively pursued these accusations in bad faith, and failed to 'maintain policies and procedures' ensuring that the Planning Department enforced the Zoning Ordinance impartially."

But, Mendes conceded "about the lack of the deprivation of a protected property interest," and this was "fatal to this claim." Also, "the process in this case cured the deficiency," the court found. He had the opportunity to participate in two hearings, where the BZA examined the Planning Department's proposal. It was only after deliberation that "the BZA adopted the proposal, overturned [a] Zoning Administrator's May 1, 2019 Zoning Determination, and imposed a $10.00 zoning permit fee in accordance with the proposal to bring the property into compliance."

The bottom line: "Through these procedures, the BZA agreed with Mendes' position and exempted him from most permit requirements. Its decision to assess a $10.00 fee [wa]s not the 'conscious-shocking' behavior required to create a substantive due process violation."

CIVIL CONSPIRACY

Mendes also contended the defendants had committed civil conspiracy against him, in violation of section 1983. To bring this claim, Mendes had to show "that the defendants 'acted jointly in concert and that some overt act was done in furtherance of the conspiracy,' resulting in the deprivation of a federal right." He had to "make specific allegations that [would] reasonably lead to the inferences that members of the alleged conspiracy shared the same conspiratorial objective to try to 'accomplish a common and unlawful plan' to violate [his] federal rights."

Mendes claimed Planning Department and Building Department staff members had conspired to infringe upon his property rights. But, he failed to "sufficiently plead any actions that were not authorized by Warren County," and he didn't plead an actionable section 1983 conspiracy claim as a result.

Practically Speaking:

Mendes' complaint had to "allege enough facts from which the court, calling upon 'its judicial experience and common sense,' [could] conclude that Mendes [wa]s entitled to relief," the court found.

Land Development Plans

Court reviews whether land development plan to build auto parts retail store can move forward or requires further review

Citation: *Edgemark Littleton, LLC v. Cheswick Borough Council, 2020 WL 2300054 (Pa. Commw. Ct. 2020)*

Edgemark Littleton LLC and Cheswick Shopping Center, LLC were neighboring landlords. They took issue with a decision by the Cheswick Borough Council (CBC) to grant final approval to an amended land development plan that SimonCRE Carp LLC (SimonCRE) submitted in support of its proposal to build an O'Reilly Auto Parts store. That decision came after the Cheswick Borough Zoning Hearing Board (ZHB) determined that SimonCRE didn't need a parking variance to proceed with 30 parking spaces on the lot.

In the neighboring landowners' view, the land development application did not meet the Cheswick Borough Zoning Ordinance's requirements and did not comply procedurally with the Cheswick Borough Subdivision and Land Development Ordinance (SALDO).

A Pennsylvania court affirmed the CBC's findings, and the neighboring landlords appealed.

DECISION: Vacated in part; case sent back for further proceedings.

Additional evidence needed to be examined before a finding of fact could be rendered concerning the parking spaces.

The court explained that questions remained as to whether off-street loading was provided and whether the 30 planned parking spaces were sufficient for the gross floor area when the business office square footage was deducted from the parts area.

OFF-STREET LOADING

The neighboring landowners argued that the amended plan did not comply with the off-street loading space requirements of the zoning ordinance. That ordinance stated that "all structures and uses which require the receipt or distribution of materials or products by tractor trailer trucks or similar vehicles shall provide accessory off-street loading spaces." Another section of the ordinance stated that "retail stores require[d] one berth 'for every 5,000 square feet up to a maximum of two stalls.' " Also, "off-street loading space(s) [had to] be located so that 'no portion of the vehicle shall project into any traffic lane.' "

The neighboring landowners argued that the amended plan did not comply with the off-street loading space requirements of the zoning ordinance.

In the neighboring landlords' view, the land development plan was deficient because it did not show an off-street loading space. They contended two were required given the building's 7,200 square-foot size. SimonCRE asserted that the plan itself showed a loading space.

"While the disagreement as to whether one or two off-street loading space(s) is/are required can easily be resolved in Developer's favor, as there is not a second 5,000 square feet in the proposed structure under any interpretation of the amended plan, the decisions of the tribunals below are otherwise insufficient to permit appellate review," the court found.

While the lower court found the " 'plan provide[d] this off-street loading space,' there [we]re no supporting findings as to where and what in the plans and supporting documents comprise[d] the loading space that demonstrate[d] compliance with the Zoning Ordinance."

PARKING REQUIREMENTS

The neighboring landlords also contended the ZHB erred in finding that a variance wasn't required for the project to proceed with only 30 parking spaces, rather than the 36 that it was initially believed would be required for 7,200 square feet of gross floor area. "Off-street parking in the C-1 Community Business District, in which the property is located, must meet the requirements set forth in [two specific sections of the] Zoning Ordinance," the court explained. "Retail or service commercial uses require[d] one parking space per 200 square feet of gross floor area," according to the zoning ordinance. "Included in the calculation of gross floor area [wa]s 'floor space devoted to the principal use of the premises, including accessory storage areas located within selling or working space, such as counters, racks or closets; . . . and floor area devoted to the production or processing of goods or to business or professional offices.' "

Space "devoted primarily to storage purpose . . . or loading facilities, including aisles, ramps and maneuvering areas" was excluded from the gross floor area calculation.

In the neighboring landlords' view, portion of "Parts Area C" weren't excludable. Specifically, they contended the office that the store's general manager would use was a "business or professional office" and the lathe and workbench areas were "working space[s]." They also asserted there wasn't any loading space depicted on the floor plan or land development plan.

Here, the borough engineer had testified that he, the zoning officer, and the borough manager had identified Parts Area C as primarily a storage area based upon the engineer's conversations with SimonCRE and his existing knowledge of how auto parts stores operated and were laid out. Also, "O'Reilly Auto Parts' district manager testified that Parts Area C would be devoted primarily to storage purposes," the court explained.

"With respect to the majority of Parts Area C, we defer to the discretion of the Zoning Board in interpreting the ordinance it administers," the court wrote. "The question of whether Parts Area C will be 'primarily' used as storage and loading space does not require that it will never have other uses in the course of running the business. Incidental use of portions of Parts Area C for other purposes does not defeat the finding that the space will be primarily used for storage and loading," it added.

But, "it [wa]s clear that a discrete portion of the area characterized as Parts Area C w[ould] be used as a business office. . . . The definition of gross floor area in the Ordinance specifically provide[d] that such space [wa]s included in the calculation," the court found.

The zoning officer, the ZHB, and the lower court had "dealt with the question of the use of Parts Area C without differentiating and calculating the space that w[ould] be occupied by the office," so the reviewing court "lack[ed] the requisite findings of fact to determine whether the gross floor area of the proposed retail business, including the office but excluding the remainder of Parts Area C, [wa]s sufficiently accommodated by [30] parking spaces." Therefore, the court sent the case back for the lower court determine the correct quantity of gross floor area.

ACCESS REQUIREMENTS

The neighboring landlords also contended the plan didn't comply with the zoning ordinance's access

requirements. The ordinance provided "for access to off-street parking spaces and require[d] that '[a]ll accessways shall be designed so as to provide safe exit and entrance from the public street, in accordance with applicable borough standards or [Pennsylvania Department of Transportation] specifications.' "

Regarding off-street loading, a space had to be "designated with appropriate means of vehicular access to a street, highway or alley in a manner [that would] least interfere with traffic movement." In the neighboring landlords' view, the land development plan was deficient because vehicles would have to cross over a car wash property to a traffic signal by a Rite Aid and the SimonCRE's truck-turning template showed that tractor trailer trucks approaching from the west, which would have to cross into oncoming traffic to turn right to access the shared entrance. SimonCRE countered, asserting that the truck-turning template showed appropriate access for delivery trucks.

"There is nothing in the Zoning Ordinance that requires 'direct' access to a public street," the court found. Also, the zoning ordinance didn't require "an applicant to demonstrate that it ha[d] executed an agreement to acquire rights in property that [wa]s part of the 'designated' means of vehicular access." Also, SimonCRE, as the applicant, didn't have to "prove that neighbors' land w[ould]l not be affected by traffic issues." "It [wa]s only required that each off-street loading space shall be 'designated' with 'appropriate means of vehicular access to a street, highway or alley in a manner [that would] least interfere with traffic movement.' " Also, "accessways for other vehicles '[had to] be designed so as to provide safe exit and entrance from the public street. ' "

The bottom line: The lower court had found that the development plan "provide[d] 'appropriate means of vehicular access to the street' " and that the truck-turning template had "evidenced appropriate access for O'Reilly delivery trucks." "We view the formalization of the easement agreement to be an implicit condition of the plan approval, and find the agreement in effect to be sufficient for approval of the amended plan subject to this condition," the court ruled.

Land Use

High court examines whether attempt to block building of residential high rises on build site should proceed

Citation: *Shipyard Associates, LP v. City of Hoboken, 2020 WL 2120903 (N.J. 2020)*

Shipyard Associates LP (Shipyard) planned to build tennis facilities on a Hoboken, New Jersey pier that extended into the Hudson River. The city issued land-use approvals, but Shipyard then appended the plan, seeking to replace the tennis facilities with two high-rise residential buildings (the project).

The city opposed the amendment and unsuccessfully attempted to block the project by initiating a breach of contract lawsuit against Shipyard and challenging its application for a waterfront development permit.

After Shipyard obtained final site plan approval for the project, the city sought to apply two ordinances that would bar residential uses of the pier. Following an appellate court's ruling that blocked the city's attempt, it asked the Supreme Court of New Jersey to halt Shipyard's proposed construction even though Shipyard's right to build had vested under the state's Municipal Land Use Law (MLUL).

DECISION: Affirmed.

The zoning ordinances were subject to the MLUL's limitations, and the plain language of the MLUL didn't contain any exception "for the retroactive application of changes in zoning requirements within two years of the issuance of a final approval."

The bottom line: The city could not "apply either ordinance to the [p]roject[] because they became effective within two years of the issuance of Shipyard's final approval," the court found.

A CLOSER LOOK

This case concerned two city ordinances, which were passed in 2013—Z-263 and Z-264—and became effective in January 2014. These ordinances were designed to address issues related to the aftermath of Hurricane Sandy.

Z-264—This ordinance provided that "no new construction or substantial improvement of existing structures shall be permitted on piers or platforms projecting into or over the Hudson River or Weehawken Cove." If Z-264 applied to this project, its completion would be altogether prevented.

Z-263—This ordinance amended the city's municipal code to reflect the Federal Emergency Management Agency's Advisory Flood Hazard Map. It established coastal high hazard areas (V Zones) in which "[a]ll construction shall be landward of the mean high tide." "The only exceptions for construction 'seaward of the mean high tide' [we]re limited to certain uses: (1) those 'located or carried out in close proximity to water,' such as port facilities designed to unload cargo and passengers or 'ship[-]building and ship[-]repair facilities'; or (2) 'open space and outdoor passive and active recreational uses.' " Here, the pier in question was "seaward of the mean high tide in a V Zone, but if the ordinance were applicable here, the [p]roject would not satisfy either of Z-263's permitted uses," the court explained.

This case concerned two city ordinances passed in 2013 that were designed to address issues related to the aftermath of Hurricane Sandy.

The court ruled that "Z-263 [was]s a zoning ordinance

subject to the limitations of the MLUL." While two sections of that ordinance "contain[ed] exceptions to the bar against retroactive application of changes in zoning requirements to applications and preliminary approvals, respectively, we find no similar exception applicable to final approvals in [a different section]," the court wrote. "The [c]ity therefore c[ould not] use either Z-263 or Z-264 to amend the zoning requirements for the [p]roject, as both ordinances became effective during Shipyard's two-year period of insulation under [that other section—52(a)]."

Here, the lower court had rejected the city's attempt to defeat the project, finding that "under the plain terms of Section 52(a), any zoning ordinance passed within two years of that time could not apply to the [p]roject," the Supreme Court explained. "Because Shipyard had received final approval for the [p]roject on July 10, 2012, and '[t]he plain language of [Section 52(a)] d[i]d not contain a health and public safety exception after final approval,' " the lower court had found.

Zoning News From Around The Nation

Georgia

Rome City Commission asks Redevelopment Committee to chime in on River District plans

In 2018, an opportunities study was conducted on ways to improve Rome, Georgia's River District. Rather than adopting the study's findings, the Rome City Commission (RCC) sent the report to the city's Redevelopment Committee for review, *Northwest Georgia News* reported recently.

The news outlet reported that the area between West Third Street, North Fifth Avenue, and the Avenue A traffic corridors have been eyed for redevelopment. Also, as of print time, a meeting was scheduled for July 21 with design firm Goodwyn, Mills and Cawood, which has been contracted to design a River District streetscape rendering, the news outlet reported.

The full report is entitled *River District Multimodal Analysis and Redevelopment Plan—Draft* (December 2018).

Source: *northwestgeorgianews.com*

Michigan

Question lingers as to whether gravel mine should be exempted from local zoning laws

The Michigan Senate Transportation and Infrastructure Committee is likely to act on a state bill that would exempt gravel companies from adhering to ordinances and regulations established by local townships, *Michigan Radio* reported recently. The bill has been met with some opposition since it would permit gravel companies to mine gravel wherever it is found—e.g., in neighborhoods or recreational areas—the news outlet reported.

The article noted that Metamora Township has been in a battle with the Levy mining company, which wants to mine adjacent to a Superfund site. Also, in Leclanau Township, despite gravel mining zoning being in place, gravel companies want greater access to certain areas, and one company has bought parcels of land outside the dedicated mining zone, the news outlet added.

The gravel companies, however, claim that they have been arbitrarily denied permits for new mines despite a statewide gravel shortage.

Source: *michiganradio.org*

Montana

Proposed Helena Valley zoning rule changes met with strong opposition

The Helena and Lewis and Clark County's Consolidated City-County Planning Board has been considering a proposal to create several zoning districts across the county. These would be divided into urban, suburban, and rural zones subject to applicable zoning regulations concerning building height, land use, and placement of buildings in relation to property boundaries and water bodies.

Opponents of the proposal appear to be particularly concerned about changes that would mandate a 10-acre lot size for parcels located in the rural zoning district to curb density.

To view the zoning map and accompanying regulations, visit *lccountymt.gov/cdp/zoning.html*.

Source: *ktvh.com*

Ohio

Trumbull County awarded more than $399,000 in funding following feasibility study tied to air reserve station

In a newly released study, researchers examine compatibility issues concerning a 10-mile radius of the Vienna, Ohio's Youngstown Air Reserve Station. Five operational footprint factors were specifically examined: safety; bird/wildlife strike hazards; drone use; noise; and vertical obstruction awareness. And, the study addressed real estate, environmental, and commercial economic growth impact, too.

Now, Trumbull County has been awarded close to $400,000 in funding for the Youngstown Air Reserve Station Joint Land Use Study (JLUS), *WKBN* reported. Grant dollars will be used to set into motion education for the public about land use in the area.

To download the JLUS study, background on the study, and an executive summary, visit *http://yarsjlus.com./*.

Source: *wkbn.com*

Oklahoma

Regulators' "school buffer zone" definition and residency requirements for medical marijuana facilities being challenged

Several medical marijuana business owners in Oklahoman have filed suit over to block regulators from enforcing school-buffer zone and residency requirements, *Marijuana Business Daily* (*MBD*) reported recently.

The owners specifically take issue with the regulation's

definition of a 1,000-foot school buffer zone and two-year residency requirements. In their view, the rules could potentially impact thousands of licensed dispensaries, the news outlet reported, citing information published by *The Oklahoman*.

One attorney told *MBD* that while the school buffer zone rule had been in place for some time the definition was recently expanded to include head-start programs and preschools. Also, measuring the 1,000-foot distance has been an ongoing issue. The attorney told the news outlet that constitutional issues may arise if the dispensary has been granted a license but then the school adds something like an athletics field closest to the dispensary. In that case, should the dispensary be forced to move to adhere to the 1,000-foot buffer zone requirement, she posited.

Source: *mjbizdaily.com*

Virginia

2020 Community Survey released in Albemarle County

According to a newly released survey the Center for Survey Research at the University of Virginia conducted, 73% of residents in Albemarle County, Virginia said affordable housing was "important" or "very important." Close to 40% of respondents said that they've encountered barriers when accessing county recycling and waste services. They also said they've had issues accessing sidewalks (28%), hospitals (23%), and bike lanes (23%).

Overall, four out of five respondents reported excellent or good quality for county services. But, around 75% of respondents noted that traffic congestion was a top concern.

"Since 2002, Albemarle County has contracted with survey consultants biannually to conduct reliable and valid County-wide citizen surveys," the county's website stated. "Staff, elected officials and other stakeholders use the survey results for community planning and resource allocation, program improvement and policy making."

For more information, visit *albemarle.org/department.asp?department=ctyexec=2657*.

Source: *albemarle.org*

Washington, D.C.

Study concludes big real estate development firms may be the ones really benefiting from opportunity zones

An Urban Institute study, funded by a JPMorgan Chase grant, has found that while opportunity zone real estate development projects have benefitted low income community projects, big real estate developers, not minority-owned businesses, have reaped the biggest benefits, *BISNOW* reported recently.

The news outlet reported that the Trump Administration's opportunity zone plan focused on lowering racial inequality through tax cuts, introduced in 2017, to incentivize investments in lower income communities.

The study's findings suggest that while the incentives were intended to lead to affordable housing, better jobs, and community-based amenities, such as grocery stores, they should be redesigned to ensure that those investing in these projects deliver on helping the government meet desired outcomes.

Citing the issue of return on investment (ROI), the study explained that since investors generally seek a high ROI and low-income areas have lower returns, they've poured money into opportunity zones to create condominium, commercial, and retail projects in areas that have already been developed rather than focusing on communities in need of capital, the news outlet reported.

For more information, visit the Urban Institute's Metropolitan Housing and Communities Policy Center at *urban.org/policy-centers/metropolitan-housing-and-communities-policy-center/projects/opportunity-zones*. And, to download its research report, "An Early Assessment of Opportunity Zones for Equitable Development Projects," visit *urban.org/sites/default/files/publication/102348/early-assessment-of-ozs-for-equitable-development-projects_0.pdf*. The report, released on June 17, 2020, also addresses the challenges the COVID-19 crisis could pose to existing opportunity zone challenges.

Source: *bisnow.com*

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Zoning Bulletin

in this issue:

Conditional Use Permit

United States files suit against City of Springfield, Illinois claiming 'spacing rule' violates FHA

Citation: *Valencia v. City of Springfield, Illinois, 2020 WL 1035229 (C.D. Ill. 2020)*

A group of plaintiffs filed suit against the City of Springfield, Illinois after it refused to grant a zoning permit to allow a group home for three men with intellectual and physical disabilities to remain open.

The lower court granted the plaintiffs' request for a preliminary injunction. It found there was a likelihoud of success on the merits that the city had violated the Fair Housing Act (FHA) by discriminating against them on the basis of disability.

The Seventh U.S. Circuit Court of Appeals affirmed the lower court's decision.

Then, the United States challenged the city's practice. It contended the city's conduct constituted a "pattern or practice" of discrimination and a denial of rights to a group of persons that raised an issue of general public importance.

The United States asked the court to grant it judgment without a trial and to order the city to submit a plan to remediate the violations.

DECISION: Request for judgment without a trial granted.

The city violated the FHA by maintaining and enforcing a "spacing rule" that treated group homes with up to five unrelated individuals with disabilities less favorably than similarly situated unrelated, non-disabled individuals in similar living arrangements.

It was unlawful under the FHA "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of . . . a person residing in or intending to reside in that dwelling." The FHA also barred discrimination "against such individuals in the 'terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling.' "

The court explained that Congress had "explicitly intended for the [Fair Housing Amendments Act] to apply to zoning ordinances and other laws that would restrict the placement of group homes' for persons with disabilities."

The court explained that Congress had "explicitly intended for the [Fair Housing Amendments Act] to apply to zoning ordinances and other laws that would restrict the placement of group homes' for persons with disabilities."

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Even when construing the facts in a light most favorable to the city, the court concluded the record showed the enforcement action against the group home in this case "demonstrate[d] that the spacing rule treat[ed] group homes for up to five unrelated individuals with disabilities less favorably than it d[id] a similarly situated living arrangement consisting of up to five unrelated non-disabled people." "By maintaining the discriminatory spacing rule and enforcing it against the . . . group home, the [c]ity ha[d] denied housing and made it unavailable on the basis of disability."

DETAILS ON THE SPACING RULE

"The spacing rule render[ed] certain housing 'unavailable' to persons with disabilities that would otherwise be available," the court explained. "The 600-foot spacing rule on group homes for individuals with disabilities that d[id] not apply on comparable housing for non-disabled individuals plainly impose[d] discriminatory 'terms' and 'conditions' on housing on the basis of disability."

The bottom line: The zoning ordinance constituted "a discriminatory policy which is sufficient to establish a 'pattern or practice' of discrimination." By applying the spacing rule to the group home in this case and refusing to make "an exception as a reasonable accommodation for the three residents, the [c]ity also denied rights granted by the FHA to a group of persons," the court found. "[T]he availability of community-based housing for persons with disabilities [wa]s most assuredly an 'issue of general public importance,' " so the city was also liable for denying the group home residents' fair housing rights.

A CLOSER LOOK

The court also ruled that the city had a pattern or practice of discrimination, in violation of the FHA, which unlawfully denied the affected individuals' rights. This raised "an issue of general public importance," so the United States had the right to file this lawsuit and to seek civil penalties against the city, as the FHA authorized such action under certain circumstances.

Practically Speaking:

A reasonable fact finder could conclude that the city had a discriminatory intent in enforcing the spacing rule and denying the request for a conditional permitted use (CPU) permit. A reasonable fact finder could also find the plaintiffs in this case had suffered actual damages due to the city's actions.

Res Judicata

Landowners claim town violated their constitutional rights by taking private property without just compensation

Citation: *Grdinich v. Plan Commission for Town af Hebron Indiona, 2020 WL 3868704 (N.D. Ind. 2020)*

JRG LLC (JRG), which Jon Grdinich owned, purchased a two-acre property in 2015. He wanted to build a home on the lot. Ultimately, JRC legally conveyed title to the property to the Grdinichs.

The property contained a pre-existing pond, which had a marshy, mosquito-infested area. Grdinich chose to improve the pond and improve drainage by clearing the overgrowth, excavating, and banking the pond.

Grdinich submitted an application to the Army Corps of Engineers for approval, which was granted in February 2015. Then, Grdinich sought approval from the Town of Hebron, Indiana, which issued a permit.

As the construction at the property got underway, the town inspected and observed the house build and pond improvements. The Grdinichs moved to the property on September 15, 2015, after being issued a certificate of occupancy.

About seven months after they moved in, the Grdinichs

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received a building violation for "Ordinance Number A, Article 2, 2-2-11 § 13," which didn't exist. The violation notice stated that the property must be returned to its original grade within 90 days. The violation notice did not notify the Grdinichs of their appeal rights. And, a subsequent letter from the president of the Hebron Plan Commission (the Commission) to the Grdinichs clarified that the Commission considered the pond to be not permitted.

The Grdinichs alleged that the town violated their constitutional rights by taking private property without just compensation in violation of the Fifth Amendment, by violating:

- their procedural and substantive due process rights; and
- their equal protection rights.

The Grdinichs sought injunctive and other relief. They also contended that the town should be estopped from taking action regarding Plaintiffs' pond.

The Commission then filed a complaint against Jon Grdinich and JRG. It sought a court order to require them to remove the pond. Jon Grdinich and JRG filed counterclaims and third-party claims against the Plan Commissioner, the town, and the town council.

The issue for the court to decide was whether the Grdinichs' claims against the town and its officials should be dismissed.

DECISION: Request for dismissal granted in part.

One claim the Grdinichs brought—regarding a storm drainage line in the federal complaint they had filed—was subject to "res judicata."

"Res judicata . . . bar[red] any claims that were litigated or could have been litigated in a previous action when three requirements [we]re met: (1) an identity of the causes of action; (2) an identity of the parties or their privies; and (3) a final judgment on the merits."

Since the Grdinichs brought the storm drainage claim in their federal complaint, and there was no evidence that the claim here was different, it was dismissed, the court found.

The court also found that Jon Grdinich and his wife were "tenants in the entirety of the property at issue." The wife had been "adequately represented by her spouse in the [original] lawsuit and c[ould] be bound by the judgment in that case."

Also, the Indiana Court of Appeals had affirmed the dismissal of the storm drainage line claim for failure to state a claim upon which relief could be granted. "Grdinich appealed, so the judgment on the storm drainage line count [wa]s on the merits. . . . [I]t [wa]s a final judgment, so the final element of res judicata [wa]s met."

PRACTICALLY SPEAKING

This was a case where state and federal claims pertaining to the "same legal questions" arose. Those questions "applied to the same set of facts"—"whether the pond violate[d] Town of Hebron ordinances and whether [the d]efendants' attempts to enforce the ordinances violated [the Grdinichs'] constitutional rights. The parties [we]re substantially the same," the court explained. Jon's wife "as a tenant in the entirety, ha[d] the same interests as Jon Grdinich in the state court suit, so her addition to the federal suit as a party [wa]s of no consequence. It [wa]s substantially likely that resolution of the state court claims w[ould] dispose of all of the claims in this lawsuit, and these cases [we]re parallel," the court added.

Practically Speaking:

The parties [we]re substantially the same," the court explained. Jon's wife "as a tenant in the entirety, ha[d] the same interests as Jon Grdinich in the state court suit, so her addition to the federal suit as a party [wa]s of no consequence."

Preemption

Pipeline company argues FERC regulations preempt town from restricting it from building pipeline

Citation: *Empire Pipeline, Inc. v. Town of Pendleton, 2020 WL 3972315 (W.D. N.Y. 2020)*

Empire Pipeline Inc. (Empire) asked a federal court to grant its request for judgment without a trial on its claim that Federal Energy Regulatory Commission (FERC) regulations preempted the Town of Pendleton, New York's ordinance restricting its proposed gas pipeline project that include the construction and operation of a compression station.

DECISION: Judgment without a trial granted.

The town's zoning laws conflicted with the FERC certificate that had been granted and was preempted.

FERC had considered many of the topics the town considered in zoning the parcel intended for the compression station, and the issue for the court to decide was whether federal law preempted local zoning and land use regulations regarding the location of that compressor station, the court explained.

"After concluding that the project . . . would not affect the quality of the environment, . . . FERC issued the [c]ertificate conditioned upon [Empire] completing authorized construction within two years of date of the [c]ertificate; compliance with applicable FERC regulations; compliance with environmental conditions; and executing contracts."

Empire contended that the certificate barred the town from barring, interfering with, or unreasonably delaying the construction or operation of the pipeline project. It also asserted that the town opposed construction and delayed the siting, construction, and operation of the compression station. Further, it alleged the town's building inspector refused to act on the building permit application and, after Empire obtained the certificate, the town denied the building permit.

The town contended that the Natural Gas Act (NGA) did not provide FERC with the authority to determine permissible land use under the town's zoning code. It argued the (NGA) did not expressly preempt matters other than the siting, construction, expansion, or operation of liquid natural gas terminal.

"[T]he Town [wa]s correct that the [NGA] d[id] not expressly preempt local zoning and land use laws," the court wrote. But, the court didn't need to "determine whether the [NGA] preempt[ed] the field for construction and maintenance of the infrastructure to transport natural gas in interstate commerce. . . . Preemption here f[e]ll under the narrower conflict preemption doctrine," it found.

The town argued the FERC decision wasn't final. But, the bottom line on this point was that the "finality of the FERC decision [wa]s immaterial for determination of preemption; the preemption question remain[d] whether the Town Code c[ould] alter, delay, or hinder this federal project (authorized by the [NGA]) at whatever stage it might be. If there [wa]s any finality applicable it is whether the Act of Congress [wa]s final."

The "finality of the FERC decision [wa]s immaterial for determination of preemption; the preemption question remain[d] whether the Town Code c[ould] alter, delay, or hinder this federal project (authorized by the [NGA]) at whatever stage it might be."

Ultimately, the court found that "[t]he point of the FERC certification process [wa]s to deem interstate pipeline projects as consistent with the Natural Gas Act and hence that Act preempt[ed] contrary state and local laws that [could] affect the project."

Practically Speaking:

The Natural Gas Act preempt[ed] the [t]own's land use ordinances to preclude [it from] prevent[ing]construction by denying a building permit."

Zoning Classification

Owner of Home Depot store challenges approval to reclassify zoning to permit age-restricted housing

Citation: *Old Mine Associates, LLC v. Planning & Zoning Commission, 2020 WL 3120341 (Conn. Super. Ct. 2020)*

United Healthcare (United) used a property located at 48 Monroe Turnpike as its headquarters. The parcel consisted of 17.6-acres on the east side of Route 111, north of Old Mine Road in the Town of Trumbull, Connecticut. The property also consisted of a 253,000 square foot office building, with underground parking, and a free standing 145,000 square foot parking garage.

The office building consisted of four stories and the two upper stories served as office space while the lower levels were for parking. Surface parking existed on the site as well, and the free-standing garage, which was constructed in the 1990s, provided additional parking on three levels.

In 2015, United vacated the property, and the site remained vacant.

In August 2018, 48 Monroe Turnpike LLC (Monroe) bought the property. At the time, the parcel was zoned Business Commercial (B-C). A small section adjacent to the Pequonnock River and Old Mine Road carried a Residence A (R-A) designation.

Monroe, which Silver Heights Development owned, maintained offices in Westport, Norwalk, and Southbury, Connecticut. The company developed senior housing, including age restricted independent living units, memory care facilities, and assisted living.

In October 2018, Monroe filed an application with the Trumbull Planning and Zoning Commission, seeking to change the Business Commercial (B-C) and Residence A (R-A) designation of the 17.6 acres, to an Industrial (I-L) Zone.

Another application requested specific amendments to provisions of the Trumbull Zoning Regulations (TZRs). The proposal concerned the measurement standard to be used in measuring the height of a building and building setbacks.

Old Mine Associates LLC (Old Mine) contended that the use of Monroe for residential purposes was not compatible with a Home Depot operated on the adjacent property. Its attorney alleged a nuisance would be created if age restricted residential units and assisted living units were in close proximity to an active retail and commercial establishment such as Home Depot.

A municipal planner contended the residential development wasn't compatible with a retail commercial operation. He also questioned the elimination of available commercial real estate, in favor of multi-unit housing.

Old Mine read into the record a protest petition that property owners within 500 feet of the subject property signed. Four affirmative votes would be required, for the Planning and Zoning Commission to decide to change the zoning classification of Monroe.

Ultimately, the Planning and Zoning Commission voted to change the zoning. Old Mine and three local residents appealed to challenge the approval.

DECISION: Appeals dismissed.

There was substantial evidence in the record to support the Planning and Zoning Commission's decision to change the zoning classification.

The plaintiffs contended changing the zoning classification of Monroe to Industrial (I-L) and amending existing regulations was arbitrary and constituted an abuse of discretion, the court explained. For instance, they claimed:

- the owner of Monroe had submitted a "hypothetical" use of 48 Monroe Turnpike in that no age restricted residential development could be established on the property until the overlay zones, accompanied by a special permit, were approved;
- the applicant should have submitted the special permit application and overlay zones at the same time the change of zoning classification to Industrial (I-L) and the change in the Trumbull regulations were proposed; and
- the Commission's actions were arbitrary because there

was no discussion concerning uses allowed in an Industrial (I-L) Zone, which were not permitted in a Business Commercial (B-C) Zone—"[t]he only discussion, they argue[d], concerned an age restricted residential development, which [wa]s not allowed, absent approval of overlay zones, and a special permit."

Monroe asserted a two-step process was required under state law. In its view, "all of the approvals c[ould not] be heard simultaneously." The court agreed with the entity.

"Unlike a floating zone, or a planned development district (PDD), both of which c[ould] be situated at any location within a municipality without regard to the existing zoning classification, the MFO and ALF Overlay Zones c[ould] only be established within an Industrial (I-L) Zone, consistent with the Trumbull Zoning Regulations," the court found. So, "a change in the underlying zoning classification [wa]s a necessary prerequisite to establishing the overlay zones" with respect to 48 Monroe Turnpike, the court found.

"Unlike a floating zone, or a planned development district (PDD), both of which c[ould] be situated at any location within a municipality without regard to the existing zoning classification, the MFO and ALF Overlay Zones c[ould] only be established within an Industrial (I-L) Zone, consistent with the Trumbull Zoning Regulations," the court found.

The law required "a zoning commission to establish a date on which the new classification w[ould] take effect, and to publish notice in a newspaper having a substantial circulation in the community. Therefore, a two-step process [wa]s mandated, as a matter of law."

Finally, "48 Monroe Turnpike contain[ed] a vacant office building and a free standing parking garage. It adjoin[ed] a B-C Zone, in which a Home Depot [wa]s operated. The majority of the uses of land permitted in a B-C Zone, consistent with the Trumbull Regulations, [we]re also permitted in an I-L Zone," the court explained. "Only three uses, 1) manufacturing, fabricating, processing and packaging operations, 2) research laboratories, and 3) warehousing, [we]re permitted in an Industrial (I-L) Zone, but [we]re not allowed in a Business Commercial (B-C) Zone. . . . In each instance, it [wa]s mandated that an applicant obtain a special permit, . . . to insure a site-specific analysis by the Commission."

The bottom line: "The fact that multiple uses of land [we]re permitted uses in both an I-L Zone and a B-C Zone, indicate[d] that the change of zone [wa]s consistent with the comprehensive plan, the zoning regulations, and the zoning map."

PRACTICALLY SPEAKING

The evidence showed that "any age restricted residential development w[ould] be separated from a residential condominium development" by a major road—Route 111. "This provide[d] addition support for the claim that the change of zone [wa]s consistent with the comprehensive plan," the court found.

Also, the record showed that the Commission had taken into account a "Plan of Conservation and Development (POCD)" before reaching its decision. And, the court noted that "[a]ny alleged failure to adhere strictly to the POCD . . . [wa]s not fatal to the change in zoning classification or the amendments to the [r]egulations, both of which [we]re legislative actions."

Finally, the plaintiffs argued that the rezoning of 48 Monroe Turnpike constituted spot zoning. This occurred when "1) the change in zoning classification affect[ed] only a small area, and 2) the change [wa]s out of harmony with the municipal comprehensive plan."

"Here, neither prong of the spot zoning test is satisfied," the court ruled. "The change does not involve a small area of land, and the changes are consistent with the municipal comprehensive plan," it added.

Zoning Approval

Zoning issue lands landlord in legal hot water related to second apartment

Citation: *Agarwal v. Simms, 2020 WL 3455790 (N.J. Super. Ct. App. Div. 2020)*

A landlord rented a basement unit in a residence she owned in Jersey City, New Jersey for $1,501 per month to three tenants.

In July 2018, the landlord filed a landlord-tenant summons and verified complaint against the tenant seeking possession of the rental unit for non-payment of rent totaling $3500.89. The tenants agreed they owed the rent, and the court ordered them to deposit $2,512 and $1,500, respectively, with it.

The tenants didn't make the deposits for the outstanding rent. The court then entered a judgment of possession in September 2018 along with a warrant of removal with a lockout scheduled for September 27.

Three days before the scheduled lockout date, the Jersey City Division of Zoning issued a notice of violation to the landlord because there was a "[second] apartment created without prior zoning approval and a [certificate of occupancy]," at the residence. Two days later, the tenants filed an order to show cause to vacate the judgment of possession and dismiss the landlord-tenant action or in the alternative allow the lockout to proceed after the landlord provided relocation assistance.

At a court hearing in November 2018, a zoning inspector testified that after inspecting the premises, he wrote a notice of violation that required the landlord to give notice to the tenants to vacate for her to comply with the zoning ordinance.

The landlord's husband, who served as the building's manager, testified that there were two units at the residence. He claimed he was told when he went to obtain a certificate of occupancy that the residence was permitted to be "up to

two families." He didn't, however, have any proof that the residence was allowed to be two units.

The court found that the tenants had rented an illegal unit and that relocation was appropriate. The court ordered the landlord to pay the tenants six times the monthly rent—$9,006—for relocation assistance in accordance with New Jersey law. The court then set the move-out date as January 2, 2019 and explained that the parties could reconsider that date if the relocation assistance wasn't paid.

In February 2019, the tenants sent a letter to the court asking for a hearing because the landlord hadn't paid the relocation assistance.

In March 2019, the parties appeared in court and the landlord asked the court to reconsider its determination regarding relocation assistance. The court denied that request and extended the lockout period indefinitely until the relocation assistance was paid. The landlord appealed to a state court.

DECISION: Case dismissed without prejudice.

The landlord had filed a non-payment of rent claim against the tenants, but since the rental unit hadn't been lawfully rented, this wasn't a valid claim against them.

The New Jersey Anti-Eviction Act (AEA) was enacted to protect tenants from unfair and arbitrary evictions, a New Jersey superior court explained. It was permitted under state law "to evict tenants to correct 'an illegal occupancy because [the landlord] ha[d] been cited by local or [s]tate . . . zoning officers and it [wa]s unfeasible to correct such illegal occupancy without removing the tenant' " the court noted. But, while a landlord retained that authority, lawmakers had "imposed certain obligations on them to assist soon-to-be-evicted [tenant(s)] by adding" an additional section to the AEA. That section—2A: 18-61(h)—stated that if a residential tenant was displaced "because of an illegal occupancy . . . and the municipality in which the rental premises [wa]s located ha[d] not enacted an ordinance . . . the displaced residential tenant [would] be entitled to reimbursement for relocation expenses from the owner in an amount equal to six times the monthly rental paid by the displaced person."

Here, the landlord couldn't evict the tenants "from an illegal apartment for nonpayment of rent because the rent [wa]s not 'legally owing.' " Since this was a non-payment of rent case, the court dismissed the landlord's complaint without prejudice.

That payment was due five days prior to the displaced tenant's removal. Also, under the state's act, "a landlord c[ould] also evict a tenant from a residential apartment if the tenant 'fail[ed] to pay rent due and owing under the lease whether the same be oral or written.' " But, "the amount claimed to be due must be 'legally owing' at the time the complaint was filed."

The bottom line: A landlord's failure to obtain an occupancy permit did "not automatically void a lease; however, other equitable factors c[a]me to bear on the issue," the court explained. Such factors included:

- "whether the public policy of the underlying law would be contravened";
- "if voiding the lease w[ould] actually further that policy";
- "the burden or detriment on the parties if the lease [wa]s voided"; and
- "the benefit the party seeking to avoid the bargain ha[d] enjoyed."

Here, the landlord couldn't evict the tenants "from an illegal apartment for nonpayment of rent because the rent [wa]s not 'legally owing.' " Since this was a non-payment of rent case, the court dismissed the landlord's complaint without prejudice, meaning she would not be precluded from bringing suit against the tenants under a different theory.

CASE NOTE

In *Miah v. Ahmed*, the Supreme Court of New Jersey had ruled in 2004 that "a landlord [had] to provide tenants evicted because of a zoning-ordinance violation for an illegal dwelling, with a fixed amount of relocation-assistance benefits equaling six-times the monthly rent." In that case, the tenant had rented an attic apartment for about seven years when the city determined that the dwelling had violated a local zoning ordinance.

"After learning the apartment was illegal, the landlord sent a notice to the tenant indicating that the tenant had to vacate the premises by a certain date and may be entitled to relocation assistance. The tenant, at some point, stopped paying rent and continued to reside in the apartment beyond the specified date."

Practically Speaking:

When a landlord violates a local zoning ordinance, the violation can carry hefty financial consequences.

The case cited is Miah v. Ahmed, 179 N.J. 511, 846 A.2d 1244 (2004).

Zoning News from Around the Nation

California

Pacific Grove mobile-home park residents not happy with city over potential rezoning

The Friends of Monarch Pines Mobile has issued a press release challenging the city's decision to correct what it calls an error in the local zoning map, the *Monterey Herald* reported recently.

According to the press release, the city is trying to change the zoning for part of a park that currently serves as a road for residents to "open space." "If the area the City demands was converted to open space, it would mean bulldozing acres of pavement, ending all vehicle access to the Park, and forcing hundreds of aging homeowners to move," Spokesperson Milly Joseph said.

"It's obvious what the City is doing," Joseph added. "Pacific Grove wants the land for commercial development. It needs a backup plan in case other hotel projects fall through."

Residents are worried the city wants to avoid paying a "fair price" for the 10-acre property and is instead trying to drive their property values down by cutting off vehicle access to the park.

The group asserts that the city's plans violate eminent domain law, which requires governments to pay "just compensation" for private property taken for public use.

For more information, visit drive.google.com/file/d/1f6k3hHLd5H-B4tKWb9hCQNeG6VFoInMP/view.

Source: *montereyherald.com*

Massachusetts

Wings Neck resident in Pocasset loses appeal to use residence for commercial purposes

A resident of the Wings Neck area of the village of Pocasset, located in Bourne, Massachusetts, has lost an appeal of an order finding her in violation of the local zoning law by renting out her Lighthouse Lane home, *The Enterprise* reported recently.

The Bourne Zoning Board of Appeals (ZBA) issued the order after Christina Stevens, who owned 0-1 Lighthouse Lane, which is located in a residentially zoned area of Bourne, Massachusetts, rented the property out for special events including weddings. She contended the local zoning rules permitted such events as an accessory use, the news outlet reported.

But the ZBA and a state appeals court disagreed. The court upheld a previous judgment in the ZBA's favor, the news outlet reported.

Previously, Stevens had entered into an agreement with town selectmen authorizing limited use of the property. But, after the ZBA overturned the selectmen's action in the matter, she appealed to the state court.

The court found that the selectmen didn't have the authority to assign their judgment to how the bylaw that applied to Stevens' property would be enforced, the news outlet noted.

Source: *capenews.net*

North Carolina

New zoning category being added in Jamestown

The Jamestown, North Carolina Town Council has voted to add a zoning category that will permit mixed-use development in the same project, the *News & Record* reported recently.

The planned unit development, which will allow residential and commercial development as part of the same project, means that a proposed 467-acre project near Guilford College will likely proceed, the news outlet reported.

Prior to approving the PUD, a planning-services consultant presented information about the town's comprehensive plan. Data from that plan showed that more than 60% of 200 survey respondents said they were satisfied with at least one element of the plan for property development.

The news outlet also reported that before approving the PUD, Jamestown's town council stressed that future decisions concerning development will address maximum density for residential uses, a maximum number of multifamily units, and maximum square footage for nun-residential uses.

Source: *greensboro.com*

Texas

Close to 55 acres to be rezoned in Magnolia; Cameron's Master Park Plan study released

The Magnolia, Texas City Council has voted to rezone more than 50 acres in its Unity Plaza zoning district, *Community Impact* reported recently. The change means the district will be rezoned to semi-urban residential, the news outlet reported. Currently, Unity Plaza includes municipal buildings, including City Hall and a fire station. The zoning change concerns 55.5 acres of family-owned land behind these.

Prior to voting to rezone the area, the city's planning and zoning commission held public hearings and found that the consensus was that most residents would prefer residential zoning. A spokesperson for the commission told the news outlet that it's unlikely the acres would be used for anything but residential development.

And, in other news out of the Lone Star state, the Cameron, Texas City Council has received results from a Master Park Plan study, *The Cameron Herald* reported recently. The study came following the city's desire to seek grants for many different upgrades to benefit its parks, the news outlet reported.

A spokesperson for MRB Group, which conducted the study, explained at a July 2020 meeting that the study evaluated each of the city's parks and what improvements could be made to benefit the community. This included discussion of adding bathrooms, making lighting improvements, and adding an amphitheater at one of the local parks, the news outlet reported.

In addition, the city council's July 6, 2020 meeting concerned replacing lift stations, a wrecker storage yard-related ordinance, and a request to change food-truck ordinances.

To view the Master Park Plan, visit http://www.cameronte xas.net/DocumentCenter/View/477/Cameron-Master-Parks-Rec-Plan-2020-06-05.

Sources: *communityimpact.com; cameronherald.com*

Virginia

City of Richmond's new regulations governing short-term rental properties took effect July 1, 2020

In June 2020, the Richmond, Virginia City Council passed zoning ordinance amendments that include regulations governing short-term rental (STR) properties. Such properties are generally advertised on apps such as Airbnb, the city explained in a recently issued press release.

The zoning changes, which took effect July 1, 2020, permit STRs, which previously had not been permitted under the city's zoning ordinance. "Therefore, rental units offered for a period of fewer than 30 consecutive days were effectively prohibited. However, a March 2018 study revealed that 749 unique short-term rental units were active within city lines," the city's press release stated.

Recognizing a need to formalize its position on STRs, the

city, in collaboration with Richmond Regional Tourism and PlanRVA, "identif[ied] best practices and discuss[ed] the various approaches pursued by neighboring counties and cities." The work group studied more than a dozen localities in Virginia or similar in size to Richmond that have already implemented STR regulations, the city explained.

"This is a great example of how city policies can make Richmond more competitive," said Mayor Stoney. "I'm all about tourism and economic empowerment, letting Richmonders leverage their assets to strengthen our city's economy. However, other cities have seen unfettered short-term rentals lead to speculative markets. Bottom line: the health of our city's housing market must be protected. The Department of Planning and Development Review and Planning Commission have done a great job ensuring we have a responsible regulatory framework in place," the mayor stated.

Prior to passing the amendments, the city's planning and development review staff:

- conducted an aggressive public input campaign over a two-month period;
- solicited opinions via print and online surveys, emails, and phone calls; and
- attended councilmembers' meetings across the city's nine council districts and hosted two informational meetings exclusively focused on STR regulations.

"Throughout the community engagement process, we have heard from both short-term rental operators and other residents who had concerns about STRs," explained Mark Olinger, director of the Department of Planning and Development Review. "With these regulations, we hope to strike a balance by allowing homeowners to rent their properties to supplement their incomes while limiting the effects to the character of residential neighborhoods and the housing supply," Olinger added.

The city said the final regulations "emulate best practices from around [Virginia], allowing short-term rental units to operate as an accessory use to dwelling units with conditions to ensure the health and safety of the renters and minimize any negative effect on the permanent residents of the neighborhood."

For more information on STRs in Richmond, visit http://www.richmondgov.com/PlanningAndDevelopmentReview/ShortTermRentals.aspx, where you can access the ordinance governing STRs, a fact sheet on STRs fact, and information about applying for STR permits and reporting zoning violations regarding STRs.

Source: *patch.com*

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Zoning Bulletin

in this issue:

Supreme Court Spotlight

Ruling on MCA may impact zoning and other issues concerning Native American land

Citation: *McGirt v. Oklahoma, 140 S. Ct. 2452 (2020)*

A case out of the Supreme Court concerning the convictions of hundreds of Native Americans in Oklahoma may have broader implications for zoning and other governmental functions, such as taxing, *The New York Times* reported recently.

THE FACTS

Jimcy McGirt was convicted in an Oklahoma state court for sexual offenses. Following his conviction, he unsuccessfully argued that the state did not have the jurisdiction to prosecute him because he was a member of the Seminole Nation and the crimes had taken place on the Creek Reservation.

The Oklahoma District Court for Wagoner County and the Oklahoma Court of Criminal Appeals McGirt's denied McGirt's request for a new trial, which he contended must take place in federal court.

The Court accepted the case for review.

DECISION: Reversed.

For purposes of the federal Major Crimes Act (MCA), land that had been reserved for the Creek Nation since the 19th century stood as "Indian country," the Court ruled in a 5-4 decision.

The state of Oklahoma argued that Congress had ended the Creek Reservation during an "allotment era" when Congress pressured tribes to abandon communal lifestyles and divide their land into smaller lots that individual tribe members owned. But, there wasn't anything in the agreement with Creek "evincing anything like the 'present and total surrender of all tribal interests' in the affected lands," the Court's syllabus stated.

Many legal experts, government officials, and activists have said this historic ruling is expected to have complex legal implications for decades to come, the Washington Post reported.

The state also contended that the MCA hadn't applied in eastern Oklahoma. It asserted that the Oklahoma Enabling Act, which transferred all non-federal cases pending in territorial courts to that state's court made the state courts the successors to federal territorial courts' authority to try Native Americans for crimes committed on reservations. But, the Court reasoned that argument rested on state practices that would defy the MCA.

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COURT'S DISSENTING OPINION RAISING ZONING ISSUE

About the majority's opinion, Chief Justice John Roberts, joined by Associate Justices Samuel Alito, Jr., Brett Kavanaugh, and Clarence Thomas wrote, "Not only does the Court discover a Creek reservation that spans three million acres and includes most of the city of Tulsa, but the Court's reasoning portends that there are four more such reservations in Oklahoma. The rediscovered reservations encompass the entire eastern half of the State—19 million acres that are home to 1.8 million people, only 10%-15% of whom are Indians."

"Across this vast area, the State's ability to prosecute serious crimes will be hobbled and decades of past convictions could well be thrown out. On top of that, the Court has profoundly destabilized the governance of eastern Oklahoma. The decision today creates significant uncertainty for the State's continuing authority over any area that touches Indian affairs, ranging from zoning and taxation to family and environmental law," Chief Justice Roberts wrote.

PRACTICALLY SPEAKING

Many legal experts, government officials, and activists have said this historic ruling is expected to have complex legal implications for decades to come, the *Washington Post* reported. In addition to impacting zoning and taxation, other civil matters, such as child custody may be impacted, the *Post* reported.

Sources: *washingtonpost.com*; *nytimes.com*

Zoning Violation

Owner of vacant lot who was fined for removing trees without a permit files lawsuit against the city and its officials

Citation: *Delta Business Center, LLC v. City of Taylor, 2020 WL 4284054 (E.D. Mich. 2020)*

In 2017, Delta Business Center LLC (Delta) retained a tree service to remove trees and other debris from a 4.88 vacant parcel of land it owned. Once the work began, the city of Taylor, Michigan issued a stop-work order because Delta hadn't obtained a permit as required under the city's ordinance, which addressed tree preservation and replacement.

Weeks later, Delta submitted a tree-removal permit application, a copy of the property's survey, and a check for the application fee. The city cashed the check, and the planning director sent Delta a letter requesting additional information to process the permit application.

In April, Delta submitted a list describing the trees it intended to remove once the permit was granted. The trees the service provider had already removed from the property were not on the list.

The planning director returned a copy of Delta's permit application with a handwritten note indicating that "Trees have already been removed without a permit. Permit would have been denied. Permit processed for determination of tree fund amount due, due to non-replacement." She also included handwritten notes and documentation purporting to support a calculation of $136,700.

On July 20, 2017, Taylor's Building Department invoiced Delta for a fine of $136,700. The invoice did not indicate how the number was calculated, and in December 2017, Taylor assessed the property in the amount of the fine. Since that time, interest and penalties accrued, which Delta did not pay.

Delta filed suit against the city, and several officials, including the planning director (collectively, the defendants), alleging a Fifth Amendment takings claim. The defendants asked the court to dismiss the action for lack of jurisdiction. Alternatively, they asked for a stay until the Taylor Zoning Board of Appeals could address the issue with Delta.

DECISION: Defendants' request for stay granted.

The controversy wasn't ripe for judicial review.

Contributors

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The court agreed with the defendants that the matter wasn't ready for a court to review because the Taylor ZBA hadn't yet rendered a final decision.

"Until recently, there were two requirements before a plaintiff could pursue a takings claim in federal court: (1) 'the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue' and (2) 'the property owner has exhausted the proper state procedures for seeking just compensation,' " the court explained.

In 2019, the Supreme Court eliminated the second requirement, so filing a state court action was no longer a prerequisite to a Fifth Amendment takings claim. But, the "finality requirement" remained, which meant "a 'final' decision [had to be rendered] before a takings claim [would be] ripe for judicial review in federal court." The final decision required:

- "a decision ha[d] been made 'about how a plaintiff's own land may be used' "; and
- "the local land-use board ha[d] exercised its judgment regarding a particular use of a specific parcel of land, eliminating the possibility that it may 'soften[ ] the strictures of the general regulations [it] administer[s].' "

In 2019, the Supreme Court eliminated the second requirement, so filing a state court action was no longer a prerequisite to a Fifth Amendment takings claim.

Here, Delta had not "sought a decision from the Taylor ZBA, ha[d] not obtained a final decision from the Taylor ZBA, and ha[d] not even alleged that it would be futile to seek a decision from the Taylor ZBA because such a process [wa]s purportedly unavailable," the court explained. Therefore, Delta had "not satisfied the well-settled finality requirement, which [wa]s a prerequisite to litigation," and its takings claim wasn't ripe for review.

Practically Speaking:

The court noted that the takings claim would be stayed until the Taylor ZBA had the opportunity to review the matter and issue a final decision.

Conditional Use Permit

Landowners challenge planning commission's decision concerning wind farm application

Citation: *Ternes v. Board of County Commissioners of Sumner County, 464 P.3d 395 (Kan. Ct. App. 2020), unpublished*

In 2015, Invenergy LLC (Invenergy), a wind-farm developer, began obtaining lease agreements from Sumner County landowners. Under the county's zoning regulations, commercial wind energy projects were allowed on "Agricultural Commercial District" (ACD) property through a conditional use permit.

The issue for Invenergy was that the land it wanted to develop was zoned as a "Rural District" (RD), which did not permit wind energy projects. Therefore, Invenergy had to satisfy two requirements to lawfully operate the wind farm. Specifically, it had to obtain:

- a zoning change from RD to ACD; and
- a conditional use permit to operate a commercial wind farm.

In 2016, Invenergy filed applications for a zoning change and for a conditional use permit, which would impact about 14,000 acres of land in northern Sumner County. Invenergy planned to include between 60 and 65 commercial wind turbines in the Argyle Creek Wind Project.

NOTICE PUBLISHED

Later in 2016, Invenergy published notice in the *Belle Plaine News* about its zoning change and conditional use permit applications. The notice identified Invenergy as the applicant, stated the legal description of the property, and included a map labeled "Argyle Creek Wind Project" (ACWP). The notice, however, incorrectly used the name of a previously approved wind energy project—"Wild Plains Wind Project" (WPWP)—when describing Invenergy's request for a conditional use permit, which was unrelated to Invenergy's ACWP. The notice explained that a public hearing before the Sumner County Planning Commission (Planning Commission) would occur on December 7, 2016.

On November 17, 2016, the county mailed certified letters with the published notice, a map of the project's boundary and notice that Invenergy's application would be presented to the Planning Commission on December 7. The letter also incorrectly used the name WPWP when describing Invenergy's request for a conditional use permit, but the map was labeled ACWP and the legal description correctly described the proposed project's boundaries. Individuals and entities that owned property within 1,000 feet of the ACWP except for Jeffery and Brooke Potucek.

Prior to the December 7 meeting, the Planning Commission discovered the error in the notice and the certified letters but determined the error didn't require republication or a meeting delay. The county, however, sent another certified letter to landowners owning property within 1,000 feet of the project—it didn't address a letter to the Potuceks, though.

The December 7 hearing took place, and the Planning Commission considered Invenergy's zoning change application. An Invenergy representative explained that the company wanted to construct a commercial wind project, and 13 residents voiced their opposition to it, citing health issues, diminished property values, noise problems, and undesirable scenery.

Following the hearing, the Planning Commission recommended that Invenergy's request for the zoning change should be denied. Those members who voted in favor of denial explained that:

- the area contained too many current and future residential properties;
- the zoning change would adversely affect surrounding land use; and
- the change did not follow the comprehensive plan.

The Planning Commission also voted to recommend denying Invenergy's request for a conditional use permit and submitted its written findings to the Planning Board.

Then, on December 21, 2016, the county mailed the Potuceks a letter about Invenergy's applications and informed them of the Board's meeting scheduled for December 27, 2016. That same day, Invenergy amended its applications by revising the project's boundaries to eliminate about 700 acres of the project to address concerns over the project's proximity to an area with higher housing density. As a result of the reduced footprint, the land belonging to the Potuceks—along with several other individuals—was no longer within 1,000 feet of the project boundary.

On December 27, the Planning Board met and approved the zoning change and conditional use permit applications. Then, the landowners filed suit challenging the Planning Board's decision. They asserted that its approval of the zoning change wasn't reasonable and that it lacked jurisdiction to approve the conditional use permit.

The lower court struck the conditional use permit and zoning change applications. On appeal, the board contended it could approve the permit against the planning commission's recommendation and that the zoning change was reasonable even though the evidence presented at the hearings supported only a wind energy project and no other permitted use in an ACD. The landowners also appealed, claiming the imperfect notice on the applications rendered the board's zoning decisions invalid.

DECISION: Affirmed in part; reversed in part.

The lower court erred by striking the zoning change and conditional use permit, the Court of Appeal of Kansas ruled.

"Contrary to the district court's findings, the [b]oard could approve the conditional use permit despite the planning commission's recommendation to deny the permit, and the zoning change was reasonable," the court wrote.

A CLOSER LOOK

The Planning Board had only considered the proposed wind energy project and no other "broad scope of permitted uses" in the ACD, the court explained. "Even though a wind energy project is a permitted conditional use in an [ACD], the district court's reasoning would [have] require[d] Invenergy to present evidence on other permitted uses which will not occur," it added. "[A]ny evidence on non-proposed uses allowed by the zoning district would be entitled to little weight," the appeal court found, though. Also, it added, "no community opposition was raised against these other uses allowed by an [ACD]. As a result, the zoning change [wa]s reasonable even though the [b]oard considered only the proposed use of a wind energy project and not the other uses permitted in an [ACD]."

THE NOTICE ISSUE

The lower court had not erred by ruling that imperfect notice by the county did not render the zoning decisions invalid.

The court noted that "the misidentified project name did not affect the community's opportunity to appear and be heard before the Planning Commission and the Board." "The name [WPWP] still notified the citizens that Invenergy proposed to build and operate a wind farm. Thus, the notice satisfied the purpose of informing the public of the applicant's proposed use. And once the [c]ounty discovered the error, it sent corrected notices to those most likely to be affected by the proposed use—the surrounding landowners," it added.

"Contrary to the district court's findings, the [b]oard could approve the conditional use permit despite the planning commission's recommendation to deny the permit, and the zoning change was reasonable," the court wrote.

Further, the public could tell the name of Invenergy's proposed project from the published notice, the court found. "The notice included an accurate legal description of the project area and a map of the project's boundaries. The [WPWP] was a previously approved wind energy project and therefore could be easily recognized as a mere typographical error. And the correct name of the project is the most conspicuous language in the notice—in large font above the map. The [c]ounty substantially complied with the requirement to describe Invenergy's proposal for a conditional use permit in general terms." Therefore, the conditional use permit was valid even though the name of the wind project had been misidentified in the company's proposal.

Case Note:

"The only notice mailed 20 days before the Planning Commission's meeting contained the incorrect name of [WPWP] when describing the requested conditional use permit," the court explained.

RLUIPA

The Satanic Temple files suit against Minnesota city after it orders take down of a veterans memorial park display

Citation: *Satanic Temple v. City of Belle Plaine, Minnesota, 2020 WL 4382756 (D. Minn. 2020)*

In 2017, Belle Plaine, Minnesota passed two resolutions, 17-020 and 17-090. Resolution 17-020 established a policy regarding a limited public forum in the city's Veterans Memorial Park. Specifically, the resolution stated that the city council wanted "to allow private parties access to Veterans

Memorial Park for the purpose of erecting displays in keeping with the purpose of honoring and memorializing veterans." Also, the city would "designate[] a limited public forum in Veterans Memorial Park for the express purpose of allowing individuals ur organizations to erect and maintain privately owned displays that honor and memorialize living or deceased veterans, branch of military and Veterans organizations affiliated with Belle Plaine." It also stated that "[t]he requesting party and not the [c]ity shall own any display erected in the limited public forum. The display must have liability coverage of 1,000,000." If the city wanted to close the limited public forum or rescind the policy, its city administrator had to right to terminate all permits with 10 days' written notice to the display's owner.

In July 2017, Resolution 17-090 rescinded Resolution 17-090. This resolution stated that "[p]rivate displays or memorials placed in the park shall be removed within a reasonable period by the owner thereof or, upon notice to such owner, or they will be deemed abandoned and removed by the City."

In February 2017, The Satanic Temple (TST) submitted an application to erect a display in the Veterans Memorial Park pursuant to Resolution 17-020. It received the permit on March 29, 2017. Around this time, the Belle Plaine Veterans Club also obtained a permit under Resolution 17-020 to erect a display.

On June 29, 2017, TST notified the city administrator that its memorial monument was complete. It reported spending a lot of money on the design and construction of the display and asserted that it had obtained liability insurance as required by Resolution 17-020.

Before Resolution 17-090 was passed, the Belle Plain Veteran's Club voluntarily removed its display from Veterans Memorial Park. After Resolution 17-020 was rescinded on July 17, 2017, Belle Plaine notified TST by letter dated July 18 that Resolution 17-090 had been adopted. It enclosed a check reimbursing TST for its permit-application fee. As a result of Resolution 17-090, TST never erected its display.

Also on July 18, 2017, Belle Plaine issued a press release stating, "The original intent of providing the public space was to recognize those who have bravely contributed to defending our nation through their military service. In recent weeks and months, though, that intent has been overshadowed by freedom of speech concerns expressed by both religious and non-religious communities."

THE LAWSUIT

TST filed suit against Belle Plaine, its mayor, and its city council members (collectively, the defendants) alleging they had violated its constitutional right to free exercise of religion. It also alleged the defendants had violated TST's rights under the Religious Land Use and Institutionalized Person Act of 2000 (RLUIPA) and denied it equal protection under the law.

TST and Belle Plain both requested judgment on the pleadings in their favor.

DECISION: TST's request for judgment on the pleadings denied; defendants' request for judgment on the pleadings granted in part.

Belle Plaine was entitled to jndgment on the pleadings with respect to TST's claim that it had violated the RLUIPA.

TST didn't "sufficiently allege any facts that entitle[d] [it] to protection under RLUIPA," the court found. In TST's view, it had satisfied its burden to establish a RLUIPA claim because the permit it had been granted constituted an easement—"the jurisdictional requirement of RLUIPA."

The court disagreed. "[U]nder RLUIPA, jurisdiction [wa]s invoked when a 'substantial burden [wa]s imposed *in the implementation of a land use regulation or system of land use regulations*, under which a government ma[de], or ha[d] in place formal or informal procedures or practices that permit[ted] the government to make, individualized assessments of the proposed uses for the property involved.' "

"A 'land use regulation' [wa]s a 'zoning or landmarking law . . . that limit[ed] or restrict[ed] a claimant's use or development of land (including a structure affixed to land), if the claimant ha[d] an *ownership, leasehold, easement, servitude, or other property interest* in the regulated land or a contract or option to acquire such an interest.' "

"An easement," the court explained, was "an interest in land possessed by another which entitle[d] the grantee of the interest to a limited use or enjoyment of that land." Here, the court found, TST had not plausibly alleged facts that its one-year revocable permit created an easement. "At most, TST allege[d] that it held an express easement before its permit was terminated. But TST nonetheless fail[ed] to allege sufficient facts to identify the Belle Plaine permit as such," the court ruled, noting that there wasn't any legal authority supporting TST's argument to extend RLUIPA to the facts presented in this case.

There wasn't any legal authority supporting TST's argument to extend RLUIPA to the facts presented in this case.

In addition, TST didn't allege any facts that Belle Plaine had "acted pursuant to any zoning or landmarking law." While the complaint alleged RLUIPA violations, it didn't "identify any zoning or landmarking law under which Belle Plaine acted when it passed Resolution 17-090."

Also, TST didn't allege any facts supporting its contention that "a substantial burden on TST's religious exercise was imposed by Belle Plaine's implementation of any land use regulation nor any other facts that would invoke RLUIPA's protections. And TST alleges no other valid ownership interest in the land."

The bottom line: "A government entity implement[ed] a land use regulation 'only when it act[ed] pursuant to a zoning or landmarking law that limit[ed] the manner in which a claimant may develop or nse property in which the claimant has an interest.' "

CLAIMS AGAINST THE MAYOR AND CITY COUNCIL MEMBERS

The mayor and the city council members were entitled to judgment on the pleadings with respect to the claims against them because TST hadn't identified any "factual or legal grounds that support [ed] holding [them] liable in their individual capacities for TST's Section 1983 claims."

The court explained that "[a]t best, the complaint identifie[d] the fact that the individual [c]ouncil [m]embers [had] voted to enact Resolution 17-020 and Resolution 17-090" and that TST had "identifie[d] statements by [them] regarding the intent of rescinding Resolution 17-020." These statements weren't sufficient, though, because the court would "consider only the *nature* of the act after stripping it of all considerations of intent and motive." "TST concede[d], and the [c]ourt agree[d], that the enactment by vote of Resolution 17-090, regardless of the [c]ouncil's rationale, [wa]s a 'quintessentially legislative' function and an 'integral step[ ] in the legislative process.' "

Belle Plaine was also entitled to judgment on the pleadings on TST's equal protection claim. To plead a valid claim, TST had to show that it "was singled out and treated differently from similarly situated entities . . . [and] the reason for taking this action was a prohibited purpose or motive, such as discrimination based on TST's religion." "Here, TST must allege that it is similarly situated 'in all relevant respects' to any group with which it compares itself," the court explained.

The court rejected TST's claim. It had to "allege[] that the retroactive nature of Resolution 17-090 uniquely targeted TST because of its controversial religion or speech," the court explained. "But TST's equal-protection claim fails, as a threshold matter, because TST and the Belle Plaine Veterans Club [we]re not similarly situated. Regardless of whether TST br[ought] its equal-protection claim as a member of a protected class or as a class of one, TST must allege dissimilar treatment of similarly situated parties."

A CLOSER LOOK

TST also filed a "promissory estoppel" claim, arguing that Belle Plaine had violated its promise and breached its contractual agreement with TST by passing the rescission the resolution that barred it from installing its display in the limited public forum. In its view, requiring the enforcement of Belle Plaine's promise was necessary to prevent an injustice. The court found TST met its initial burden at the pleadings stage for asserting this claim, and "Belle Plaine ha[d] not demonstrated that dismissal of TST's promissory-estoppel claim [wa]s warranted," so a request for judgment on the pleadings on this claim was denied.

Zoning News from Around the Nation

Connecticut

Hartford planning and zoning commission member steps down to focus on housing-related initiatives

Sara Bronin, the chairwoman of the Hartford Planning and Zoning Commission, has stepped down, *The Connecticut Examiner* reported recently. Bronin, an architect who served on the commission for seven years who also teaches law at the University of Connecticut, said she will shift her focus to address the impact zoning has on housing and racial issues, the news outlet reported.

Bronin said that land use laws requiring minimum lot and home sizes have had the effect of segregating the state by race, the *Examiner* reported. She explained that many of Connecticut's quaint, historic towns were developed in the 1920s and constructed "middle housing" around their centers and village greens. But, as time went on, towns have restricted residential housing so that individuals cannot live in those centers, which could benefit those who want to live close to shopping destinations, eateries, and other area amenities.

While Bronin was on the commission, the city of Hartford adopted a form-based zoning code, the news outlet reported. That code was the recipient of the Smart Growth America and the Form-Based Codes Institute's 2020 Driehaus Award.

Bronin told the news outlet that while conventional zoning is focused on separation of uses and factors in size, height, and, setback, form-based zoning takes into account a building type's architecture and physical form, so that communities can decide what types of development each neighborhood wants while minimizing the risk of structures that are not compatible being constructed there.

In considering who will receive the Driehaus Form-Based Codes Award, the jury evaluates whether:

- the code will deliver "a predictable street character (public space)";
- its "implementable and relatively easy to use";
- it has "relevant and distinguishing features that advance the practice" and
- it "will promote good urbanism"—for instance, "has it resulted in high-quality development activity?"

For more information about the Driehaus Award, visit formbasedcodes.org/driehaus-form-based-codes-award/.

Source: *ctexaminer.com*

Indiana

Pulaski County stalls on deciding fate of proposed solar farm

The Pulaski County(Indiana) Zoning Board of Appeals (ZBA) has delayed making a decision as to whether Mammoth Solar's special exception request will be granted, *wkvi.com* reported recently.

The ZBA said it needs more time to consider the impact the project could have on wildlife, the environment, the area's ecology, farm values, and residents' health, the news outlet reported.

Developers of the project pitched that it as making sense for the area because of the proposed site's flat terrain and proximity to two power grids. They also asserted that the county already has established rules permitting solar development and that the solar farm will provide enough power for 80,000 residents while employing 40 people full time.

At the hearing where the ZBA opted to delay issuing its decision, reaction about the proposed solar farm was mixed, the news outlet reported. For instance, concerns were raised over the project's impact on the local fire departments and the loss of farmland, it noted.

Proponents of the project said the solar farm could provide property owners with a good way to earn money off the use of their land, would support the county in transitioning to using renewable energy sources, and could provide a source of revenue for the county government as well. The news report

explained that a study to determine how much is currently in the works.

As of print time, the next ZBA meeting on the matter was scheduled for August 24, 2020.

If the special exception is granted, the developers and the county will enter a phase of negotiation over drainage, decommissioning, road use and maintenance, and payments to the county, the news outlet reported. If those negotiations are finalized, then Mammoth may request a building permit.

For more information, visit gov.pulaskionline.org/wp-content/uploads/sites/4/2020/07/GEGrenewables-Pulaski-BZA-July-27-2020-Presentation.pdf?fbclid=IwAR2aM-I53y2sz5bAVn3i8Rghi6YuL7V9MG7V7tSLZqPAGQGycH2cCcVTROs, where the developer's presentation details the solar project's history and background, as well as:

- a general overview of the summary for the Mammoth Solar plan;
- community benefits;
- what its next steps would be if the special exception is granted and its compatibility with the current conditions, character of the vicinity, and the comprehensive plan; and
- its position on why the project won't negatively impact property values and will promote responsible development and growth.

Source: *wkyi.com*

Massachusetts

Boston zoning reform passes; Worcester considers downtown overlay district rezoning proposal to convert mills to housing

The Boston City Council has passed a bill that seeks to overhaul the city's zoning board, the *Boston Herald* reported recently. The proposal would add Zoning Board of Appeal members and would require the ZBA to post reports quarterly about its actions and meeting results, the news outlet reported. In addition, if a board member has had anything to do with a property at issue for the last five years, s/he would not be able to sit on that hearing, which is currently the case under existing rules.

The Boston ZBA came under scrutiny on in 2019 after one of its staff members pleaded guilty to taking bribes, the *Herald* reported. Around that time, a ZBA member also resigned over conflict-of-interest concerns.

In other news out of the Bay State, Worcester is considering plans to convert old mill buildings into housing, the *Worcester Telegram & Gazette* reported recently. By unanimous vote, the city's planning board recommended changes to the Main South area's zoning map so buildings previously used as mills may be converted into housing.

The petition for the change originated with Consigli Real Estate Holdings LLC, a developer that would like to see the BG-6 (Business General) and Downtown Commercial Corridor Overlay District extended, the news outlet reported. According to the *T&G*, many of the properties within these areas are zoned for manufacturing, and only a small amount is zoned for residential purposes, but if the change goes through more than 4.5 acres of properties could be used for a combination of commercial and residential usage.

As of print time, the planning board's recommendation was slated to head to the city council for a vote.

And, in the northwestern town of Erving, Massachusetts, the planning board is reviewing zoning policies that would apply to the town's industrial mills, the *Greenfield Recorder* reported recently.

Plans to establish new zoning policies goes along with Erving's push to redevelop the International Paper mill, which is located on Papermill Road and has been vacant since 2001.

In 2014, the town took possession of the property after its owner failed to pay property taxes, the news outlet reported.

While the fate of the paper mill is likely one of the biggest issues the planning board is contending with, it is also focused on addressing policies impacting housing development, the *Recorder* reported.

One town official said that the defunct International Paper mill along with two other mills are subject to the same zoning bylaws as other structures and aren't bound to any special standards. The concern is that because of the size and purpose of the mills they may need special standards to ensure that developers are able to develop in a way that aligns with the mills' uniqueness without having to petition the town for variances, the news outlet reported.

Sources: *bostonherald.com*; *telegram.com*; *recorder.com*

Michigan

Proposal to change waterfront zoning subject to protest

Some residents in Trenton, Michigan recently organized a protest at city hall to voice concerns over a proposal to overhaul a local zoning ordinance that covers the McLouth Steel industrial site, the *Detroit News* reported recently.

The proposal is to re-classify the property, which is currently owned by a real estate firm, into a waterfront industrial district, but some local residents aren't keen on brining large-scale or specialized industrial operations to the area, the news outlet reported. In their view, the zoning change is likely to turn the area into an industrial transportation hub that would result in a diminished quality of life along with home values. They also fear that converting the current mixed-use to industrial zoning along the waterfront will alter the character of the area.

City officials have said that once any redevelopment happens, the site's owner will still need to comply with the site-approval process.

Source: *detroitnews.com*

Oklahoma

Norman's city council approves rezoning that will permit building of a freestanding emergency room

The Norman, Oklahoma City Council has approved a request to rezone a 30-acre parcel, which will pave the way for Norman Regional's Inspire Health plans to build a freestanding emergency room, the *Norman Transcript* reported recently.

The size of the property will permit Inspire Health's future growth, the news outlet reported, which may include additional emergency services as well as planned development, such as multi-family housing, assisted living, and commercial properties.

The first phase of development includes the full-service ER, in addition to laboratory-, diagnostic-, and physical therapy-related facilities, as well as clinics and a meeting space. The plan also calls for walking trails and green spaces around the complex, which is located about 10 miles from the area's HealthPlex acute care hospital.

Source: *normantranscript.com*

Pennsylvania

Zoning proposal in Upper Mount Bethel Township subjected to scrutiny; domestic duck amendment makes a splash in Ferguson

Lehigh Valley Planning Commissioner Stephen Melnick said that a new proposal to build structures up to 100 feet high in Upper Mount Bethel Township looks like it was written by a real estate developer to benefit developers, *wfmz.com* reported recently. Another commission staff member, Samantha Smith, said the proposed changes wouldn't be consistent with the commission's regional plan. Overall, the commission is concerned about the proposed plan's impact on neighboring property values and the tax base in the area.

And, there's concern over whether local firefighters, who are volunteers, could handle if a 100-foot building caught fire.

In other news out of Pennsylvania, an amendment to broaden a backyard chicken ordinance that passed in 2016 to include domestic ducks will move forward in Ferguson, *Statecollege.com* reported recently. Under the current ordinance, Ferguson residents may have up to six hens. Ducks would be capped at four, the news outlet reported.

The amendment is the result of a Pine Grove Mills resident's request to keep ducks in a residentially zoned district. After addressing concerns that ducks may spread viral infections such as avian influenza (H5N1), the board concluded that the ducks won't pose a greater health risk than chickens, the news outlet reported.

About the lower limit on how many ducks residents may keep, one official said it reflects a precautionary measure since ducks generally need more space and water sources, which will need to be big enough so the ducks can fit their entire bodies in the water and go under water.

Structures to house all of the birds will be restricted from being any closer than 10 feet from each property side line and coops will need to be at least three square feet per hen capped at 144 square feet. And, residents must pay a zoning permit accessory structure fee to have a coop.

Sources: *statecollege.com*; *wfmz.com*