



CITY OF ELKO

Planning Department

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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, November 5, 2019 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.S.T.

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

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

Date/Time Posted: October 30, 2019 2:10 p.m.

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

Date/Time Posted: October 30, 2019 2:05 p.m.

ELKO POLICE DEPARTMENT – 1448 Silver Street, Elko NV 89801

Date/Time Posted: October 30, 2019 2:15 p.m.

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

Date/Time Posted: October 30, 2019 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician
Name Title

Shelby Archuleta
Signature

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

Dated this 30th day of October, 2019.

NOTICE TO PERSONS WITH DISABILITIES

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

Cathy Laughlin
Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.S.T., TUESDAY, NOVEMBER 5, 2019
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

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

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

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

APPROVAL OF MINUTES

October 1, 2019 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration and possible recommendation to City Council for Rezone No. 4-19, filed by Elko West Properties, LLC, for a change in zoning from PC (Planned Commercial) to C (General Commercial) Zoning District, approximately 66.30 acres of property, to allow for multi-family residential and commercial development, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is generally located on the south side of Errecart Boulevard, approximately 545' west of Lamoille Highway. (APN 001-770-004)

2. Review, consideration, and possible action of Conditional Use Permit No. 10-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally west of the intersection of 13th Street and College Avenue. (1297 College Avenue - APN 001-191-004).

3. Review, consideration, and possible action on Variance No. 4-19, filed by Elko County School District for a reduction of the required setback from any Street Line from 66' to 20' for the College Avenue setback from street line, within a PQP (Public, Quasi-Public) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally west of the intersection of 13th Street and College Avenue. (1297 College Avenue - APN 001-191-004).

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible recommendation to City Council for Vacation No. 12-19, filed by the Ellison Properties, for the vacation of a portion of the Front Street right-of-way, consisting of an area approximately 1,979 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally south of S. 5th Street and east of the terminus of Front Street. (404 S 5th Street- APN 001-422-002)

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, OCTOBER 1, 2019
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

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

ROLL CALL

Present: Evi Buell
 Jeff Dalling
 John Anderson
 Stefan Beck
 Tera Hooiman

Excused: Gratton Miller
 Ian Montgomery

City Staff Present: Scott Wilkinson, Assistant City Manager
 Cathy Laughlin, City Planner
 Bob Thibault, Civil Engineer
 Michele Rambo, Development Manager
 John Holmes, Fire Marshal
 Michael Palhegyi, Police Lieutenant
 Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

September 3, 2019 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the minutes from September 3, 2019 as presented.**

Moved by Tera Hooiman, Seconded by Evi Buell.

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

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration and possible recommendation to City Council for Rezone No. 4-19, filed by Elko West Properties, LLC, for a change in zoning from PC (Planned Commercial) to C (General Commercial) Zoning District, approximately 60.75 acres of property, to allow for multi-family residential and commercial development, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is generally located on the south side of Errecart Boulevard, approximately 545' west of Lamoille Highway. (APN 001-770-004)

Cathy Laughlin, City Planner, explained that staff was requesting that no action be taken on this item, as the square footage was listed incorrectly in the agenda item. The approximate acreage is inaccurate, because it did not include going to the center of Errecart Blvd.

****Commission took no action on this item.**

2. Review, consideration, and possible action of Conditional Use Permit No. 8-19, filed by Elko West Properties, LLC, which would allow for the development of an apartment complex within a C (General Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south side of Errecart Boulevard, approximately 545' west of Lamoille Highway. (APN 001-770-004)

Ms. Laughlin went through the City of Elko Staff Report dated September 13, 2019. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Mark Callahan, Elko Holdings Group, LLC, 301 Val Verde Ct. Las Vegas, NV. He stated that he had questions regarding the hydrology flow, ingress/egress, and the easements for the roadways. He thought it looked like the water was going to be flowing onto his property. He also mentioned that the easement for Errecart Boulevard was not done correctly.

Ms. Laughlin pointed out that the shaded area, called out as the unnamed roadway, would be dedicated to the City of Elko in order to provide access to Mr. Callahan's property. This is long range planning done by the City of Elko, so that we are not land locking any property. The City is requiring that they put in a paved roadway with curb, gutter, and sidewalk.

Bob Thibault, Civil Engineer, explained that a portion of Errecart Boulevard and Powerhouse Road was granted as an easement from the BLM. The easement is not identified by location, just as a 60 foot width. The City realized that when they were intending to construct a new water line along Powder House Road, and the City wanted to better define that easement by location. The City was working towards that.

Mr. Callahan mentioned an acceleration and deceleration lane for the highway. He also was concerned with the runoff from the proposed development onto his property from the pads that would be created on the property.

Mr. Thibault explained the water flow of the property. He also pointed out that there would be a detention basin and that the developer would not be allowed to increase peak runoff. The detention pond will reduce the amount of water that is running toward the culvert on Mr. Callahan's property.

There was further discussion on drainage.

Michele Rambo, Development Manager, went over the Development Department Conditions that were listed in the Staff Report.

Mr. Thibault went over the eight Engineering Department conditions that were listed in the Staff Report.

John Holmes, Fire Marshal, said he would work with builder on fire codes, but he didn't have any concerns at this time.

Mr. Wilkinson had no comments or concerns, and recommended approval as presented by staff.

Ms. Laughlin went through the Utility Department conditions that were listed in the Staff Report.

*****Motion: Conditionally approve Conditional Use Permit No. 8-19 subject to the conditions in the City of Elko Staff Report dated September 13, 2019, listed as follows:**

- 1. The CUP 8-19 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.**
- 2. The Errecart Boulevard right-of-way is to be landscaped. A landscape plan will be required for submittal and approval. All landscaping shall include a combination of trees and shrubs. Landscaping shall be installed and not obstruct the view of oncoming traffic at the intersections. The landscape plan is to include features which create a "front" for the development adjacent to Errecart Boulevard and should be similar in nature to the landscaping along the north side of Errecart Boulevard. Owner or developer is to provide such maintenance and care as is required to obtain the effect intended by the original landscape plan for the development.**
- 3. CUP 8-19 to be recorded with the Elko County Recorder within 90 days after commencement of work.**
- 4. The permit shall be personal to the permittee, Elko West Properties, LLC. and applicable only to the specific use of multiple family residential 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. Civil improvement plans are required for review and possible approval. Civil improvements are required on all frontages. No on-street parking will be allowed on Errecart Boulevard or the Unnamed right-of-way.
6. No RV storage allowed.
7. Building #1 which includes the clubhouse /office shall be completed prior to the issuance of any certificate of occupancy for any other buildings.
8. All parking lot lighting is to be shielded or cut-off design.
9. An illumination schedule is required to ensure lighting is adequate for safety with minimal impact to adjacent properties.
10. 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
11. The sidewalk adjacent to Errecart Boulevard shall be offset.
12. The exterior of the building shall be compatible with surrounding areas and shall be similar to what is presented in the application.
13. The common areas are to be maintained in an acceptable manner at all times.
14. The applicant shall file a parcel map for the proposed parcels shown in the application. Such parcel map shall be approved and recorded prior to certificate of occupancy on any building.

Development Department Conditions:

1. Provide 250 feet between the Golden Health Clinic driveway and this project's driveway on Errecart.
2. Full street improvements needed for both Errecart and unnamed new road.
3. Recommend moving the detention basin out of the flood plain and instead utilize landscaped areas and/or other capturing methods.
4. Provide a crosswalk across Errecart to facilitate pedestrian movement to the north along Lamoille Highway.
5. No traffic study required.

Engineering Department Conditions:

1. The northerly driveway must be a dedicated street to service adjacent parcels.
2. Grading onto adjacent parcels will not be permitted.
3. A culvert will be required under the southerly driveway
4. Per 3-2-17, 3.c.2, increase the spacing between the southerly driveway and the intersection across the street to a minimum of 250', measured centerline to centerline. Errecart Blvd. is a minor arterial.
5. Office building shall be constructed as part of the first phase of construction.
6. Extend curb and sidewalk along the northerly part of the frontage.
7. Provide curb and sidewalk on both sides of the dedicated street that will be the northerly driveway.
8. Provide site lighting information.

Utility Department Conditions:

1. Project will need to be water/sewer code compliant.

2. Water main will need to be extended on access easement/dedicated right-of-way as well.

Commissioner Buell'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 3-2-10(B) General Commercial District, the proposed use meets the required separation of dwelling units as found in City Code 3-2-5(E)(6). The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-2-18, and 3-8 of the Elko City Code.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

3. Review, consideration, and possible action of Conditional Use Permit No. 9-19, filed by KLB Enterprises, LLC, which would allow for a bar to be located within the Central Business District, specifically 548 Commercial Street, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 160' southwest of 6th Street. (548 Commercial Street - APN 001-343-006)

Deborah Barnhart, 780 Aesop Dr. Spring Creek, explained that she was one-third of the KLB Enterprise, LLC. The other two partners are Tony Lewis, owner of Anthony Construction, and Clair Ketchum, a meteorologist with the National Weather Service. KLB Enterprises entered into a commercial lease with option to purchase in July 2019 for the property located at 548 Commercial Street, formerly known as The G. It is their intent to bring the property up to date regarding Fire, City, and ADA Codes. Such improvements include a fire suppression system on both levels, ADA restrooms, emergency lights, enlarging the doorways, and an updated camera system. Once the property is updated it is their intention to open the business as a nightclub known as The Underground. The Underground will operate Wednesday through Saturday from 7pm through 3am. Their target market is women between the ages of 25 and 45 years of age. The Club music will consist of 80's, 90's, Y2K, and modern dance music. The Underground will be a non-smoking establishment, and they will have a zero tolerance policy for violence and a zero tolerance policy for employee alcohol consumption. There will be two wand metal detectors at the entrance, and IDs will be thoroughly examined. In addition, the LLC will communicate effectively and proactively with the Elko Police Department regarding the management and safety of the nightclub. Lastly, the Manager will be personally responsible for removing all bottles, cans, trash, broken glass, debris, cigarette butts, and bodily fluids from abutting properties and the alleyway. The following make The Underground unique. Front door security will be equipped with an age verification and visitor management system. This device will immediately alert if a patron is underage, if the ID is a forgery, if the patron has been banned

from the property, or if the ID is expired. Speaking of Security, there will be 12” by 12” lockers for patrons to rent in order to secure their belongings. Patrons will rent the padlock for \$5 and in turn their keys will be taken for collateral. This will allow them to intervene if necessary at the end of the night. They can do that by offering the patron a non-alcoholic beverage, food on the house, or paid ride home by LYFT. However, it is their intention that no patron becomes so inebriated that the counter measures are necessary. Responsible pouring and not overserving is the responsibility of each and every bartender. At the time of hiring, bartenders will sign a contract, which outlines their responsibilities and management expectations. One of those expectations is that a bartender will take a pre-employment drug test and be subject to random drug testing. In addition, a bartender will be breathalyzed if a manager suspects he/she has been drinking. In other words, the manager will have a breathalyzer and each bartender is given their own breathalyzer mouth piece, which he/she will keep in their locked locker in the basement. She briefly mentioned food. The Underground would be the only standalone nightclub that serves food. Their food items include gourmet hotdogs, such as Chicago Dogs, New York Dog, Cheese Dog, nachos, pretzel bites with cheese, and pizza. Food will be available until closing. Speaking of closing time, The Underground would like to stay open until 3am, with last call being at 2am. In other words, from 2am until 3am only non-alcoholic drinks and food will be available for sale. With the hour of business being dedicated to only food and soda sales, this will encourage patrons to drink and drive responsibly. Speaking of drinking, patrons will be offered plastic cups with lids. In light of recent online stories of party goers being roofied, lids will give the patrons a sense of security of knowing that their drink will not be tampered with. Also, throughout the club there will be disposable drink coasters, which can be used as a cover for any drink glass, or beer bottle. In addition, they are installing a 40” drink rail around the dance floor, so a patron can place their drink on the rail and watch it while they dance. Lastly, The Underground is joining a growing list of restaurants and bars who offer women an escape from a potential dangerous date. A harassed or scared woman simply has to ask the bartender for an Angel Shot, which is code for asking for help. If the woman requests an Angel Shot with lime”, the bartender will call the police, if she asks for one “neat”, a bartender, or security guard, will walk the customer to her car; ask for “ice” and they will call a taxi, or a LYFT. The drink code names will change frequently and will be updated and posted in the women’s restroom. In closing, KLB Enterprises appreciates the Planning Commission’s time in reviewing and considering their Conditional Use Permit.

Ms. Laughlin went through the City of Elko Staff Report dated September 16, 2019. Staff recommended conditional approval with the conditions and findings listed in the Staff Report. Regarding Condition No. 6, Ms. Barnhart has expressed that they would like to close at 3 am. It was a discussion amongst staff and the Police Department on the closure recommendation of 2am, because there are so many residential units within that block.

Ms. Rambo had no concerns.

Mr. Thibault had one additional condition that the applicant resolve all issues of encroachments onto adjacent properties and streets.

Mr. Holmes had no comments.

Mr. Wilkinson had no comments or concerns and recommended approval as presented by staff.

Mike Palhegyi, Police Lieutenant, said that Ms. Barnhart touched on most of the conditions of Police Department. He then went over the Police Department conditions that were listed in the Staff Report.

Chairman Jeff Dalling explained that he works on that block and owns property on the block. The last thing he wants is another bar, but he understood that that has been a bar for a long time and will be a bar for another 30 years. It has been a bar since the few residents that live there have been there. He understood that they are now out of conformance because the building sat vacant for 12 months. He took that as they were not becoming a bar, just being a bar again. There are quite a few bars in the area. He asked if they had restrictions on their hours of business.

Lieutenant Palhegyi said they do not.

Chairman Dalling said this was a Conditional Use Permit, so they could put conditions on it. He didn't think anything good happened after 2am. He saw that they were planning of closing at 3 with a last call at 2. He thought that was pretty fair, which is only an hour difference of the Police Department recommendation. He didn't want to put undue pressure on bar to fail if they limit their hours of making money.

Commissioner Evi Buell said she got the concerns of the property owners and the concerns of the Police.

Chairman Dalling asked for final comment from the applicant.

Ms. Barnhart thanked Mr. Dalling for bring up the closing time. From what Ms. Barnhart had noticed on the block, a lot of people are moving out of the residential units, or they are already empty. Her concern would be for the existing people that live there. If you choose to move into a rental unit next to bar, then you get what you get. She thought they might discuss turning down the octaves of the music. They are trying to provide food and drink to people during that last hour, which is not currently available in any establishment. They were thinking about the feasibility of the recommendation regarding the professionally trained certified in the State of Nevada staff. They wanted to amend that to say that they will receive the training within 30 to 60 days of hire. Because the fluid nature of hiring security personnel. Their head of security will have to have a background in security and be familiar with the Nevada law regarding liability and security.

Ms. Laughlin asked if Ms. Barnhart planned on having security personnel every night, or just Friday and Saturday night.

Ms. Barnhart expressed that they would be there every night.

Lieutenant Palhegyi asked what Ms. Barnhart's vision was with regard to the amount of security personnel that would be on duty at any given time.

Ms. Barnhart explained that there would be two at the door and one at each exit in the back.

Lieutenant Palhegyi said presumably there would be a supervisor, which is trained and certified, to oversee operations. In the meantime, the people that might be coming and going are going to

need to some time to get caught up on their training. He thought that was reasonable, as long as there is someone working there that has been through the training to guide and monitor the new people.

Chairman Dalling asked if they were ok with last call at 2am, since they wouldn't be serving alcohol.

Lieutenant Palhegyi said it's all good until people complain, as far as the residents go. He would prefer 2am, but it's up to the Commissioners.

Commissioner Buell said it sounded like two of the conditions were up for conversation. She thought they might be ok with Police Department Condition No. 2, since it didn't specify all staff just that someone trained is on staff. They still needed to discuss and decide on the business hours.

Chairman Dalling said he had a restaurant next to the property, but the Commission had already heard his standpoint on the hours. He then asked the applicant if they were ok with an opening time of 4pm. (Yes)

Mr. Wilkinson wanted to have a little more discussion with the Police Department. He thought the expectation with Condition 2 was that all staff that would be on would be professionally trained. If the Planning Commission wishes to allow for the supervisor and that new hires have a period of time to get trained, he thought that needed to be clarified as a condition, so that there is no question in the future on how to interpret that condition.

The Commissioners agreed on 30 days from hire date for the new security staff to get certified in the State of Nevada.

Lieutenant Palhegyi concurred that there should probably be something in writing that states that they have 30 days to get the new staff trained in Nevada Security.

Commissioner Tera Hooiman asked if the supervisor would have to have the training upon hire. (Yes)

Lieutenant Palhegyi argued that someone that is certified should be on duty at all times.

Chairman Dalling thought they should put that in the condition.

Commissioner Hooiman asked what everyone thought about the hours.

Chairman Dalling said he was good with a last call at 2am and close at 3am.

Ms. Barnhart mentioned that they were planning to spray a foam throughout the rear of the club where the music is. It will help with acoustics of the music, and it will also cut down on the noise and vibration emanating into other units.

There was further discussion regarding hours of operation, ultimately the Commissioner's agreed on last call being at 2am and closing at 3am.

*****Motion: Conditionally approves Conditional Use Permit No. 9-19 subject to the conditions in the City of Elko Staff Report dated September 16, 2019 with modification by the Planning Commission, listed as follows:**

- 1. The permit is granted to the applicant KLB Enterprises, LLC for a bar establishment subject to compliance with all conditions imposed by a conditional use permit.**
- 2. The permit shall be personal to the permittee and applicable only to the specific use (bar establishment) and to the specific property (548 Commercial Street) 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.**
- 3. CUP 9-19 to be recorded with the Elko County Recorder within 90 days after the business license is issued for the bar.**
- 4. Signage will require review and comment by the Redevelopment Agency prior to approval by the City.**
- 5. Applicant shall install and maintain exterior security lighting that illuminates both the Commercial Street frontage and the alleyway adjacent to and including the rear exit. The security lighting shall be sufficient to make easily discernible the appearance and conduct of all persons and patrons in the vicinity of the front and rear entrances, and shall be positioned so as not to cause excessive glare for persons located outside of the vicinity of the front and rear entrances, such as pedestrians, motorists, and owners and occupants of neighboring properties.**
- 6. Hours of operation to be opening time of 4:00 p.m. or later and closing time to be 3:00 a.m., with a last call of 2:00 a.m.**
- 7. Applicant shall remove all bottles, cans, trash, broken glass, debris, and bodily fluids from abutting properties upon closing on each day applicant's business is open.**
- 8. Applicant shall maintain outdoor receptacles in the rear of the property for the collection of garbage, refuse and waste of adequate capacity and in sufficient number to hold all garbage, refuse and waste that accumulates between removal or disposal.**

Police Department:

- 1. Communicate effectively and proactively with Elko Police Department regarding management and safety of the business, such as; provide notice as to management or supervision changes, problems with security, changes with lighting, camera systems, security, weapons polices, etc.**

2. A certified security supervisor must be on staff during all business hours and new security staff have 30 days from date of hire to be certified in the State of Nevada.
3. Metal detectors at entrance are required.
4. Zero tolerance of employee consumption of alcohol while they are on shift.
5. Security cameras are required and a minimum of ten days stored video footage from the security system to be maintained at all times.

Engineering Department:

1. Resolve all issues of encroachment onto adjacent properties and streets.

Commissioner Buell's findings to support the motion were the conditional use is in conformance with the Land Use Component of the Master Plan. The conditional use is in conformance with the Transportation Component of the Master Plan and existing transportation infrastructure. The conditional use is in conformance with the Wellhead Protection Plan. Approval of the Conditional Use Permit is required for the proposed use to be in conformance to Section 3-2-10 of the Elko City Code. Approval of the Conditional Use Permit is required for the proposed use to be in conformance with Sections 3-2-3, 3-2-4, 3-2-17, and 3-2-18 of the Elko City Code. The proposed use conforms to Section 3-8 of Elko City Code.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

Lieutenant Palhegyi left.

4. Review, consideration, and possible action on Zoning Ordinance Amendment 2-19, Ordinance No. 845, specifically an amendment to Title 3, Chapter 4, Section 1 of the Elko City Code entitled "Planning Commission" and matters related thereto. **FOR POSSIBLE ACTION**

NRS 278.040 was revised in 1985 and Elko City Code needs to be revised to reflect those changes.

Commissioner Tera Hooiman said that she would sit the item out.

Ms. Laughlin explained that the Commissioners had the proposed ordinance in front of them. It is Ordinance No. 845. The way the current Code was written was to match NRS 278.040 back when it was established that communities have Planning Commissions. In 1985 it was revised and the line that was taken out of the NRS remained in the City Code. It stated that the Members shall hold no other public office, except that one such member may be a member of the Zoning Board of Adjustment. This has come in a recent determination and a legal opinion based on Public Office, which could be any board that a person sits on. That is why it was taken out of the NRS in 1985. The NRS changed the provision to read that the members of the Planning Commission must not be members of the governing body of the City or a County, which would

be the City Council or County Commission. Staff would like to revise the City Code to match the revised NRS.

***** Motion: Forward a recommendation to City Council to adopt an Ordinance, which approves Zoning Ordinance Amendment No. 2-19 of the Elko City Code, specifically Section 3-4-1.**

Moved by Evi Buell, Seconded by Stefan Beck.

****Motion passed (4-0, Commissioner Hooiman Abstained).***

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration and possible approval of Final Map No. 9-19, filed by Bailey & Associates, LLC, for the development of a subdivision entitled Cambridge Estates involving the proposed division of approximately 8.02 acres of property into 35 lots and a remainder parcel for residential development within the R1 (Single-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the northeast corner of the intersection of Celtic Way and El Armuth Drive. (APN 001-660-041)

Nitin Bhakta, Summit Engineering, 1150 Lamoille Hwy, said he worked with staff on revising this and getting it to where it needed to be.

Ms. Rambo explained that this was the Final Map application for Cambridge Estates. When the Tentative Map was in front of the Commission there was extensive conversation. The map is the same as the last time the Commission saw it. Staff worked with the applicant on Construction Drawings, which have been approved by staff. The Final Map complies with all of the City Codes, the Master Plan, and Zoning Ordinance. Staff recommended that the map be conditionally approved with the conditions listed in the City of Elko Staff Report dated September 13, 2019.

Mr. Thibault pointed out that he had one condition, which had already been addressed. He recommended approval.

Mr. Holmes and Mr. Wilkinson had no comments or concerns.

*****Motion: Recommended that the City Council accept, on behalf of the public, the parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication; that the final map substantially complies with the tentative map; that the City Council approve the agreement to install improvements in accordance with the approved construction plans that satisfies the requirements of this Chapter, and conditionally approve Final Map 9-19 with conditions listed in the Staff Report dated September 13, 2019, listed as follows:**

1. The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.
2. The Performance and Maintenance Agreement shall be approved by the City Council.
3. The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council.
4. The Final Map for Cambridge Estates is approved for 35 single family residential lots and 1 remainder lot.
5. The Utility Department will issue a Will Serve Letter for the subdivision.
6. Grading shall not commence prior to approval of the construction plans by the Nevada Department of Environmental Protection.
7. Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.
8. Conformance with the conditions of approval of the Tentative Map is required.
9. The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. All right-of-way and utility improvements are to be certified by the Engineer of Record for the project.
10. Approval of the Tentative Map by the Nevada Department of Environmental Protection is required prior to scheduling the Final Map for City Council approval.

Commissioner Buell's findings to support the motion were the Final Map for Cambridge Estates has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City Code. The Final Map is in conformance with the Tentative Map. The proposed subdivision is in conformance with the Land Use Component of the Master Plan. The proposed subdivision is in conformance with the Transportation Component of the Master Plan. Based on the Modification of Standards for lot widths and areas granted under the Tentative Map application, the proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive). The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City Code. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City Code. The Subdivider has submitted plans to the City and State agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City Code. The Subdivider has submitted construction plans, which having been found to be in conformance with Section 3-3-20 of City Code, have been approved by City Staff. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City Code. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City Code. Based on the Modifications of Standards for lot widths and areas for particular lots granted under the Tentative Map application, the proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 of City Code. The proposed development is in conformance with Section 3-8 of City Code.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

2. Review, consideration, and possible recommendation to City Council for Vacation No. 4-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way, consisting of an area approximately 52 sq. ft. adjacent to APN 001-343-001, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the east corner of the intersection of Commercial Street and 5th Street. (500 Commercial Street- APN 001-343-001)

Ms. Laughlin went through the City of Elko Staff Report dated September 23, 2019. Staff recommended conditional approval with the findings and condition listed in the Staff Report.

Ms. Rambo had no comments or concerns.

Mr. Thibault recommended approval of all seven Vacation applications.

Mr. Holmes and Mr. Wilkinson had no comments or concerns.

Mr. Wilkinson added that those would be consistent staff comments for the remainder of the items.

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 4-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. **Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.**

Commissioner Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

3. Review, consideration, and possible recommendation to City Council for Vacation No. 5-19, filed by the City of Elko, for the vacation of a portion of the Commercial

Street right-of-way, consisting of an area approximately 101 sq. ft. adjacent to APN 001-343-002, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 25' northeast of 5th Street. (512 Commercial Street- APN 001-343-002)

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 5-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.

Commission Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

4. Review, consideration, and possible recommendation to City Council for Vacation No. 6-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way, consisting of an area approximately 50 sq. ft. adjacent to APN 001-343-003, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 106' northeast of 5th Street. (524 Commercial Street- APN 001-343-003)

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 6-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.

Commissioner Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed

vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously.*

5. Review, consideration, and possible recommendation to City Council for Vacation No. 7-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way, consisting of an area approximately 50 sq. ft. adjacent to APN 001-343-004, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 130' northeast of 5th Street. (536 Commercial Street- APN 001-343-004)

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 7-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.

Commissioner Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously.*

6. Review, consideration, and possible recommendation to City Council for Vacation No. 8-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way, consisting of an area approximately 50 sq. ft. adjacent to APN 001-343-005, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 155' northeast of 5th Street. (542 Commercial Street- APN 001-343-005)

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 8-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.

Commissioner Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

**Motion passed unanimously.*

7. Review, consideration, and possible recommendation to City Council for Vacation No. 9-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way, consisting of an area approximately 53 sq. ft. adjacent to APN 001-343-006, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 181' northeast of 5th Street. (548 Commercial Street- APN 001-343-006)

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 9-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.

Commissioner Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed

vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

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

8. Review, consideration, and possible recommendation to City Council for Vacation No. 10-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way, consisting of an area approximately 147 sq. ft. adjacent to APN 001-343-007, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Commercial Street, approximately 84' southwest of 6th Street. (570 Commercial Street- APN 001-343-007)

*****Motion: Forward a recommendation to City Council to adopt a resolution which conditionally approves Vacation No. 10-19 subject to the conditions listed in the City of Elko Staff Report dated September 23, 2019, listed as follows:**

1. **Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.**

Commissioner Buell's findings to support the motion were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.

Moved by Evi Buell, Seconded by Tera Hooiman.

****Motion passed unanimously.***

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that CUP 5-19 filed by Bailey & Associates, LLC for the mobile home park was appealed. Prior to the item going to City Council there was a request from the applicant to withdraw the appeal. City Council had to take action on the appeal, because they cannot be withdrawn, so they affirmed the Planning Commission's action to

deny the appeal. On September 24th City Council approved the sale of a portion of land to Koinonia Construction for a small piece of land above the Mountain View Park parking lot. They are looking at that for a townhouse development. City Council had a finding that it was in the best interest of the City to sell that to the adjacent property owner, because it is not viable to anyone other than the adjacent property owner. A Revocable permit for a grease interceptor was approved. Vacation 4-19 through 10-19 were accepted and referred to the Planning Commission.

Ms. Rambo reported that there had been several Stage 1 meetings for subdivisions in the last six weeks.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

Ms. Laughlin said she had sent out a couple of emails for the survey that is being requested to be filled out by Planning Commissioners. She also sent out several emails in regards to the APA conference in Sparks.

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. **Review, consideration and possible recommendation to City Council for Rezone No. 4-19, filed by Elko West Properties LLC, for a change in zoning from PC (Planned Commercial) to C (General Commercial), approximately 66.30 acres of property, to allow for multi-family residential and commercial development, and matters related thereto, FOR POSSIBLE ACTION**
2. Meeting Date: **November 5, 2019**
3. Agenda Category: **NEW BUSINESS PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **Subject property is located generally on the south side of Errecart Boulevard, approximately 545' west of Lamoille Highway. Developer is proposing an apartment development and remainder to be commercial development.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 4-19 based on facts and findings as presented in Staff Report dated September 11, 2019**
9. Findings: **See Staff Report dated September 11, 2019**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Elko West Properties LLC
c/o Jon Bailey
780 West Silver Street
Elko, NV 89801
jbaileype@gmail.com**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 11/5

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

Title: Rezone No. 4-19
Applicant(s): EIKO West Properties, LLC
Site Location: S side of Errefart Blvd - APN 001-770-004
Current Zoning: PC Date Received: 9/10 Date Public Notice: 10/22
COMMENT: This is to rezone APN 001-770-004 from PC to C to
allow for multi-family residential and Commercial development.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 10/28/19
Recommend approval as presented by
staff

SAC

Initial

City Manager: Date: 10/29/19

No comments/concerns.

u

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE:	September 11, 2019
PLANNING COMMISSION DATE:	October 1, 2019
APPLICATION NUMBER:	Rezone 4-19
APPLICANT:	Elko West Properties LLC
PROJECT DESCRIPTION:	Zone amendment from PC to C
ADDITIONAL APPLICATIONS:	CUP 8-19



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-770-004

PARCEL SIZE: 60.75 acres

EXISTING ZONING: PC- Planned Commercial

MASTER PLAN DESIGNATION: (COMM-HWY) Commercial Highway

EXISTING LAND USE: Undeveloped

NEIGHBORHOOD CHARACTERISTICS:

-) The property is surrounded by:
 -) North: Planned Commercial (PC) / Partially developed
 -) West: Residential (R) / Undeveloped
 -) South: Elko County / Undeveloped
 -) East: Agriculture (AG) / Undeveloped

PROPERTY CHARACTERISTICS:

-) The area is currently undeveloped.
-) The area has moderately sloping.
-) The area is accessed from Errecart Blvd.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Master Plan – Transportation Component
-) City of Elko Redevelopment Plan
-) City of Wellhead Protection Plan
-) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
-) City of Elko Zoning – Section 3-2-10 Commercial Zoning Districts
-) City of Elko Zoning – Section 3-2-21 Amendments
-) City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. The property is owned by Elko West Properties LLC.
2. The rezone includes all of APN 001-770-004.
3. The area fronts Errecart Boulevard.
4. City utilities are located in the immediate vicinity.
5. Other non-city utilities are located in the immediate area.
6. The application for rezone is based on an application for a Conditional Use Permit for the development of apartments.

MASTER PLAN:

Land use:

1. Land Use is shown as Commercial Highway.
2. Supporting zone districts for Commercial Highway are Planned Commercial (PC), General Commercial (C), Convenience Commercial (CC) and Industrial Commercial (IC).
3. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
4. Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.
5. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

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

Transportation:

1. The area will be accessed from Errecart Boulevard.
2. Errecart Boulevard is classified in the Transportation Component as a minor arterial with it being a major arterial once roadway is connected.

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

ELKO REDEVELOPMENT PLAN:

The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

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

The proposed zone district is in conformance with wellhead protection plan.

SECTION 3-2-4 Establishment of Zoning Districts:

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

3. No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
4. No yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title. The property meets the area requirements for the proposed zone district.

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

SECTION 3-2-10 (B) – General Commercial District

1. As the property develops, it will be required to be in conformance with Section 3-2-10 (B).

The proposed zone district is in conformance with Elko City Code Section 3-2-10 (B).

SECTION 3-2-21:

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

SECTION 3-8:

The proposed zone district is partially located in a designated Special Flood Hazard Area (SFHA). As the property develops, conformance with Section 3-8 will be required.

FINDINGS:

1. The proposed zone district is in conformance with the Land Use Component of the Master Plan.
2. The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure.
3. The property is not located within the Redevelopment Area.
4. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan.
5. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).
6. The proposed zone district is in conformance with Elko City Code Section 3-2-10(B).
7. The application is in conformance with Elko City Code 3-2-21.
8. The proposed zone district is partially located in a designated Special Flood Hazard Area (SFHA).
9. Development under the proposed zone district will not adversely impact natural systems,

or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

STAFF RECOMMENDATION:

Staff recommends this item be APPROVED.

Rezone 4-19 ELKO West Properties, LLC

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001929117	*ARNOLD BECK CONSTRUCTION INC	} 1 p.c.	247 GREENCREST DR	SPRING CREEK NV	89815-5447
001929114	*ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001929113	*ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001929123	*ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001929122	*ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001929120	*BARAJAS, IGNACIO		1660 STITZEL RD	ELKO NV	89801
001929125	*BDSA LLC		4518 N 32ND ST	PHOENIX AZ	85018-3303
001929116	*BLESSING, PERRY & JULIE		1644 STITZEL RD	ELKO NV	89801-4879
001929121	*CIAU, CARLOZ S & LINDSAY K		1664 STITZEL RD	ELKO NV	89801
00609E019	*ELKO CITY OF	} NOP.C.	1755 COLLEGE AVE	ELKO NV	89801
001770003	ELKO CITY OF		1755 COLLEGE AVE	ELKO NV	89801
006090009	ELKO COUNTY OF		571 IDAHO ST	ELKO NV	89801-3715
001770005	ELKO HOLDING GROUP LLC		C/O BACCARAT LADY, LLC 301 VILBERTI CT	LAS VEGAS NV	89144-4013
001770010	*ELKO MOUNTAIN VILLAGE LLC	} 1 p.c.	25 S MAIN ST STE 120	CENTERVILLE UT	84014-1846
001770011	*ELKO MOUNTAIN VILLAGE LLC		25 S MAIN ST STE 120	CENTERVILLE UT	84014-1846
001920063	*FAITH EVANGELICAL LUTHERAN CHUR	} 1 p.c.	1700 STITZEL RD	ELKO NV	89801-8842
001920066	*FAITH EVANGELICAL LUTHERAN CHUR		1700 STITZEL RD	ELKO NV	89801-8842
00609E015	*GERBER, LENORE C TR ET AL		237 JUNIPER ST	ELKO NV	89801-3159
001929119	*HEAPS, RYAN M & MICHELLE L		1656 STITZEL RD	ELKO NV	89801-4879
006090048	HEATON, JON C		4567 S COTTAGE CREEK LN	SALT LAKE CITY UT	84107-3872
001929118	*HEINBAUGH, ERIC & KATHY		1652 STITZEL RD	ELKO NV	89801
001929124	*JORDANELLE THIRD MORTGAGE LLC		4518 N 32ND ST	PHOENIX AZ	85018-3303
001740019	*MEMORIAL MEDICAL CENTER FOUNDAT		2801 ATLANTIC AVE	LONG BEACH CA	90806-1737
001920058	*ORMAZA SERIES(LAMOILLE HWY)LLC		PO BOX 339	ELKO NV	89803-0339
001770013	PBDK LLC	} 1 p.c.	PO BOX 339	ELKO NV	89803-0339
001770014	PBDK LLC		PO BOX 339	ELKO NV	89803-0339
001770012	PHC-ELKO INC		C/O PROPERTY VALUATIO 14400 METCALF AVE	OVERLAND PARK KS	66223-2989
001920056	*STITZEL, RITA		PO BOX 236	CARLIN NV	89822-0236
001730010	TIPTON, R THOMAS TR ET AL		231 E PINON WAY	GILBERT AZ	85234-4633
00609M003	*WOMACK, ROBERT R & JUNE C TR	} 1 p.c.	8395 HIDDEN CROSSING LN	LAS VEGAS NV	89129-4893
001770008	*WOMACK, ROBERT R & JUNE C TR		8395 HIDDEN CROSSING LN	LAS VEGAS NV	89129-4893

(21)

Post Marked 10/24/19

* = Properties Outside the Original
300' radius to achieve 30 parcels

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, November 5, 2019 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

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

- Rezone 4-19, filed by Elko West Properties, LLC for a change in zoning from PC (Planned Commercial) to C (General Commercial), approximately 66.30 acres of property, specifically APN 001-770-004, located generally on the south side of Errecart Boulevard, approximately 545' west of Lamoille Highway, more particularly described as:

A parcel of land being the same as Parcel No. 3 and a portion of Errecart Boulevard as shown on the Parcel Map for the City of Elko, Nevada, recorded April 7, 1999, File No. 443291, Records of Elko County, Nevada, situate within a portion of the Northwest Quarter of Section 24, Township 34 North, Range 55 East, MDM, Elko, Nevada, and being more particularly described as follows:

Beginning at the West Quarter corner of said Section 24, also being the Southwest corner of said Parcel No. 3, from which the Northwest corner of said Section 24 bears North $00^{\circ}07'27''$ West a distance of 2806.55;

Thence along the West boundary of said Parcel No. 3 North $00^{\circ}07'27''$ West a distance of 476.64 feet to the intersection of the Southerly right-of-way of Errecart Boulevard as shown on said Parcel Map 443291 to the Northeast corner of said Parcel No. 3;

Thence departing said West boundary and along the West dedication limits of said Errecart Boulevard North $00^{\circ}07'27''$ West a distance of 89.91 feet to the intersection of the centerline of said Errecart Boulevard;

Thence departing said West dedication limits and along said centerline North $56^{\circ}24'15''$ East a distance of 438.54 feet;

Thence along a tangent circular curve to the right with a radius of 1500.00 feet and a central angle of $29^{\circ}07'51''$ and arc length of 762.64 feet;

Thence North $85^{\circ}32'06''$ East a distance of 490.73 feet;

Thence along a tangent circular curve to the left with a radius of 1000.00 feet and a central angle of $61^{\circ}12'52''$ an arc length of 1068.39 feet;

Thence North $24^{\circ}19'14''$ East a distance of 125.87 feet;

Thence along a tangent circular curve to the right with a radius of 1000.00 feet and a central angle of $19^{\circ}48'48''$ an arc length of 345.81 feet to a point on the East dedication limits of said Errecart Boulevard;

Thence departing said centerline and along said East dedication limits with a non-tangent line South $00^{\circ}23'58''$ West a distance of 113.78 feet to the Northeast corner of said Parcel No. 3;

Thence departing said East dedication limits and along the East boundary of said Parcel No. 3 South $00^{\circ}23'58''$ West a distance of 1895.90 feet to the Southeast corner of said Parcel No. 3;

Thence departing said East boundary and along the South boundary of said Parcel No. 3 South 88°31'03" West a distance of 2632.17 feet to the Point of Beginning.
Said parcel contains an area of approximately 66.30 acres.
The intent of the zone change is to allow for multi-family residential and commercial development.

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

ELKO CITY PLANNING COMMISSION

COREY L. RICE, PLS, WRS
SENIOR PLANNER
CODE ENFORCEMENT
crice@elkocountynv.net

PEGGY PIERCE-FITZGERALD
PLANNING TECHNICIAN/
GIS OPERATOR
pfitzgerald@elkocountynv.net



Elko County Planning & Zoning Division

540 Court Street, Suite 104
Elko, Nevada 89801
775-738-6816 Ext. #3 (fax) 775-738-4581
www.elkocountynv.net

September 24, 2019

Shelby Archuleta
City of Elko Planning Department
1751 College Avenue
Elko, NV 89801

RE: Rezone No. 4-19 & Conditional Use Permit No. 8-19 / Elko West Properties, LLC

Ms. Archuleta,

After reviewing the above referenced Rezone and Conditional Use Permit, Elko County Planning and Zoning has no comments.

Please contact me if you have any questions or need more information.

Sincerely,

Corey L. Rice, PLS, WRS
Senior Planner
Elko County Planning and Zoning



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 18, 2019

Elko County Planning and Zoning
540 Court Street, Suite 104
Elko, NV 89801

Re: Conditional Use Permit No. 8-19 and Rezone No. 4-19/Elko West Properties, LLC

In accordance with the Communication Policy between the City of Elko and Elko County, the City of Elko hereby notices and advises the Board of County Commissioners of the County of Elko of the City's intention to consider Conditional Use Permit No. 8-19 and Rezone No. 4-19, filed by Elko West Properties, LLC. Please find enclosed a copy of the application and related site plans for your review and comment.

The subject property consists of approximately 60.75 acres and is located generally on the south side of Errecart Blvd, approximately 545' west of Lamoille Hwy, as shown in the attached site plan.

Review by the Elko City Planning Commission is tentatively scheduled for their October 1, 2019 regular meeting.

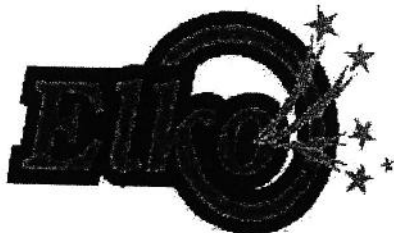
Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Please feel free to contact me if you have any questions concerning this matter.

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR ZONE CHANGE

APPLICANT(s):	ELKO WEST PROPERTIES LLC		
MAILING ADDRESS:	780 W SILVER ST ELKO NV 89801		
PHONE NO (Home)	7753853659	(Business)	7757777773
NAME OF PROPERTY OWNER (If different):	SAME <i>(Property owner's consent in writing must be provided.)</i>		
MAILING ADDRESS:	SAME		
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):			
ASSESSOR'S PARCEL NO.:	001770004	Address:	ERRECART ACROSS FROM HOSPITAL
Lot(s), Block(s), & Subdivision	SECTION 54, TOWNSHIP 34N, RANGE 55E		
Or Parcel(s) & File No.	PARCEL 3 FILE #443291		

FILING REQUIREMENTS:

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

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

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

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

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

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

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

RECEIVED

1. Identify the existing zoning classification of the property: PC

2. Identify the zoning Classification being proposed/requested: C

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

THE PROPOSED USE IS MULTI-FAMILY APARTMENT BUILDINGS A TOTAL OF 107 UNITS WITH A OFFICE/MAINT/REC UNIT (9) 12-PLEX BUILDINGS. SEE CUP PLANS FOR ADDITIONAL DETAIL.

4. Explain how the proposed zoning classification relates with other zoning classifications in the area: THE PROPERTY IS BOUNDED BY PLANNED COMMERCIAL ZONING TO THE NORTH, RESIDENTIAL ZONING TO THE WEST AND AGRICULTURE ZONING TO THE EAST. THE PROPERTY TO THE SOUTH IS VACANT OPEN LAND COUNTY PROPERTY. THE PROPERTY IS MASTER-PLANNED HIGHWAY COMMERCIAL AND THE PROPOSED ZONE CHANGE IS IN COMPLIANCE WITH THE MASTER PLAN.

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

THE PROPERTY HAS SOME TOPOGRAPHY AND NATURAL DRAINAGEWAYS THAT WILL BE PERPETUATED IN THE DEVELOPED CONDITION. THE PROPERTY IS ADJACENT TO THE REGIONAL HOSPITAL AND OTHER COMMERCIAL DEVELOPMENTS.

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

By My Signature below:

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

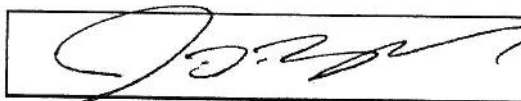
☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

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

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

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

Applicant / Agent

 ELKO WEST PROPERTIES

(Please print or type)

Mailing Address

780 W SILVER ST

Street Address or P.O. Box

ELKO NV 89801

City, State, Zip Code

Phone Number:

775 385-3659

Email address:

jbaitype@gmail.com

SIGNATURE:



FOR OFFICE USE ONLY

File No.: 4-19 Date Filed: 9/10/19 Fee Paid: \$500 CX# 324166

APN 001-770-004
& PORTION OF ERRECART BOULEVARD
LEGAL DESCRIPTION

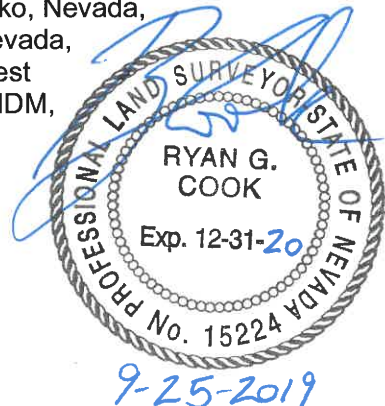
A parcel of land being the same as Parcel No. 3 and a portion of Errecart Boulevard as shown on the Parcel Map for the City of Elko, Nevada, recorded April 7, 1999, File No. 443291, Records of Elko County, Nevada, situate within a portion of the Northwest Quarter of Section 24, Township 34 North, Range 55 East, MDM, Elko, Nevada, and being more particularly described as follows:

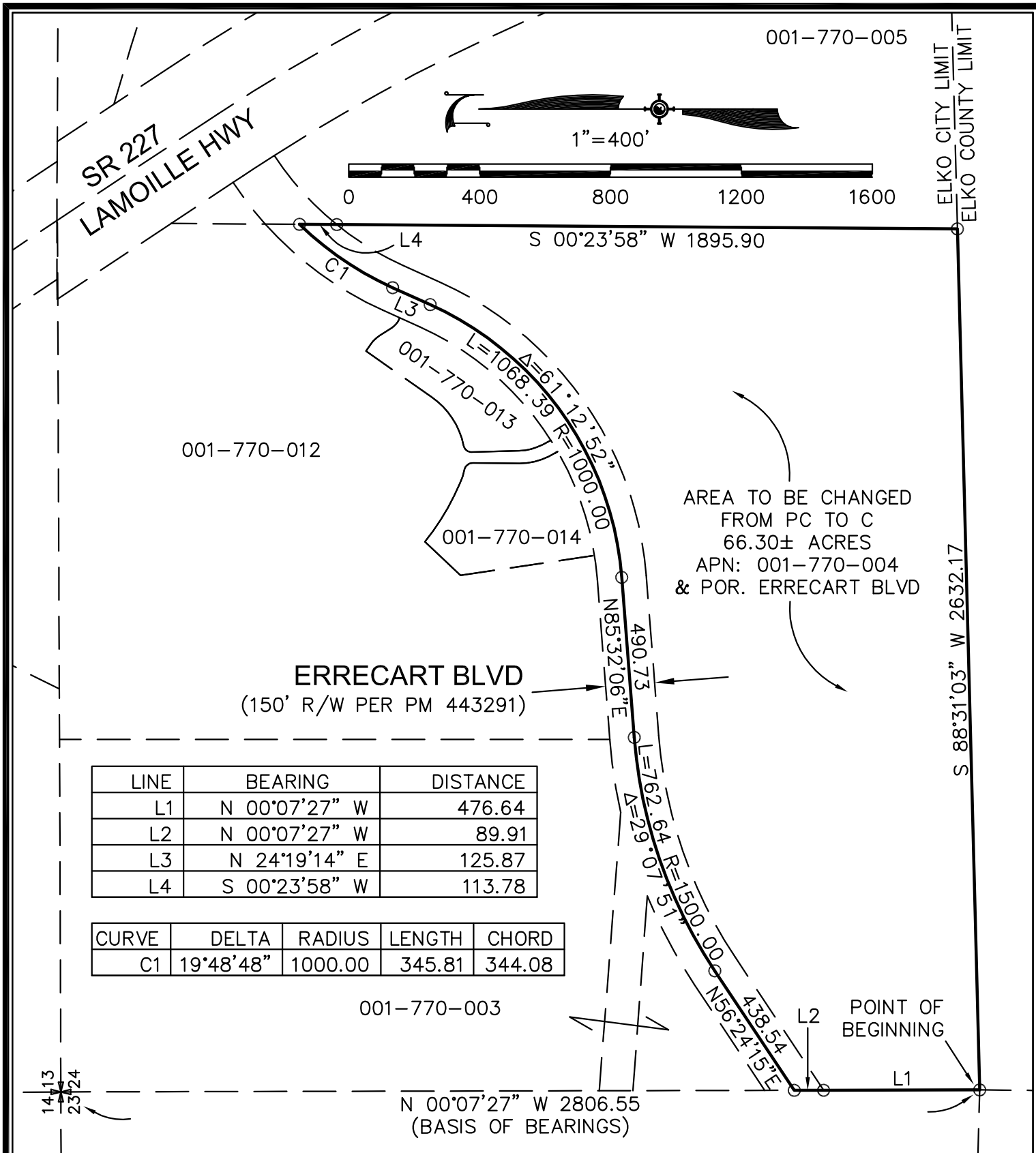
Beginning at the West Quarter corner of said Section 24, also being the Southwest corner of said Parcel No. 3, from which the Northwest corner of said Section 24 bears North 00°07'27" West a distance of 2806.55 feet;
thence along the West boundary of said Parcel No. 3 North 00°07'27" West a distance of 476.64 feet to the intersection of the Southerly right-of-way of Errecart Boulevard as shown on said Parcel Map 443291 to the Northeast corner of said Parcel No. 3;
thence departing said West boundary and along the West dedication limits of said Errecart Boulevard North 00°07'27" West a distance of 89.91 feet to the intersection of the centerline of said Errecart Boulevard;
thence departing said West dedication limits and along said centerline North 56°24'15" East a distance of 438.54 feet;
thence along a tangent circular curve to the right with a radius of 1500.00 feet and a central angle of 29°07'51" an arc length of 762.64 feet;
thence North 85°32'06" East a distance of 490.73 feet;
thence along a tangent circular curve to the left with a radius of 1000.00 feet and a central angle of 61°12'52" an arc length of 1068.39 feet;
thence North 24°19'14" East a distance of 125.87 feet;
thence along a tangent circular curve to the right with a radius of 1000.00 feet and a central angle of 19°48'48" an arc length of 345.81 feet to a point on the East dedication limits of said Errecart Boulevard;
thence departing said centerline and along said East dedication limits with a non-tangent line South 00°23'58" West a distance of 113.78 feet to the Northeast corner of said Parcel No. 3;
thence departing said East dedication limits and along the East boundary of said Parcel No. 3 South 00°23'58" West a distance of 1895.90 feet to the Southeast corner of said Parcel No. 3;
thence departing said East boundary and along the South boundary of said Parcel No. 3 South 88°31'03" West a distance of 2632.17 feet to the Point of Beginning.


Said parcel contains an area of approximately 66.30 acres.

BASIS OF BEARINGS: Identical to the Parcel Map for the City of Elko, Nevada, recorded April 7, 1999, File No. 443291, Records of Elko County, Nevada, being the line between the found Northwest corner and the found West Quarter Corner of Section 24, Township 34 North, Range 55 East, MDM, taken as S 00°07'27" E.

Descriptions Prepared By:
Ryan G. Cook, PLS 15224
Summit Engineering Corporation
5405 Mae Anne Ave.
Reno, NV 89523
775-747-8550





DISPLAY MAP FOR ZONE CHANGE APN 001-770-004	SCALE 1"=400'	 SUMMIT ENGINEERING CORPORATION 1150 LAMOILLE HIGHWAY, ELKO, NV 89801 PHONE:(775) 738-8058 FAX:(775) 738-8267	SHEET 1
			OF 1
	N:\PROPOSALS\2019_0913_JuniperRidgeApts\J82128\ZONECHANGE_DISPLAY20190925.DWG ~ 9:32 AM * 25-SEP-2019		

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 10-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 5, 2019**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **Elko High School is proposing to build a new Performing Arts building. Any expansion within the PQP, Public-Quasi, Public zoning district requires a Conditional Use Permit.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff report**
8. Recommended Motion: **Conditionally approve Conditional Use Permit 10-19 based on the facts, findings and conditions as presented in Staff Report dated October 21, 2019**
9. Findings: **See Staff Report dated October 21, 2019.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Elko County School District
Mr. Casey Kelly
850 Elm Street
Elko, NV 89801
ckelly@ecsdnv.net**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 11/5

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

Title: Conditional Use Permit No. 10-19
Applicant(s): Elko County School District - Elko High School
Site Location: 1297 College Ave. - APN 001-191-004
Current Zoning: PQP Date Received: 10/15 Date Public Notice: 10/22
COMMENT: This is to allow for the expansion of the current
Elko High School campus with the addition of a new building

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 10/28/19
Recommend approval as presented by
staff

SAW

Initial

City Manager: Date: 10/29/19

No comments/concerns.

U

Initial



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

CITY OF ELKO STAFF REPORT

DATE:	October 21, 2019
PLANNING COMMISSION DATE:	November 5, 2019
AGENDA ITEM NUMBER:	I. A.2
APPLICATION NUMBER:	Conditional Use Permit 10-19
APPLICANT:	Elko County School District
PROJECT DESCRIPTION:	Elko High School Campus, New Performing Arts
RELATED APPLICATIONS:	Variance 1-19

A Conditional Use Permit for the expansion of the current Elko High School campus with the addition of a new building.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: APN 001-191-001 & 004

PROPERTY SIZE: 14.03 acres combined after approval and recordation of parcel map combining the two parcels

EXISTING ZONING: PQP –Public, Quasi, Public

MASTER PLAN DESIGNATION: Public

EXISTING LAND USE: Developed as the Elko High School campus

NEIGHBORHOOD CHARACTERISTICS:

) The property is surrounded by developed land to the north, south, east and west. The campus is currently zoned PQP, Public, Quasi-Public with R- Single Family and Multiple Family Residential to the south and northeast.

PROPERTY CHARACTERISTICS:

-) The property is currently developed with a parking lot and landscaping on the portion of APN 001-191-004 which is proposed for the new building.
-) The property has moderate topography with slope down toward College Ave.
-) The property is currently accessed from 13th Street.
-) The property has frontage along College Avenue as well as 13th Street.
-) The property is not in the flood zone.

APPLICABLE MASTER PLANS AND CITY CODE SECTIONS:

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

BACKGROUND INFORMATION

-) The application for the Conditional Use Permit was filed as required under City Code 3-2-8 (D).

-) The applicant has applied for a variance (VAR 4-19) for a reduction in the street line setback from College Avenue for the new building.
-) The applicant has an approved parcel map to combine both parcels into one parcel. To this date, the map has not been recorded as there are conditions to be met.
-) The property is located in the Redevelopment Area.

MASTER PLAN

Land Use

1. The Master Plan Land Use Atlas shows the area as Public.
2. PQP- Public, Quasi-Public is listed as a corresponding zoning district for Public in the Master Plan Land Use.
3. Master Plan states that Public land use designation is applied to community and public and quasi-public uses such as those associated with government, non-profit, and utilities. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies.
4. Objective 3: Strengthen, preserve, and promote the area around the City Park, City Hall, and Convention Center as the civic heart of the community.
5. Objective 8: Ensure that new development does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

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

Transportation

1. The Master Plan identifies College Avenue as a minor arterial.
2. The Master Plan identifies 13th Street as a Commercial/Industrial Collector.
3. The site has pedestrian access along College Avenue, 13th Street an interior network of sidewalks from parking area to the buildings. Sidewalks are a necessary safety feature, particularly in residential neighborhoods where children walk to and from the campus.
4. There is no proposed vehicular access from College Avenue to the new building and the current access off 13th Street will remain as existing. It is a safer approach having the access not from the minor arterial.
5. The existing facility meets the goals listed in the Master Plan Transportation document as Best Practice Objective 1; Provide a balanced transportation system that accommodates vehicle, bicycles, and pedestrians, while being sensitive to, and supporting the adjacent land uses.

The conditional use permit is in conformance with the Master Plan Transportation Component and existing transportation infrastructure.

ELKO REDEVELOPMENT PLAN:

1. The property is located within the redevelopment area. The proposed use doesn't provide tax increment growth but does support several goals and objectives listed in the Redevelopment Plan.

The proposed conditional use conforms to the Redevelopment Plan.

ELKO WELLHEAD PROTECTION PLAN

-) The property is located in the 30-year capture zone for City wells. Development will be required to conform to the Elko Wellhead Protection Plan

SECTION 3-2-3 GENERAL PROVISIONS

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

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

1. Section 3-2-3(D) states that “No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability.”

The proposed development is required to have an approval as a conditional use to be in conformance with ECC 3-2-3 as required in ECC 3-2-8(D).

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS

1. Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
2. Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

The proposed development does not conform with this section of the code and therefore the applicant has applied for a variance (VAR 4-19) for the street line setback requirement.

SECTION 3-2-8 PQP PUBLIC, QUASI-PUBLIC DISTRICT

1. The intent of the district is to accommodate public or quasi-public institutional uses.
2. Section 3-2-8(D) The establishment, expansion or change of any use, including principal permitted uses, shall be governed by the conditional use permit procedure, as set forth in section [3-2-18](#) of this chapter.
3. Section 3-2-8(C) The total ground floor area of all buildings shall not exceed thirty five percent (35%) of the net site area. Minimum setback from any street line is not less than one and one-half (1 ½) times the height of the principal building. Minimum setback from interior side and rear lot lines is not less than the height of the principal building, plus one additional foot for each five feet (5') or part thereof that such building exceeds thirty five feet (35') in the aggregate horizontal dimension of the wall generally parallel to such side or rear lot line. Building height shall conform with requirements contained within the city airport master plan.
4. Development of the property is required to be in conformance with City code and conditions for the CUP. It appears the property can be developed in conformance with the requirements stipulated in City code with the approval of a variance.

The proposed development does not conform with the development standards of this section of code and therefore, the applicant has requested a variance.

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

-) Conformance with this section is required as the property is developed. Currently there are 1,301 students and 100 staff which would result in a need of 426 parking stalls. The parking analysis that was provided to us states that within 500 feet of the facility they have 540 parking stalls. Staff is concerned with the seating capacity of the Auditorium holding 830 fixed seats and not being able to accommodate the parking required for the Auditorium with the current configuration. As part of the Elko High School campus, the new facility is considered a part of the principal permitted uses with parking calculated on students and staff, not fixed seating in the Auditorium. Staff has added a condition in regards to if the Elko County School District rents the auditorium for events during regular scheduled school hours and how they are to provide off-site parking with shuttle service.

SECTION 3-2-18 CONDITIONAL USE PERMITS

General Regulations:

1. Certain uses of land within designated zoning districts shall be permitted as principal uses only upon issuance of a conditional use permit. Subject to the requirements of this chapter, other applicable chapters, and where applicable to additional standards established by the

Planning Commission, or the City Council, a conditional use permit for such uses may be issued.

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

3-8 FLOOD PLAIN MANAGEMENT

1. The parcel is not located within a designated flood plain.

FINDINGS

1. The proposed development is in conformance with the Land Use Component of the Master Plan. The proposed conditional use permit meets Objectives 3 & 8 of the Land Use Component of the Master Plan.
2. The proposed development is in conformance with the existing transportation infrastructure and the Transportation Component of the Master Plan.
3. The proposed development conforms with the goals and objectives of the Redevelopment Plan.
4. The site is suitable for the proposed use.
5. The proposed development is in conformance with the City Wellhead Protection Program.
6. The proposed use is consistent with surrounding land uses.
7. The proposed use is in conformance with City Code 3-2-8 PQP, Public-Quasi, Public with the approval of the Condition Use Permit and variance 4-19 for street line setback reduction.
8. Development under the proposed conditional use 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.
9. The parcel is not located within a designated Special Flood Hazard Area.
10. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-2-18, and 3-8 of the Elko City Code with the approval of the variance for street line setback that is associated with this CUP.

STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of CUP 10-19 with the following conditions:

1. The permit is granted to the applicant Elko County School District.
2. The permit shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
3. A variance for the College Ave. street line setback for the principal building is required to be approved prior to issuing of a building permit. All conditions of VAR 4-19 to be met prior to occupancy of the building.
4. Slope stabilization will be required on all slope areas.
5. A Parcel Map for the consolidation of the two parcels be recorded prior to issuing a Certificate of Occupancy for the new building.
6. CUP 10-19 to be recorded with the Elko County Recorder within 90 days after the commencement of the construction of the new building.
7. Access to be limited to 13th Street.
8. If the auditorium is to be used by anyone other than students and staff during scheduled school hours, off-site parking must be arranged with transportation to and from parking.
9. If a Memorandum of Understanding (MOU) and Consent Agreement is not in place for all of the parking on City of Elko property, then one must be approved by City Council within 60 days of CUP approval.

Fw: Staff Head Count

Cathy Laughlin

Thu 10/24/2019 11:35 AM

To: Shelby Archuleta <sarchuleta@elkocitynv.gov>

Cathy Laughlin

City Planner

City of Elko

1751 College Ave. Elko, NV 89801

From: Timothy Wickersham <twickers@ecsdnv.net>

Sent: Thursday, October 24, 2019 11:29 AM

To: Casey Kelly <ckelly@ecsdnv.net>

Cc: Cathy Laughlin <claughlin@elkocitynv.gov>

Subject: Re: Staff Head Count

Hi Casey and Cathy,

Our staff, including custodial and paraprofessional, is precisely 100 individuals. Our student count is down to 1,301 as of today.

Tim

On Thu, Oct 24, 2019 at 11:08 AM Casey Kelly <ckelly@ecsdnv.net> wrote:

Good morning Tim,

As part of our permitting for the Science Building and the Performing Arts building we are required to complete a parking analysis so we need the current student count and the number of all your staff at EHS. I was able to give Cathy Laughlin with the City of ELko the student count of 1307 as of 9/6/19. Can you either send me your current staffing number or email directly to Cathy. I have included her in this email for your convenience.

Thanks,

Casey

Casey L. Kelly, P.E., PMP

Director of Building Operations & Construction

Elko County School District

850 Elm Street - P.O. Box 1012

Elko, NV 89803-1012

ckelly@ecsdnv.net

Phone : (775) 738-5196

Cell: (775) 401-0051

Fax: (775) 738-2347

--

Tim Wickersham
Principal
Elko High School
(775) 738-7281

CUP 10-19 + Var 4-19 Elko County School District

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001202014	AIAZZI, STANLEY G & JOYCE L TR		3477 WRIGHT WAY	ELKO NV	89801-3433
001242018	ARENDT, SCOTT		575 12TH ST	ELKO NV	89801-3404
001252010	BEACH, JACKIE LEE & LORRAINE K		572 13TH ST	ELKO NV	89801-3407
001203012	BIEGLER, PHILIP J		1319 COLLEGE AVE	ELKO NV	89801-3427
001201001	BLANKENSHIP, ROBERT ET AL		791 13TH ST	ELKO NV	89801-3443
001242015	BRASWELL, JAY C & MAHELIA J		576 11TH ST	ELKO, NV	89801-3403
001202015	BROWN, HOWARD A & JILL R		716 13TH ST	ELKO NV	89801-3442
001252001	CARNICLE, ALLEN R & NATALIE B		588 13TH ST	ELKO NV	89801-3407
001203005	CDEBACA, NICHOLAS FELIPE		1350 OAK ST	ELKO NV	89801
001251014	CHARPENTIER, KAY MARIE		576 12TH ST	ELKO NV	89801-3405
001201002	CLINTON, ELDON WAYNE ET AL		7850 E MEMORY LANE	PRESCOTT VALLEY AZ	86315
001241024	CREWS, JAMES V		1026 1/2 COLLEGE AVE	ELKO NV	89801-3479
001203010	CURWEN, MIKE & MACKENZIE		1351 COLLEGE AVE	ELKO NV	89801-3427
001251011	DENNIS, ROY J & LODEEN M		546 12TH ST	ELKO NV	89801
001251012	DOLBERG, ANDREW & MELANIE		552 12TH ST	ELKO NV	89801-3405
001241035	EINBODEN, ALLAN F & DINA L	C/O ZIONS BANK ATN: N	2460 S 3270 W	WEST VALLEY CITY UT	84119-1116
001191003	ELKO COUNTY OF		540 COURT ST	ELKO NV	89801-3515
001191001	ELKO COUNTY SCHOOL DISTRICT	} 1 pc.	850 ELM ST	ELKO NV	89801-3349
001620020	ELKO COUNTY SCHOOL DISTRICT		850 ELM ST	ELKO NV	89801-3349
001620019	ELKO COUNTY SCHOOL DISTRICT		850 ELM ST	ELKO NV	89801-3349
001242017	GEIST & SCHVANEVELDT LLC		318 FALLS AVE	TWIN FALLS ID	83301-3373
001241025	GREDZINSKI, ISABELLA JOY		1026 COLLEGE AVE	ELKO NV	89801-3422
001251001	GUISTI, MARK L		592 12TH ST	ELKO NV	89801-3405
001242003	GUZMAN, SERGIO A & GEORGIA C TR		207 MOUNTAIN CITY HWY # 14	ELKO NV	89801-9505
001203011	HARRIS, JERALD		1329 COLLEGE AVE	ELKO NV	89801-3427
001202003	HASSETT, DANIEL M		1342 CEDAR ST	ELKO NV	89801-3418
001202013	HASSETT, MARY CATHERINE TR		1335 OAK ST	ELKO NV	89801-3433
001203002	HAYES, DEREK JON		467 WESTCLIFF DR	SPRING CREEK NV	89815-6830
001251003	HENNEBERRY, MICHAEL J & JACQUELI		565 13TH ST	ELKO NV	89801-3406
001203003	IRIBARNE, JANET		1328 OAK ST	ELKO NV	89801-3434
001242014	JONES, DIANA J		110 WILSON AVE	ELKO NV	89801-4144
001203004	KENNEDY, MARK E		1340 OAK ST	ELKO NV	89801-3434
001202002	LARIOS, ADA ROSE		1320 CEDAR ST	ELKO NV	89801-3418

001251002 LOSTRA, ANSON J & JOLANDE L TR
001241029 MAHTAPENE-CORDOVA, NOAH ET AL
001203013 MARVEL, JODY
001241026 MCKNIGHT, SHARON K
001242013 OLSON, LISA
001201003 PATTANI, FERN J & GLEN J
001203001 RAGLAND, LEVI & HALEY L
001241028 REMALY, TAYLOR DAVID ET AL
001203009 RHOADS, DEAN A & SHARON L TR
001241030 RIOS, ANTONIO & RUIZ, GUADALUPE
001242005 ROBINSON, RICHARD L & MYRNA L
001241027 SANDHOFF, SEAN R ET AL
001202012 SHERRILL, THOMAS EDWARD JR ETAL
001202011 SHINN, KAREN L
001242006 SMITH, KENNETH C
001251013 SMITH, WINIFRED C TR
001242016 STEFLIK, DANIEL M TR ET AL
001242002 STEFLIK, DANIEL M TR ET AL
001202001 STEIN, CAROL TR
001202016 STEIN, MICHAEL S
001242001 STOWELL, ROSEMARY ANN
001251004 TRUXAL, CHRISTOPHER & LACEY

} 1 p.c.

C/O HUGHES, JANET

591 13TH ST
589 11TH ST
1640 BALLARD LN
PO BOX 281205
552 11TH ST
739 13TH ST
1306 OAK ST
593 11TH ST
PO BOX 8
328 MAPLE ST
60431 HEDGEWOOD LN
2715 PURPLE ROOT DR
1345 OAK ST
1355 OAK ST
563 12TH ST
564 12TH ST
1010 COURT ST
1010 COURT ST
51 CYPRESS WAY
5679 KEYMAR DR
594 11TH ST
555 13TH ST

ELKO NV 89801-3406
ELKO NV 89801-3402
WINNEMUCCA NV 89445-3241
LAMOILLE NV 89828-1205
ELKO NV 89801-3403
ELKO NV 89801-3443
ELKO NV 89801-3434
ELKO NV 89801-3402
TUSCARORA NV 89834-0008
ELKO NV 89801-3148
BEND OR 97702
LAS VEGAS NV 89156-7702
ELKO NV 89801-3433
ELKO NV 89801-3433
ELKO NV 89801-3404
ELKO NV 89801-3405
ELKO NV 89801-3945
ELKO NV 89801-3945
CORNELIA GA 30531
SAN JOSE CA 95123-3416
ELKO NV 89801-3403
ELKO NV 89801-3406

52

Post Marked 10/24/19

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, November 5, 2019 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

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

- Conditional Use Permit No. 10-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. The subject property is located generally west of the intersection of 12th Street and College Avenue. (1297 College Avenue - APN 001-191-004).
- Variance No. 4-19, filed by Elko County School District for a reduction of the required setback from any Street Line from 66' to 20' on the College Avenue Street Line, within a PQP (Public, Quasi-Public) Zoning District, and matters related thereto. The subject property is located generally west of the intersection of 12th Street and College Avenue. (1297 College Avenue - APN 001-191-004).

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

APPLICANT(s):	Elko County School District		
(Applicant must be the owner or lessee of the proposed structure or use.)			
MAILING ADDRESS:	850 Elm St., Elko, NV 89801		
PHONE NO. (Home)		(Business)	775-738-5196
NAME OF PROPERTY OWNER (If different):			
(Property owner's consent in writing must be provided.)			
MAILING ADDRESS:			
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):			
ASSESSOR'S PARCEL NO.:	001-191-004	Address	1297 College Ave.
Lot(s), Block(s), & Subdivision	10, 15, 34N		
Or Parcel(s) & File No.	001-191-004		

FILING REQUIREMENTS

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

Fee: A \$750.00 non-refundable fee.

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

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

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

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

RECEIVED

OCT 15 2019

1. Current zoning of the property: PQP
2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:
3-2-8, D
3. Explain in detail the type and nature of the use proposed on the property:
Expansion of education space on Elko High School Campus. Specifically, the construction of a new +/-33,000 sf, performing arts building (840 seat auditorium and classrooms).
4. Explain how the use relates with other properties and uses in the immediate area:
The use is congruent with the use of the adjacent buildings on the same property to the north and west - secondary education buildings. Property to the southeast and northeast consists of single-family residential.
5. Describe any unique features or characteristics, e.g. lot configuration, storm drainage, soil conditions, erosion susceptibility, or general topography, which may affect the use of the property: None.
6. Describe the general suitability and adequacy of the property to accommodate the proposed use: The property is part of the Elko High School campus. The lot is currently used for campus parking and includes vacant land intended for future EHS expansion. Current zoning is PQP with public schools as an allowed use. The past use was for a hospital.

7. Describe in detail the proposed development in terms of grading, excavation, terracing, drainage, etc.: Development of the building site will require slight regrade of lawn area along College Ave. to the SE. Underground water retention/infiltration will be added to pick up a portion of roof runoff. Excavation will be as necessary to construct the building pad.

8. Describe the amounts and type of traffic likely to be generated by the proposed use: The auditorium portion of the project is expected to generate vehicle and pedestrian traffic when in use, primarily during evening and weekend hours. Based on the occupant capacity, 200-250 vehicle trips may be generated during times of use. Classes currently held in adjacent buildings on the campus will be moved to this building, thus not impacting current traffic counts.

9. Describe the means and adequacy of off-street parking, loading and unloading provided on the property: The auditorium will primarily be used during evening and weekend hours. Off-street parking is currently provided adjacent to the building to the southwest, northeast and northwest for a total of 102 parking stalls. An additional 150 off-street parking stalls are available on the campus, just to the northwest. Angled parking (50+) in front of the school along Cedar St. and off-street parking at the gym and fairgrounds (140+, currently utilized for football games) is available if needed. Parking needs are not expected to increase during normal school hours. Loading and unloading is expected to be infrequent and will occur on site adjacent to the building.

10. Describe the type, dimensions and characteristics of any sign(s) being proposed: Signage on the building identifying use will be 16-18" high. No other permanent sign(s) proposed. Required construction signage is expected.

11. Identify any outside storage of goods, materials or equipment on the property: No outside storage is planned beyond the construction period.

12. Identify any accessory buildings or structures associated with the proposed use on the property: None beyond existing school buildings on campus.

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

By My Signature below:

- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant / Agent Casey Kelly, P.E., PMP
(Please print or type)

Mailing Address 850 Elm St.
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: 775-738-5196

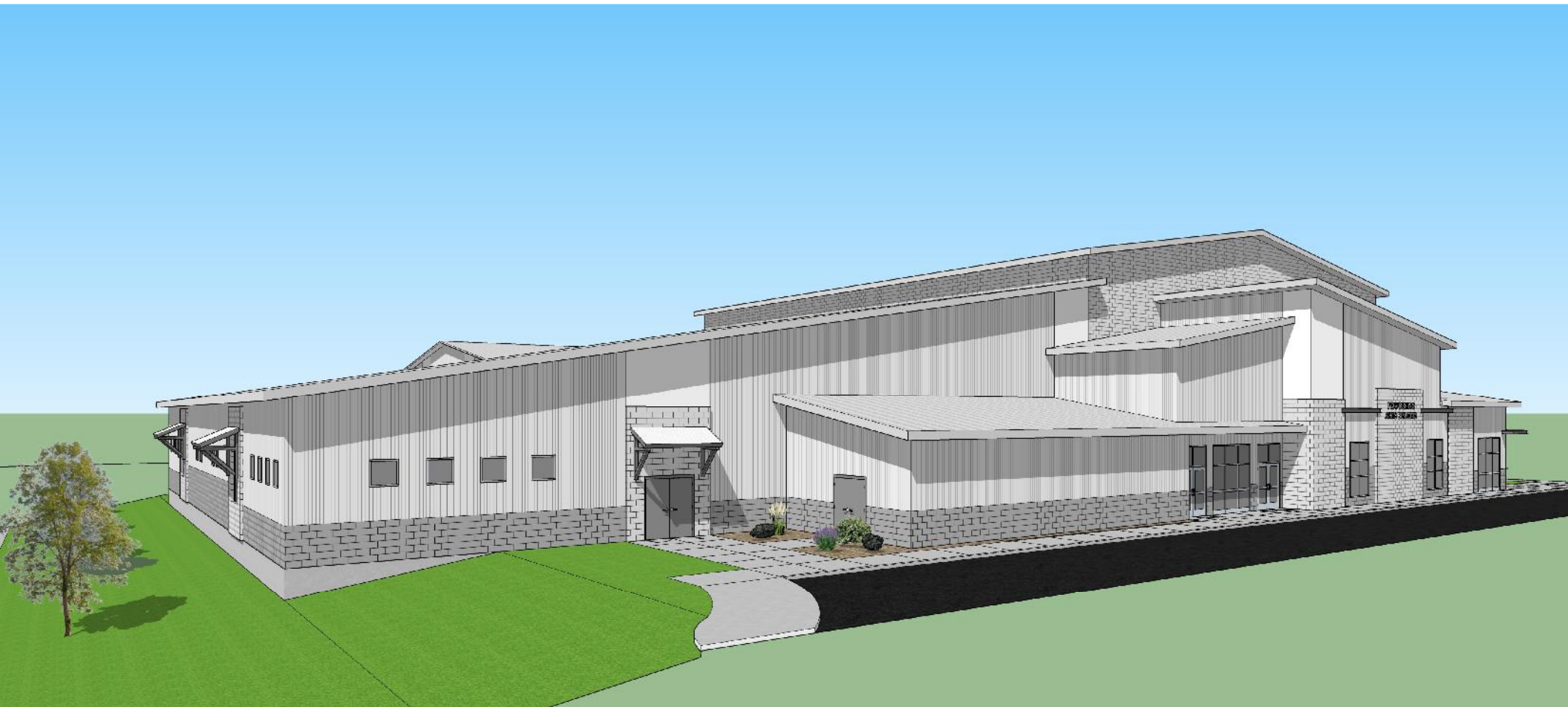
Email address: ckelly@ecsdnv.net

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 10-19 **Date Filed:** 10/15/19 **Fee Paid:** \$ 750 **cc#** 0491

ELKO HIGH SCHOOL
PERFORMING ARTS BUILDING
CONCEPTUAL ELEVATION

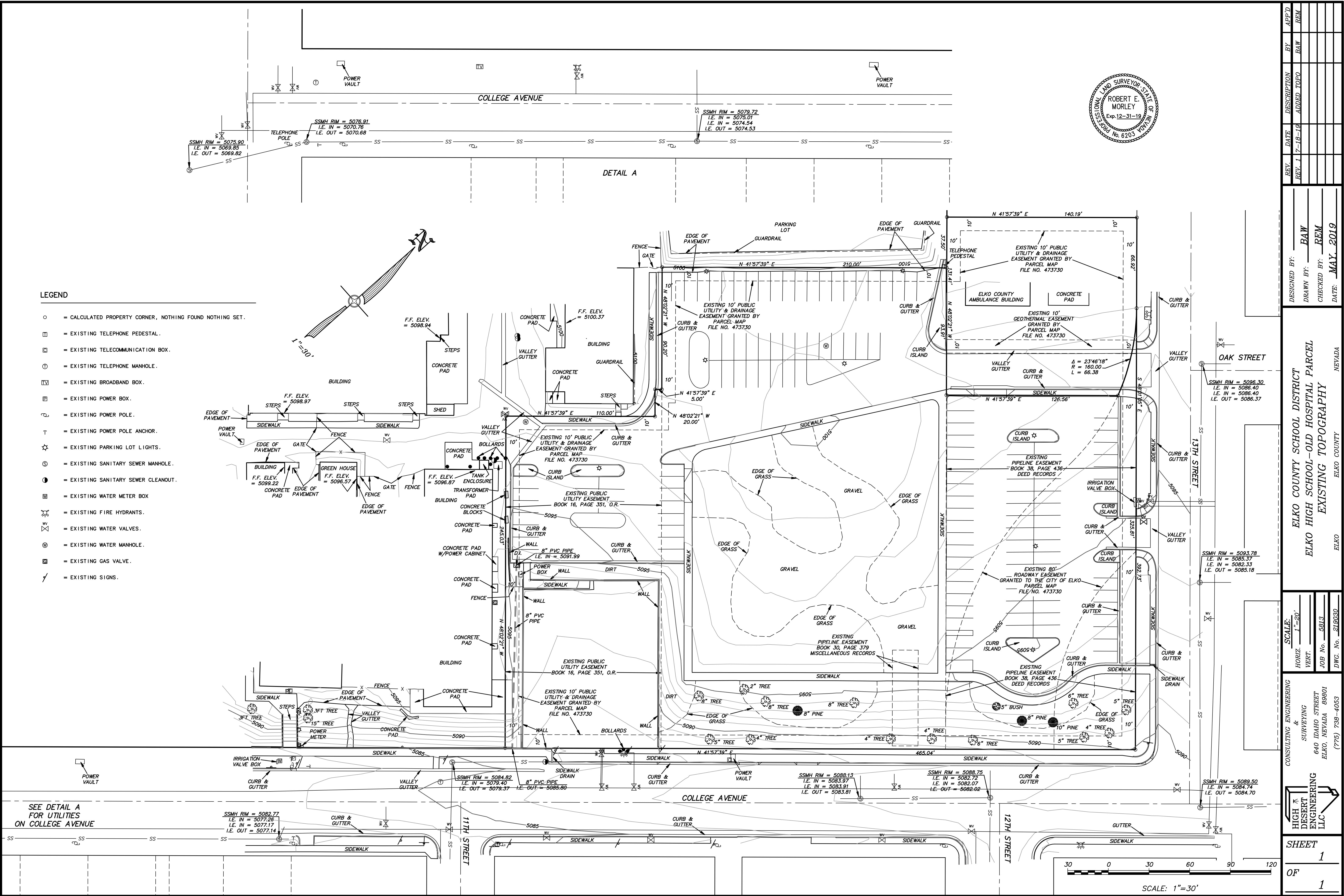


ELKO HIGH SCHOOL
PERFORMING ARTS BUILDING
CONCEPTUAL ELEVATION



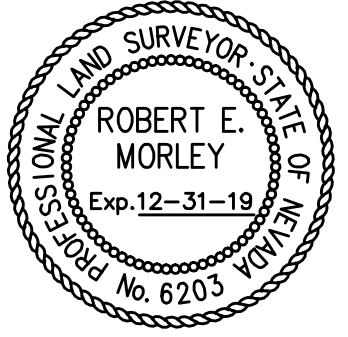
ELKO HIGH SCHOOL
PERFORMING ARTS BUILDING
CONCEPTUAL ELEVATION





LEGEND

- = CALCULATED PROPERTY CORNER, NOTHING FOUND NOTHING SET.
- = EXISTING TELEPHONE PEDESTAL.
- = EXISTING TELECOMMUNICATION BOX.
- ⊙ = EXISTING TELEPHONE MANHOLE.
- ⊞ = EXISTING BROADBAND BOX.
- ⊞ = EXISTING POWER BOX.
- ⊞ = EXISTING POWER POLE.
- ⊞ = EXISTING POWER POLE ANCHOR.
- ⊞ = EXISTING PARKING LOT LIGHTS.
- ⊞ = EXISTING SANITARY SEWER MANHOLE.
- ⊞ = EXISTING SANITARY SEWER CLEANOUT.
- ⊞ = EXISTING WATER METER BOX.
- ⊞ = EXISTING FIRE HYDRANTS.
- ⊞ = EXISTING WATER VALVES.
- ⊞ = EXISTING WATER MANHOLE.
- ⊞ = EXISTING GAS VALVE.
- ⊞ = EXISTING SIGNS.



APP'D	BY	DESCRIPTION	DATE	REV.
BAW	BAW	ADDED TOPO	1-7-18-19	
REM	REM	CHECKED BY		
		DATE	MAY 2019	

DESIGNED BY: BAW
DRAWN BY: REM
CHECKED BY: REM
DATE: MAY 2019

ELKO COUNTY SCHOOL DISTRICT
ELKO HIGH SCHOOL-OLD HOSPITAL PARCEL
EXISTING TOPOGRAPHY

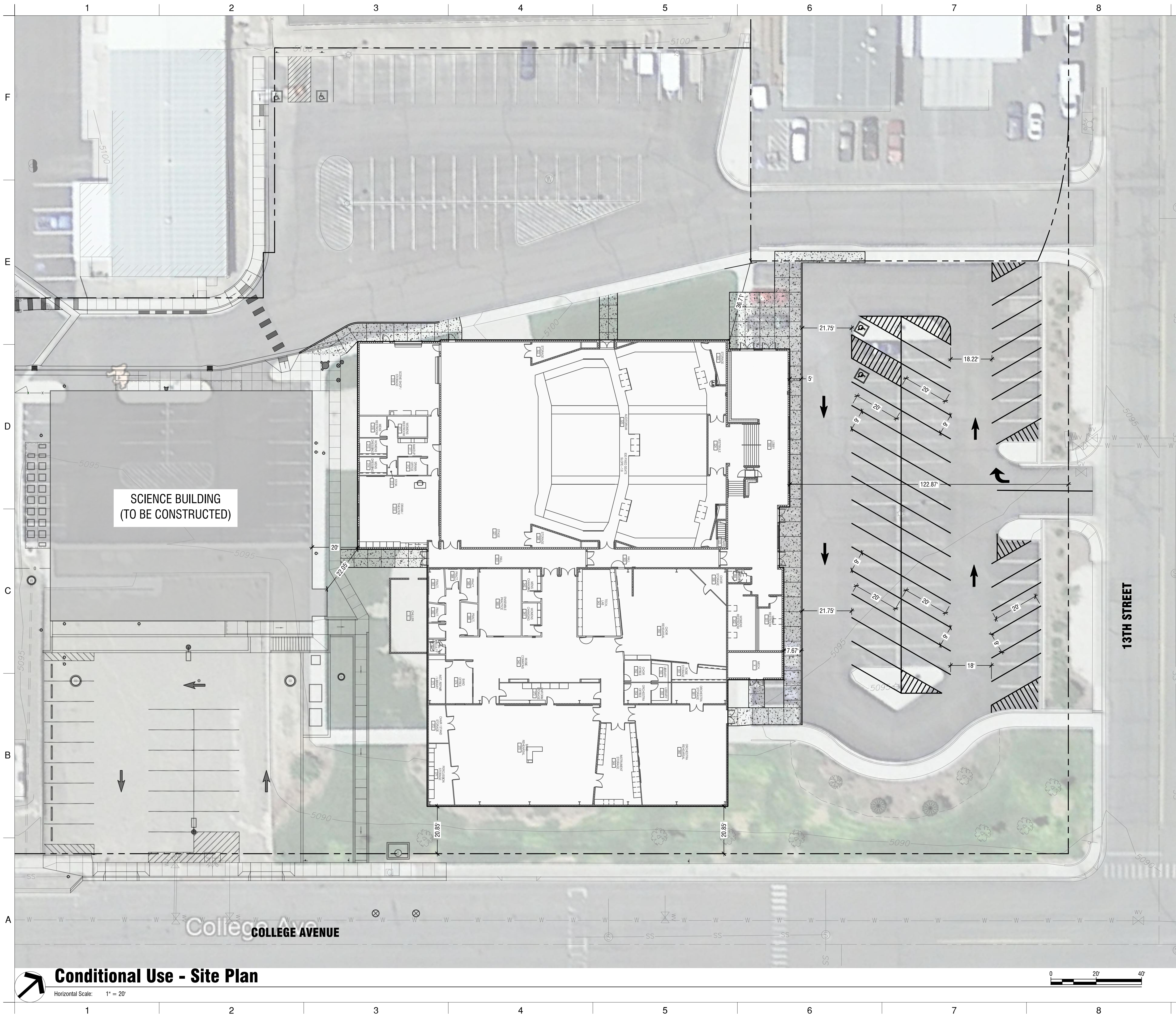
SCALE: 1"=30'
HORIZ. 1"=20'
VERT. 1"=20'

CONSULTING ENGINEERING & SURVEYING
640 IDAHO STREET
ELKO, NEVADA 89801
(775) 738-4053

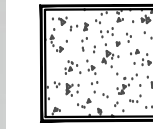
HIGH DESERT ENGINEERING LLC

SHEET 1 OF 1

File Location: g:\2019\119179\can\119179 cu site plan.dwg
Last Printed By: chad rieza
Date Printed: Tuesday, October 15 2019 at 12:34 PM



Material Legend:



STANDARD CONCRETE FLATWORK WITH
RAMPING AS REQUIRED TO MEET ADA
REQUIREMENTS.

DESIGN WEST
ARCHITECTS, P.A.
MERIDIAN IDAHO • PULLMAN WASHINGTON
KENNEWICK WASHINGTON • ONTARIO OREGON
SPOKANE WASHINGTON
www.designwestpa.com
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DRAWN BY
MT

CHECKED BY
MTA

JOB NUMBER
TBD

REVISIONS



**ELKO HIGH SCHOOL
PERFORMING ARTS**
TBD COLLEGE AVE.
ELKO, NEVADA 89801

DATE
10-15-2019

SHEET NAME

**Conditional
Use - Site
Plan**

SHEET

C1.00

AHJ APPROVAL

Elko County Fair

PARKING IMMEDIATELY ADJACENT:	107
PARKING WITHIN 500 FEET:	170
ADDITIONAL PARKING ON CAMPUS:	90
FAIRGROUNDS PARKING:	173
TOTAL AVAILABLE OFF-STREET PARKING: 540	



**Elko City Planning Commission
Agenda Action Sheet**

1. Review, consideration and possible action on Variance No. 4-19, filed by Elko County School District for a reduction of the required setback from any street line from 66' to 20' for College Avenue setback from street line, within a PQP (Public, Quasi-public) Zoning District, and matters related thereto, **FOR POSSIBLE ACTION**
2. Meeting Date: **November 5, 2019**
3. Agenda Category: **PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The applicant is requesting a variance for the required street line setback for a new proposed structure.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Conditionally approve Variance No. 4-19 based on the facts, findings and conditions as presented in the Staff Report dated October 23, 2019**
9. Findings: **See Staff Report dated October 23, 2019**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Elko County School District
Mr. Casey Kelly
850 Elm Street
Elko, NV 89801
ckelly@ecsdnv.net**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 11/5

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

Title: Variance No. 4-19

Applicant(s): Elko County School District - Elko High School

Site Location: 1297 College Ave - APN 001-191-004

Current Zoning: PQP Date Received: 10/15 Date Public Notice: 10/22

COMMENT: This is to request a reduction of the required setback from any Street Line from 10' to 20' on the College Ave Street Line, within a PQP Zoning District.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 10/28/19

Recommend approval as presented by Staff

SAW

Initial

City Manager: Date: 10/29/19

No comments/concerns.

cc

Initial



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

CITY OF ELKO STAFF REPORT

REPORT DATE:	October 23, 2019
PLANNING COMMISSION DATE:	November 5, 2019
AGENDA ITEM NUMBER:	I.A.3
APPLICATION NUMBER:	Variance 4-19
APPLICANT:	Elko County School District
PROJECT DESCRIPTION:	Elko High School Campus, New Performing Arts Building
RELATED APPLICATIONS:	CUP 10-19

A variance request from provisions under Section 3-2-8, requiring minimum setbacks from any street line in a Public, Quasi-Public District. The minimum setback requirements from any street line within the PQP District are 1 ½ times the building height for the principal building.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER:	APN 001-191-001 & 004 to be combined by parcel map
PARCEL SIZE:	14.03 acres with recordation of parcel map to combine parcels
EXISTING ZONING:	PQP –Public, Quasi, Public
MASTER PLAN DESIGNATION:	Public
EXISTING LAND USE:	Developed as Elko High School Campus

BACKGROUND:

1. The application for the variance was filed as required under City Code 3-2-8 (C).
2. The applicant has applied for a Conditional Use Permit (CUP 10-19) as required under Elko City Code 3-2-8 (D).
3. The applicant has an approved parcel map to combine both parcels into one parcel. To this date, the map has not been recorded as there are conditions to be met.
4. The property is located in the Redevelopment Area.
5. The properties are currently being served by City of Elko water and sewer and other non-city utilities.

NEIGHBORHOOD CHARACTERISTICS:

) The property is surrounded by developed land to the north, south, east and west. The campus is currently zoned PQP, Public, Quasi-Public with R- Single Family and Multiple Family Residential to the south and northeast.

APPLICABLE MASTER PLAN SECTIONS AND CITY CODE SECTIONS:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Redevelopment Plan
-) City of Elko Zoning – Section 3-2-8 Public, Quasi-Public Districts
-) City of Elko Zoning – Section 3-2-22 Variances

MASTER PLAN - Land Use:

1. The Master Plan Land Use Atlas shows the area as Public.
2. PQP-Public, Quasi-Public zoning district is listed as a corresponding zoning district for Public.
3. Master Plan states that Public land use designation is applied to community and public and quasi-public uses such as those associated with government, non-profit, and utilities. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, the Master Plan's goals and policies.
4. Objective 3: Strengthen, preserve, and promote the area around the City Park, City Hall, and Convention Center as the civic heart of the community.

5. Objective 8: Ensure that new development does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The approval of the variance from the setback requirements stipulated for the PQP zoning district is in conformance with the Land Use Component of the Master Plan.

ELKO REDEVELOPMENT PLAN:

1. The property is located within the redevelopment area. The proposed use doesn't provide tax increment growth but does support several goals and objectives listed in the Redevelopment Plan.

The proposed variance conforms to the Redevelopment Plan.

SECTION 3-2-8 PUBLIC, QUASI-PUBLIC DISTRICT:

1. The Minimum Setback From Any Street Line: Not less than one and one-half (1½) times the height of the principal building. Elko County School District is submitting a parcel map for the consolidation of the two parcels, the setbacks would not have any interior side yard or rear setback requirements as the new consolidated parcel will have street frontage along all four sides.
 - a. The following setbacks are required, all horizontal measurements for setback requirements are for the principal building on this parcel:
 - i. Street line setback requirements
 1. Building height ranges from 20' to 44'.
 2. 66' distance required to any street line
 3. Greater than 300' to Cedar Street property line
 4. Greater than 122' to 13th Street property line
 5. Greater than 800' to 9th Street property line
 6. 20' setback provided to College Avenue property line and therefore the request for a variance would be for the reduction of the street line setback requirement to College Avenue.
2. Maximum Lot Coverage: The total ground floor area of all buildings shall not exceed thirty five percent (35%) of the net site area
 - a. It does not appear that with the addition of the new proposed building, the lot coverage would exceed the 35% of the net site area requirement. The combined buildings are approximately 175,550 sq. ft. with combined lot of 14.03 acres which would be 28.7%.

Approval of Variance 4-19 is required to be in conformance with Section 3-2-8 of City Code.

SECTION 3-2-22 VARIANCES:

B. Procedure: Any person requesting a variance by the planning commission shall include:

Application Requirements

1. There are special circumstances or features, i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions applying to the property under consideration.
 -) Application states: The property has moderate slope. The available building pad is extremely constrained.

-) The special circumstance is directly related to the property as developed with multiple principal buildings that don't necessarily all meet the setback requirements for the PQP zoning district.
 -) The proposed building site will not interfere with any possible site triangle for traffic as it is not located at the intersection of any existing streets.
- 2. The special circumstance or extraordinary situation or condition results in exceptional practical difficulties or exceptional undue hardships, and where the strict application of the provision or requirement constitutes an abridgment of property right and deprives the property owner of reasonable use of property.
 -) Application states: Building is sized to accommodate specific program requirements. Meeting 1.5 times building height setback would require demolishing and building upon of the parking lots to the north and east. Because of existing grades, parking could not be replaced elsewhere on the site.
- 3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.
 -) Application states: Adjacent properties appear to have setbacks equal to ½ building height or less.
- 4. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.
 -) Application states: Setback will adequately separate building from street. As the building is located northwest of residences across the street, building will not block sunlight.
 -) Staff feels that the location of the building doesn't create a visibility safety hazard for traffic as the proposed location has distance separation from any intersection.
- 5. The granting of the variance will not substantially impair the intent or purpose of the zoning ordinance or effect a change of land use or zoning classification.
 -) Application states: Reduced setback will not affect ability to route utilities. Setback to 13th Street to the East exceeds setback requirements.
 -) Application states: The variance request is for setback only and maintains the current zoning with the proposed Public School use.
- 6. The granting of the variance will not substantially impair affected natural resources.
 -) Application states: No natural resources will be affected.

FINDINGS

1. The proposed variance approval is in conformance with the Land Use Component of the Master Plan.
2. The property is located within the redevelopment area and meets the goals and objectives of the plan.
3. The property will have street frontage on all four sides with the consolidation of the two parcels into one. Approval of VAR 4-19 is required to be in conformance with Elko City Code 3-2-8.
4. The property as developed with the addition of the proposed building, does not exceed the thirty five percent of the net site area lot coverage.
5. Approval of Variance 4-19 with the recorded parcel map for the consolidation of the two parcels will bring the proposed new development into conformance with Section 3-2-8 of City Code.

6. The special circumstance is directly related to the property as it is developed as the only high school in the City of Elko. It is somewhat land locked and with a growing population, it requires expansion of its classroom facilities.
7. The special circumstance of a fully developed property with several legal non-conforming issues. This circumstance does not generally apply to other properties in the district.
7. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.
8. 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.
9. The granting of the variance will not impair natural resources.

STAFF RECOMMENDATION:

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

1. Approval of CUP 10-19.
2. A Parcel Map for the consolidation of the two parcels be recorded prior to issuing a Certificate of Occupancy for the new building.

CUP 10-19 + Var 4-19 Elko County School District

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001202014	AIAZZI, STANLEY G & JOYCE L TR		3477 WRIGHT WAY	ELKO NV	89801-3433
001242018	ARENDT, SCOTT		575 12TH ST	ELKO NV	89801-3404
001252010	BEACH, JACKIE LEE & LORRAINE K		572 13TH ST	ELKO NV	89801-3407
001203012	BIEGLER, PHILIP J		1319 COLLEGE AVE	ELKO NV	89801-3427
001201001	BLANKENSHIP, ROBERT ET AL		791 13TH ST	ELKO NV	89801-3443
001242015	BRASWELL, JAY C & MAHELIA J		576 11TH ST	ELKO, NV	89801-3403
001202015	BROWN, HOWARD A & JILL R		716 13TH ST	ELKO NV	89801-3442
001252001	CARNICLE, ALLEN R & NATALIE B		588 13TH ST	ELKO NV	89801-3407
001203005	CDEBACA, NICHOLAS FELIPE		1350 OAK ST	ELKO NV	89801
001251014	CHARPENTIER, KAY MARIE		576 12TH ST	ELKO NV	89801-3405
001201002	CLINTON, ELDON WAYNE ET AL		7850 E MEMORY LANE	PRESCOTT VALLEY AZ	86315
001241024	CREWS, JAMES V		1026 1/2 COLLEGE AVE	ELKO NV	89801-3479
001203010	CURWEN, MIKE & MACKENZIE		1351 COLLEGE AVE	ELKO NV	89801-3427
001251011	DENNIS, ROY J & LODEEN M		546 12TH ST	ELKO NV	89801
001251012	DOLBERG, ANDREW & MELANIE		552 12TH ST	ELKO NV	89801-3405
001241035	EINBODEN, ALLAN F & DINA L	C/O ZIONS BANK ATN: N	2460 S 3270 W	WEST VALLEY CITY UT	84119-1116
001191003	ELKO COUNTY OF		540 COURT ST	ELKO NV	89801-3515
001191001	ELKO COUNTY SCHOOL DISTRICT	} 1 pc.	850 ELM ST	ELKO NV	89801-3349
001620020	ELKO COUNTY SCHOOL DISTRICT		850 ELM ST	ELKO NV	89801-3349
001620019	ELKO COUNTY SCHOOL DISTRICT		850 ELM ST	ELKO NV	89801-3349
001242017	GEIST & SCHVANEVELDT LLC		318 FALLS AVE	TWIN FALLS ID	83301-3373
001241025	GREDZINSKI, ISABELLA JOY		1026 COLLEGE AVE	ELKO NV	89801-3422
001251001	GUISTI, MARK L		592 12TH ST	ELKO NV	89801-3405
001242003	GUZMAN, SERGIO A & GEORGIA C TR		207 MOUNTAIN CITY HWY # 14	ELKO NV	89801-9505
001203011	HARRIS, JERALD		1329 COLLEGE AVE	ELKO NV	89801-3427
001202003	HASSETT, DANIEL M		1342 CEDAR ST	ELKO NV	89801-3418
001202013	HASSETT, MARY CATHERINE TR		1335 OAK ST	ELKO NV	89801-3433
001203002	HAYES, DEREK JON		467 WESTCLIFF DR	SPRING CREEK NV	89815-6830
001251003	HENNEBERRY, MICHAEL J & JACQUELI		565 13TH ST	ELKO NV	89801-3406
001203003	IRIBARNE, JANET		1328 OAK ST	ELKO NV	89801-3434
001242014	JONES, DIANA J		110 WILSON AVE	ELKO NV	89801-4144
001203004	KENNEDY, MARK E		1340 OAK ST	ELKO NV	89801-3434
001202002	LARIOS, ADA ROSE		1320 CEDAR ST	ELKO NV	89801-3418

001251002 LOSTRA, ANSON J & JOLANDE L TR
001241029 MAHTAPENE-CORDOVA, NOAH ET AL
001203013 MARVEL, JODY
001241026 MCKNIGHT, SHARON K
001242013 OLSON, LISA
001201003 PATTANI, FERN J & GLEN J
001203001 RAGLAND, LEVI & HALEY L
001241028 REMALY, TAYLOR DAVID ET AL
001203009 RHOADS, DEAN A & SHARON L TR
001241030 RIOS, ANTONIO & RUIZ, GUADALUPE
001242005 ROBINSON, RICHARD L & MYRNA L
001241027 SANDHOFF, SEAN R ET AL
001202012 SHERRILL, THOMAS EDWARD JR ETAL
001202011 SHINN, KAREN L
001242006 SMITH, KENNETH C
001251013 SMITH, WINIFRED C TR
001242016 STEFLIK, DANIEL M TR ET AL
001242002 STEFLIK, DANIEL M TR ET AL
001202001 STEIN, CAROL TR
001202016 STEIN, MICHAEL S
001242001 STOWELL, ROSEMARY ANN
001251004 TRUXAL, CHRISTOPHER & LACEY

C/O HUGHES, JANET

591 13TH ST
589 11TH ST
1640 BALLARD LN
PO BOX 281205
552 11TH ST
739 13TH ST
1306 OAK ST
593 11TH ST
PO BOX 8
328 MAPLE ST
60431 HEDGEWOOD LN
2715 PURPLE ROOT DR
1345 OAK ST
1355 OAK ST
563 12TH ST
564 12TH ST
1010 COURT ST
1010 COURT ST
51 CYPRESS WAY
5679 KEYMAR DR
594 11TH ST
555 13TH ST

ELKO NV 89801-3406
ELKO NV 89801-3402
WINNEMUCCA NV 89445-3241
LAMOILLE NV 89828-1205
ELKO NV 89801-3403
ELKO NV 89801-3443
ELKO NV 89801-3434
ELKO NV 89801-3402
TUSCARORA NV 89834-0008
ELKO NV 89801-3148
BEND OR 97702
LAS VEGAS NV 89156-7702
ELKO NV 89801-3433
ELKO NV 89801-3433
ELKO NV 89801-3404
ELKO NV 89801-3405
ELKO NV 89801-3945
ELKO NV 89801-3945
CORNELIA GA 30531
SAN JOSE CA 95123-3416
ELKO NV 89801-3403
ELKO NV 89801-3406

Post Marked 10/24/19

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, November 5, 2019 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

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

- Conditional Use Permit No. 10-19, filed by Elko County School District, which would allow for the expansion of the current Elko High School campus with the addition of a new building, and matters related thereto. The subject property is located generally west of the intersection of 12th Street and College Avenue. (1297 College Avenue - APN 001-191-004).
- Variance No. 4-19, filed by Elko County School District for a reduction of the required setback from any Street Line from 66' to 20' on the College Avenue Street Line, within a PQP (Public, Quasi-Public) Zoning District, and matters related thereto. The subject property is located generally west of the intersection of 12th Street and College Avenue. (1297 College Avenue - APN 001-191-004).

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

ELKO CITY PLANNING COMMISSION

Fw: Elko HS Performing Arts Building - Parking and Lot Coverage Analysis

Cathy Laughlin

Wed 10/23/2019 5:09 PM

To: Shelby Archuleta <sarchuleta@elkocitynv.gov>

📎 1 attachments (768 KB)

Elko HS Parking Exhibit - Reduced Size.pdf;

Cathy Laughlin

City Planner

City of Elko

1751 College Ave. Elko, NV 89801

From: Brandon Weholt <bweholt@designwestid.com>

Sent: Wednesday, October 23, 2019 2:24 PM

To: Cathy Laughlin <claughlin@elkocitynv.gov>

Cc: Casey Kelly <ckelly@ecsdnv.net>

Subject: Elko HS Performing Arts Building - Parking and Lot Coverage Analysis

Cathy,

As requested, I have put together an exhibit showing the available parking for the Performing Arts building. Please see attached. Will this work?

Below is the requested analysis of site area versus building area:

Total site: 14.03 acres (611,147 sq. ft.)

Total building area (ground floor): 129,839 sq. ft. existing + 11,839 sq. ft. Science Building + 33,872 sq. ft. Performing Arts Building = **175,550 sq. ft.**

Building area represents 28.7% of the site.

Thank you,

Brandon Weholt, NCARB, Sr. Architect

P: 208.888.1768 | M: 208.699.0810

E: bweholt@designwestid.com

DESIGN WEST ARCHITECTS, P.A.



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR VARIANCE

APPLICANT(s): Elko County School District

MAILING ADDRESS: 850 Elm St., Elko, NV 89801

PHONE NO (Home) _____ **(Business)** 775-738-5196

NAME OF PROPERTY OWNER (If different): _____

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

MAILING ADDRESS: _____

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

ASSESSOR'S PARCEL NO.: 001-191-004 **Address** 1297 College Ave.

Lot(s), Block(s), & Subdivision 10, 15, 34N

Or Parcel(s) & File No. 001-191-004

FILING REQUIREMENTS:

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

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

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

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

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

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

RECEIVED

The APPLICANT requests the following variance from the following section of the zoning ordinance:

Reduce setback from Street Line from 1.5 times principal building height (3-2-8, C, 1) to 20'
Building height is estimated to be 20' at south side and approx. 44' at north side.

1. The existing zoning classification of the property PQP
2. The applicant shall present **adequate** evidence demonstrating the following criteria which are necessary for the Planning Commission to grant a variance:

- a) Identify any special circumstances, features or conditions applying to the property under consideration. i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions

Property has moderate slope. The available building pad is extremely constrained.

- b) Identify how such circumstances, features or conditions result in practical difficulty or undue hardship and deprive the property owner of reasonable use of property.

Building is sized to accommodate specific program requirements. Meeting 1.5 times building height setback would require demolishing and building upon of the parking lots to the north and east. Because of existing grades, parking could not be replaced elsewhere on the site.

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

Meeting required setback would substantially increase site development costs,
reduce available parking by 20+ parking spaces and cut off internal vehicle circulation.

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

Adjacent properties appear to have setbacks equal to 1/2 building height or less.

- e) Indicate how the granting of the variance will not result in material damage or prejudice to other properties in the vicinity nor be detrimental to the public health, safety and general welfare.

Setback will adequately separate building from street. As the building is located

Northwest of residences across the street, building will not block sunlight.

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

Reduced setback will not affect ability to route utilities.

Setback to 13th street to the east exceeds setback requirements.

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

The variance request is for setback only and maintains

the current zoning with the proposed Public School use.

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

No natural resources will be affected.

3. Describe your ability (i.e. sufficient funds or a loan pre-approval letter on hand) and intent to construct within one year as all variance approvals **must** commence construction within one year and complete construction within 18 months per City Code Section 3-2-22 F.1.: _____
Funding is in place.

(Use additional pages if necessary to address questions 2a through h)

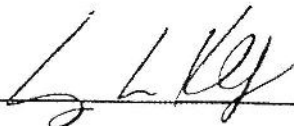
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By My Signature below:

- ☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspecting said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant / Agent Casey Kelly, P.E., PMP
(Please print or type)

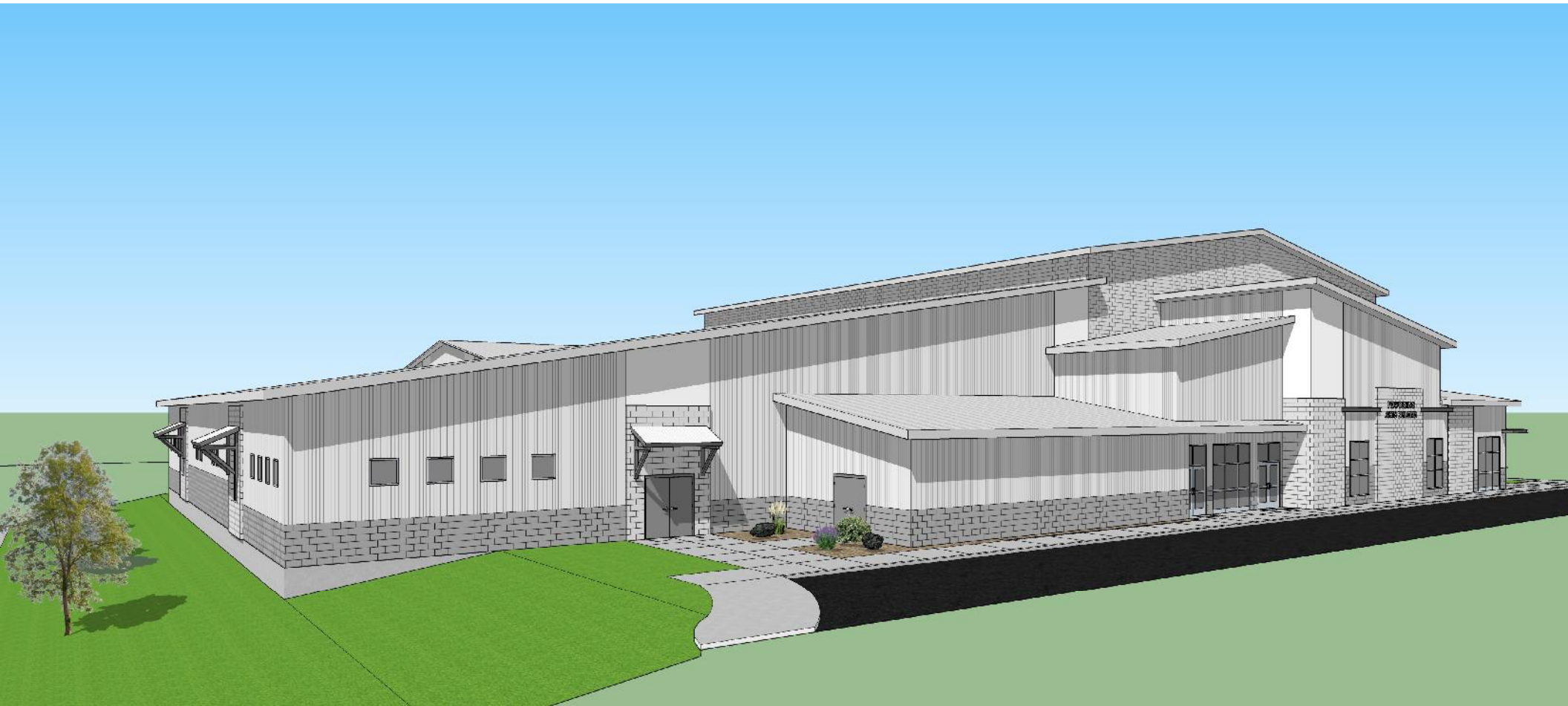
Mailing Address 850 Elm St.
Street Address or P.O. Box
Elko, NV 89801
City, State, Zip Code
Phone Number: 775-738-5196
Email address: ckelly@ecsdnv.net

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 4-19 **Date Filed:** 10/15/19 **Fee Paid:** \$500 **cc#** 0491

ELKO HIGH SCHOOL
PERFORMING ARTS BUILDING
CONCEPTUAL ELEVATION

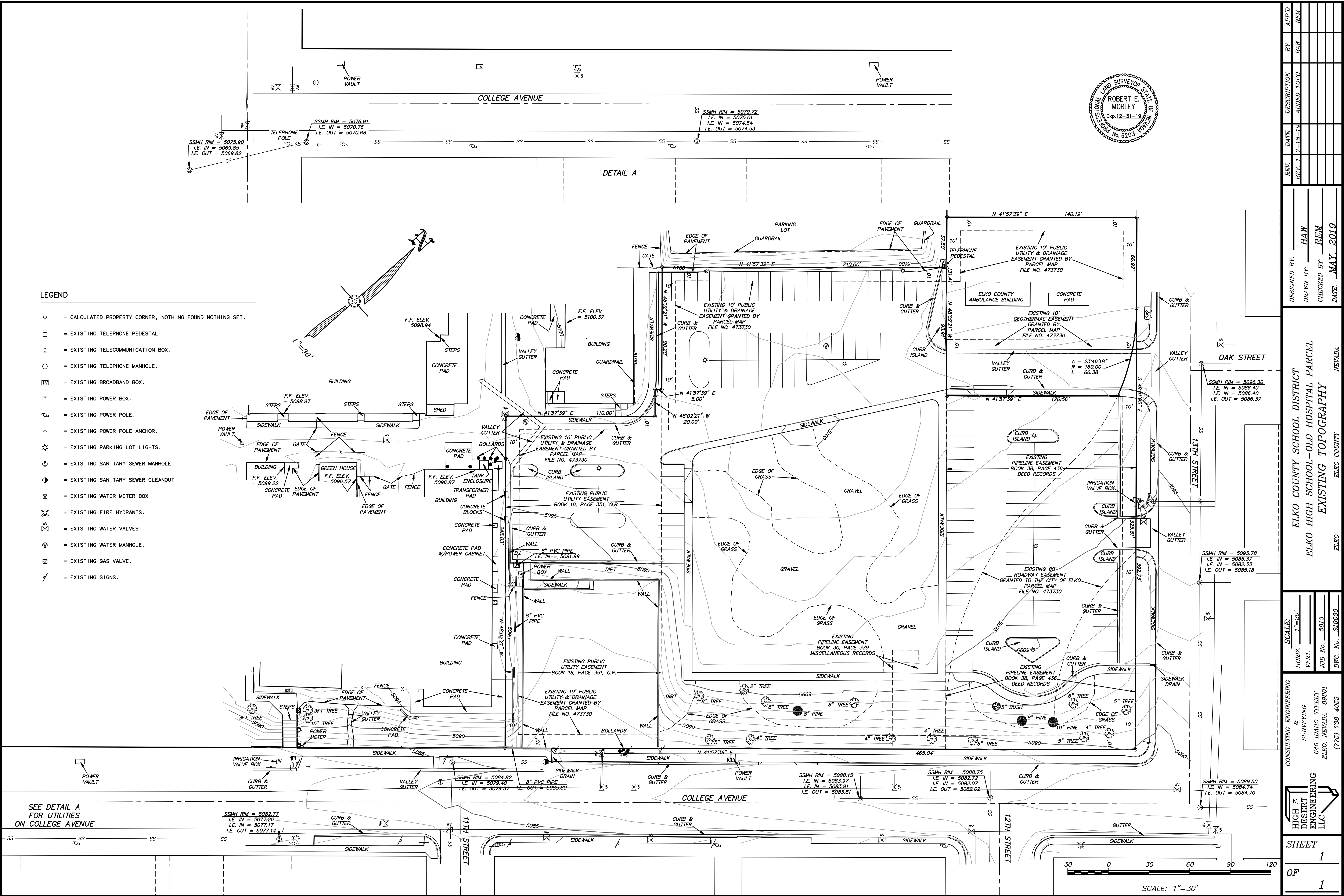


ELKO HIGH SCHOOL
PERFORMING ARTS BUILDING
CONCEPTUAL ELEVATION



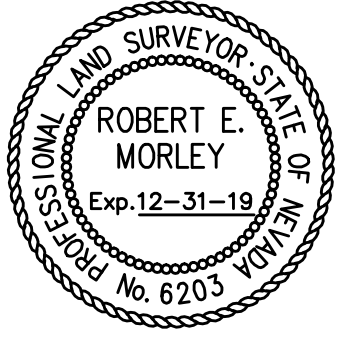
ELKO HIGH SCHOOL
PERFORMING ARTS BUILDING
CONCEPTUAL ELEVATION





LEGEND

- = CALCULATED PROPERTY CORNER, NOTHING FOUND NOTHING SET.
- = EXISTING TELEPHONE PEDESTAL.
- = EXISTING TELECOMMUNICATION BOX.
- ⊙ = EXISTING TELEPHONE MANHOLE.
- ⊞ = EXISTING BROADBAND BOX.
- ⊞ = EXISTING POWER BOX.
- ⊞ = EXISTING POWER POLE.
- ⊞ = EXISTING POWER POLE ANCHOR.
- ☆ = EXISTING PARKING LOT LIGHTS.
- ⊙ = EXISTING SANITARY SEWER MANHOLE.
- ⊙ = EXISTING SANITARY SEWER CLEANOUT.
- ⊞ = EXISTING WATER METER BOX.
- ⊞ = EXISTING FIRE HYDRANTS.
- ⊞ = EXISTING WATER VALVES.
- ⊙ = EXISTING WATER MANHOLE.
- ⊞ = EXISTING GAS VALVE.
- ⊞ = EXISTING SIGNS.



APP'D	BY	DESCRIPTION	DATE	REV.
BAW	BAW	ADDED TOPO	1-7-18-19	
REM	REM	CHECKED BY:		
		DESIGNED BY:		
		DRAWN BY:		
		CHECKED BY:		
		DATE:	MAY 2019	

ELKO COUNTY SCHOOL DISTRICT
ELKO HIGH SCHOOL-OLD HOSPITAL PARCEL
EXISTING TOPOGRAPHY

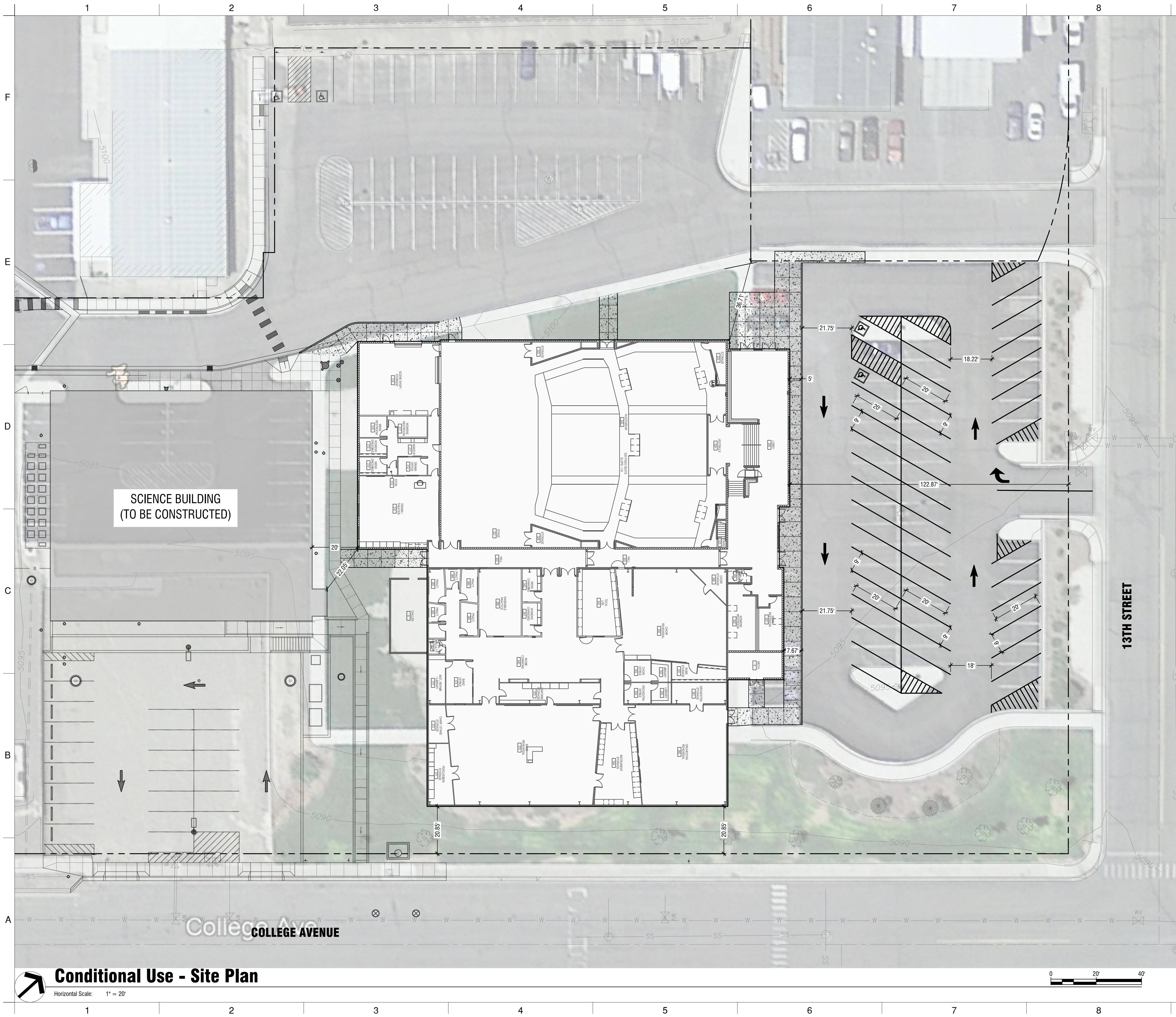
SCALE: 1"=30'
HORIZ. 1"=20'
VERT. 1"=10'

CONSULTING ENGINEERING & SURVEYING
640 IDAHO STREET
ELKO, NEVADA 89601
(775) 738-4053

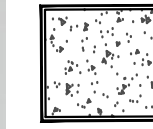
HIGH DESERT ENGINEERING LLC

SHEET 1 OF 1

File Location: g:\2019\119179\can\119179 cu site plan.dwg
Last Printed By: chad rieza
Date Printed: Tuesday, October 15 2019 at 12:34 PM



Material Legend:



STANDARD CONCRETE FLATWORK WITH
RAMPING AS REQUIRED TO MEET ADA
REQUIREMENTS.

DESIGN WEST
ARCHITECTS, P.A.
MERIDIAN IDAHO • PULLMAN WASHINGTON
KENNEWICK WASHINGTON • ONTARIO OREGON
SPOKANE WASHINGTON
www.designwestpa.com
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DRAWN BY
MT

CHECKED BY
MTA

JOB NUMBER
TBD

REVISIONS



**ELKO HIGH SCHOOL
PERFORMING ARTS**
TBD COLLEGE AVE.
ELKO, NEVADA 89801

DATE
10-15-2019

SHEET NAME

**Conditional
Use - Site
Plan**

SHEET

C1.00

AHJ APPROVAL

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible recommendation to City Council for Vacation No. 12-19, filed by the Ellison Properties, for the vacation of a portion of the Front Street right-of-way, consisting of an area approximately 1,979 sq. ft., and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **November 5, 2019**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **10 Minutes**
5. Background Information: **The applicant is currently working on a proposed development of the property and is asking for a vacation of the excess right-of-way for additional parking, access and landscaping. CL**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Application, Staff report**
9. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No. 12-19 based on facts, findings, and conditions as presented in the Staff Report dated October 24, 2019.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review:
12. Council Action:
13. Agenda Distribution: **John Ellison**
P.O. Box 683
Elko, NV 89803
john@ellisonelko.com

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 11/5

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

Title: Vacation No. 12-19
Applicant(s): Ellison Properties
Site Location: 404 S 5th Street - APN 001-422-002
Current Zoning: C Date Received: 10/3 Date Public Notice: N/A
COMMENT: This is to vacate a portion of the Front St.
right-of-way, consisting of an area approximately 1,979 sq.
ft.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 10/28/19
Recommend approval as presented by
Staff

SALU

Initial

City Manager: Date: 10/29/19
No comments/concerns

CU

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE:	October 24, 2019
PLANNING COMMISSION DATE:	November 5, 2019
APPLICATION NUMBER:	Vacation 12-19
APPLICANT:	Ellison Properties
PROJECT DESCRIPTION:	APN 001-422-002

Vacation of excess right-of-way to provide for more parking and landscaping for proposed development of property.



STAFF RECOMMENDATION:

RECOMMEND to APPROVE subject to findings of fact, conditions and waivers.

PROJECT INFORMATION

PARCEL NUMBER: 001-422-002

PARCEL SIZE: .609 acres

EXISTING ZONING: (C) General Commercial

MASTER PLAN DESIGNATION: (MU-NEIGHBORHOOD) Mixed Use
Neighborhood

EXISTING LAND USE: Undeveloped

BACKGROUND:

1. The property is currently undeveloped.
2. The property has access from Front Street as well as 5th Street.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:
North: Commercial / Developed
East: Commercial / Developed
South: General Industrial / Developed
West: PQP & General Industrial / Undeveloped & Developed

PROPERTY CHARACTERISTICS:

The property is currently undeveloped.
The property is generally flat.

MASTER PLAN AND CITY CODES:

Applicable Master Plans and City Code Sections are:

NRS 278.479 to 278.480, inclusive
City of Elko Master Plan – Land Use Component
City of Elko Master Plan – Transportation Component
City of Elko Redevelopment Plan
City of Elko Code – Section 3-2-10 General Commercial Zoning District
City of Elko Code – Section 8-7 Street Vacation Procedures

MASTER PLAN – Land Use:

1. The Master Plan Land Use Atlas shows the area as Neighborhood Mixed Use.
2. C- General Commercial Zoning District is not listed as a corresponding zoning district for Neighborhood Mixed Use.
3. Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.
4. Objective 8: Encourage new development that does not negatively impact County-wide

natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety.

The proposed vacation is not in strict conformance with the Master Plan Land Use component.

MASTER PLAN - Transportation:

1. The area is accessed from South 5th Street and Front Street.
2. The proposed vacation is part of the right-of-way for Front Street roadway.
3. There is pedestrian access along 5th Street and new pedestrian sidewalks will be added to Front Street as well as the outside of the cul-de-sac to tie into the 5th Street sidewalk. The plans show the elimination of sidewalk bisecting the proposed area to be vacated so all public pedestrian access will be within the right-of-way.

The proposed vacation is in conformance with the Master Plan Transportation component.

REDEVELOPMENT PLAN

-) The area is located outside the Redevelopment Area.

ELKO CITY CODE SECTION 8-7 STREET VACATION PROCEDURES

1. If it is determined by a majority vote of the city council that it is in the best interest of the city and that no person will be materially injured thereby, the city council, by motion, may propose the realignment, change, vacation, adjustment or abandonment of any street or any portion thereof. In addition, any abutting owner desiring the vacation of any street or easement or portion thereof shall file a petition in writing with the city council and the city council shall consider said petition as set forth above.

-) The City Council accepted the petition at their meeting on October 22, 2019 and referred the matter to the Planning Commission for further consideration.

2. Except for a petition for the vacation or abandonment of an easement for a public utility owned or controlled by the city, the petition or motion shall be referred to the planning commission, which shall report its findings and recommendations thereon to the city council. The petitioner shall, prior to the consideration of the petition by the planning commission, pay a filing fee to the city in an amount established by resolution of the city council and included in the appendix to this code.

-) The filing fee was paid by the applicant.

3. Whenever any street, easement or portion thereof is proposed to be vacated or abandoned, the city council shall notify by certified mail each owner of property abutting the proposed vacation or abandonment and cause a notice to be published at least once in a newspaper of general circulation in the city setting forth the extent of the proposed vacation or abandonment and setting a date for public hearing, which date may be not less than ten (10) days and not more than forty (40) days subsequent to the date the notice is first published.
4. Order of City Council: Except as provided in subsection E of this section, if, upon public hearing, the City Council is satisfied that the public will not be materially injured by the proposed vacation or abandonment, and that it is in the best interest of the city, it shall

order the street vacated or abandoned. The city council may make the order conditional, and the order shall become effective only upon the fulfillment of the conditions prescribed.

The proposed vacation with the recommended conditions is in conformance with Section 8-7 of City code.

FINDINGS

-)] The proposed vacation is not in strict conformance with the City of Elko Master Plan Land Use component
-)] The proposed vacation is in conformance with the City of Elko Master Plan Transportation component
-)] The property proposed for vacation is not located within the Redevelopment Area.
-)] The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive.
-)] The proposed vacation with the recommended conditions is in conformance with Elko City Code 8-7.
-)] The proposed vacation will not materially injure the public and is in the best interest of the City.

STAFF RECOMMENDATION:

Staff recommends forward a recommendation to City Council to adopt a resolution which conditionally APPROVES the proposed vacation with the following conditions:

1. The applicant is responsible for all costs associated with the recordation of the vacation.
2. Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.
3. A water line easement for the existing water line that bisects the area proposed for vacation must be approved by the City and recorded.
4. Existing sidewalk connecting Front Street and South 5th Street must be demolished and reconstructed in accordance with plans submitted and approved by the City.



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

October 17, 2019

NV Energy
Mr. Jake Johnson
6100 Neil Road
Reno, NV 89511

SUBJECT: Proposed Vacation No. 12-19

Dear Mr. Johnson:

Please be advised that the City of Elko Planning Department is processing a request filed by Ellison properties to vacate a portion of the Front Street right-of-way located generally along the northwest property line of APN 001-422-002. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to receive and maintain records of all responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 5, 2019. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician
sarchuleta@elkocitynv.gov

Enclosures



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

October 17, 2019

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

SUBJECT: Proposed Vacation No. 12-19

To Whom It May Concern:

Please be advised that the City of Elko Planning Department is processing a request filed by Ellison properties to vacate a portion of the Front Street right-of-way located generally along the northwest property line of APN 001-422-002. Please see enclosed map.

The City respectfully requests your assistance in determining whether there are any utility improvements or any other such interests within the area proposed to be vacated.

Please advise the Elko City Planning Department in writing concerning your agency's needs or interests as affected by this requested vacation, or submit a letter or email stating none of your interests are in the area, as **we are required to receive and maintain records of all responses from all local utilities per NRS 278.480(6)**. The Planning Commission will consider this item on November 5, 2019. Thank you for your time and effort in this matter!

If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician
sarchuleta@elkocitynv.gov

Enclosures



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

October 17, 2019

Satview Broadband
Mr. Tariq Ahmad
PO Box 18148
Reno, NV 89511

And VIA EMAIL: taroil@yahoo.com

SUBJECT: Proposed Vacation No. 12-19

Dear Mr. Ahmad:

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October 17, 2019

Frontier Communication

Mr. John Poole

1520 Church Street

Gardnerville, NV 89410

SUBJECT: Proposed Vacation No. 12-19

Dear Mr. Poole:

Please be advised that the City of Elko Planning Department is processing a request filed by Ellison properties to vacate a portion of the Front Street right-of-way located generally along the northwest property line of APN 001-422-002. Please see enclosed map.

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Email: planning@elkocitynv.gov

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

October 17, 2019

Beehive Broadband
2000 N. Sunset Road
Lake Point, UT 84074

SUBJECT: Proposed Vacation No. 12-19

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sarchuleta@elkocitynv.gov

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Planning Department

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

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

October 17, 2019

Elko Heat
P.O. Box 2347
Elko, NV 89803

SUBJECT: Proposed Vacation No. 12-19

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If you have any questions, please contact our office at 777-7160.

Sincerely,

Shelby Archuleta
Planning Technician
sarchuleta@elkocitynv.gov

Enclosures



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801 *

(775) 777-7160 * (775) 777-7119 fax

APPLICATION FOR VACATION OF CITY STREET, EASEMENT OR OTHER PUBLIC RIGHT-OF-WAY

APPLICANT(s): John Ellison

MAILING ADDRESS: 438 S. 5th Street

PHONE NO (Home) 775-738-6284 **(Business)** same

NAME OF PROPERTY OWNER (If different): same

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

MAILING ADDRESS: same as above

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

ASSESSOR'S PARCEL NO.: 001-422-002 **Address** 404 S. 5th Street

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

Or Parcel(s) & File No.

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. Applications go before the City Council, Planning Commission, and back to City Council twice.

Fee: A \$600.00 non-refundable fee.

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

Legal Description: A complete legal description of the area proposed for vacation along with an exhibit depicting the area for vacation.

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

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

RECEIVED

OWNER(S) OF THE PROPERTY ABUTTING THE AREA BEING REQUESTED FOR VACATION:

John Ellison

(Name)

438 S. 5th Street - Elko, NV. 89801

(Address)

OWNER(S) OF THE PROPERTY ABUTTING THE AREA BEING REQUESTED FOR VACATION:

Same

(Name)

(Address)

1. Describe the nature of the request: We are trying to clean up and enhance this area. It will allow for extra parking and shrubbery. We've been maintaining this area to keep the weeds and garbage down to no expense to the city.

2. Describe any utilities currently located in the area proposed for vacation, and if any are present how they will be addressed: An existing gas line runs along the south side of Front Street behind the existing curb and gutter. This existing line will not be disturbed, this line is to remain in place. There is also a water shut-off valve at the end of the existing sidewalk. This shut-off valve will be brought up to grade with the new construction. No other utilities are located within the vacation area.

Use additional pages if necessary

This area intentionally left blank

By My Signature below:

☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspection 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 effect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

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

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

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

Applicant / Agent

John Ellison (Please print or type)

Mailing Address

P.O. Box 683

Street Address or P.O. Box

Elko Nevada 89803

City, State, Zip Code

Phone Number: 775-738-6284 C-934-6611

Email address: John.Ellison@elko.com

SIGNATURE:

John Ellison

FOR OFFICE USE ONLY

File No.: 12-19 Date Filed: 10/3/19 Fee Paid: \$600 CX# 5879

EXHIBIT (A)

**LEGAL DESCRIPTION, showing a
1959 Sq. Ft. portion of Front Street to be
VACATED by the CITY OF ELKO**

A portion of that Public Right of Way, known as Front Street, lying in the SE ¼ SE 1/4 , Section 15, T.34 N. R.,55 E., adjacent to Lot 1, Block H, of the Biegler Addition, City of Elko, Elko County, Nevada being more particularly described as follows:

BEGINNING At the Southwest corner of said lot 1 of Block H,

THENCE NORTH 48° 20' 51" WEST, A DISTANCE OF 10.32 FEET;

THENCE NORTH 41° 59' 57" EAST, A DISTANCE OF 64.08 FEET TO THE BEGINNING OF A NON-TANGENT, 50.08 FEET RADIUS CURVE TO THE LEFT FOR AN ARC LENGTH OF 69.11 FEET (CHORD BEARING OF NORTH 1° 19' 40" EAST, FOR 63.75 FEET);

THENCE NORTH 34° 28' 19" EAST, A DISTANCE OF 2.75 FEET;

THENCE SOUTH 55° 28' 19" EAST, A DISTANCE OF 52.56 FEET;

THENCE SOUTH 41° 56' 41" WEST, A DISTANCE OF 1.13 FEET;

THENCE SOUTH 41° 56' 41" WEST, A DISTANCE OF 121.94 FEET TO THE
POINT OF BEGINNING,

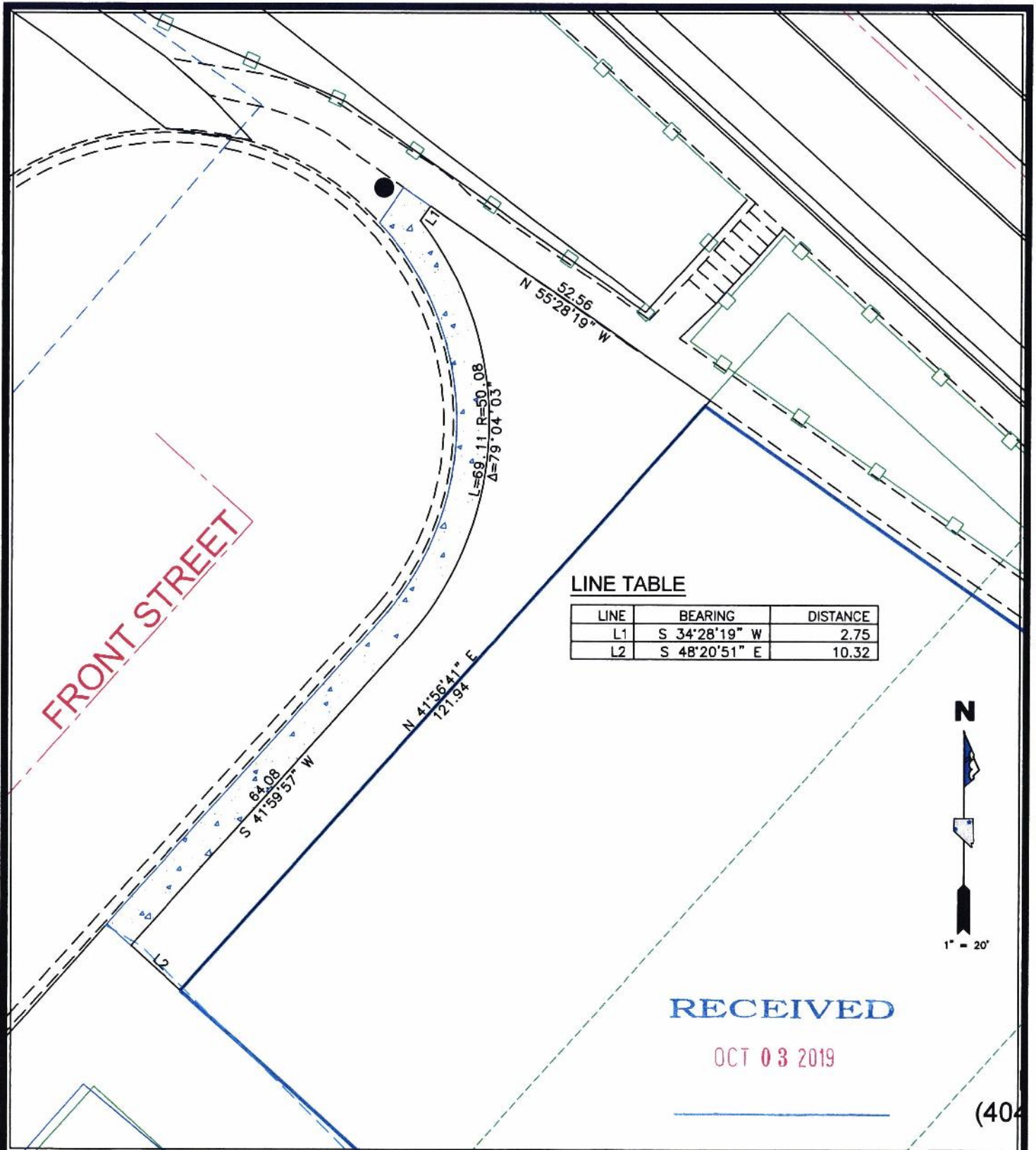
SAID PARCEL BEING 1979 SQFT MORE OR LESS.

The Basis of Bearings is The Nevada State Plane Coordinate System, East Zone, North American Datum 83/96.

This Legal Description Written by:

Randal L. Briggs, PLS
Summit Engineering Corporation
1150 Lamoille Highway, Elko, Nevada 89801





LINE TABLE

LINE	BEARING	DISTANCE
L1	S 34°28'19" W	2.75
L2	S 48°20'51" E	10.32



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OCT 03 2019

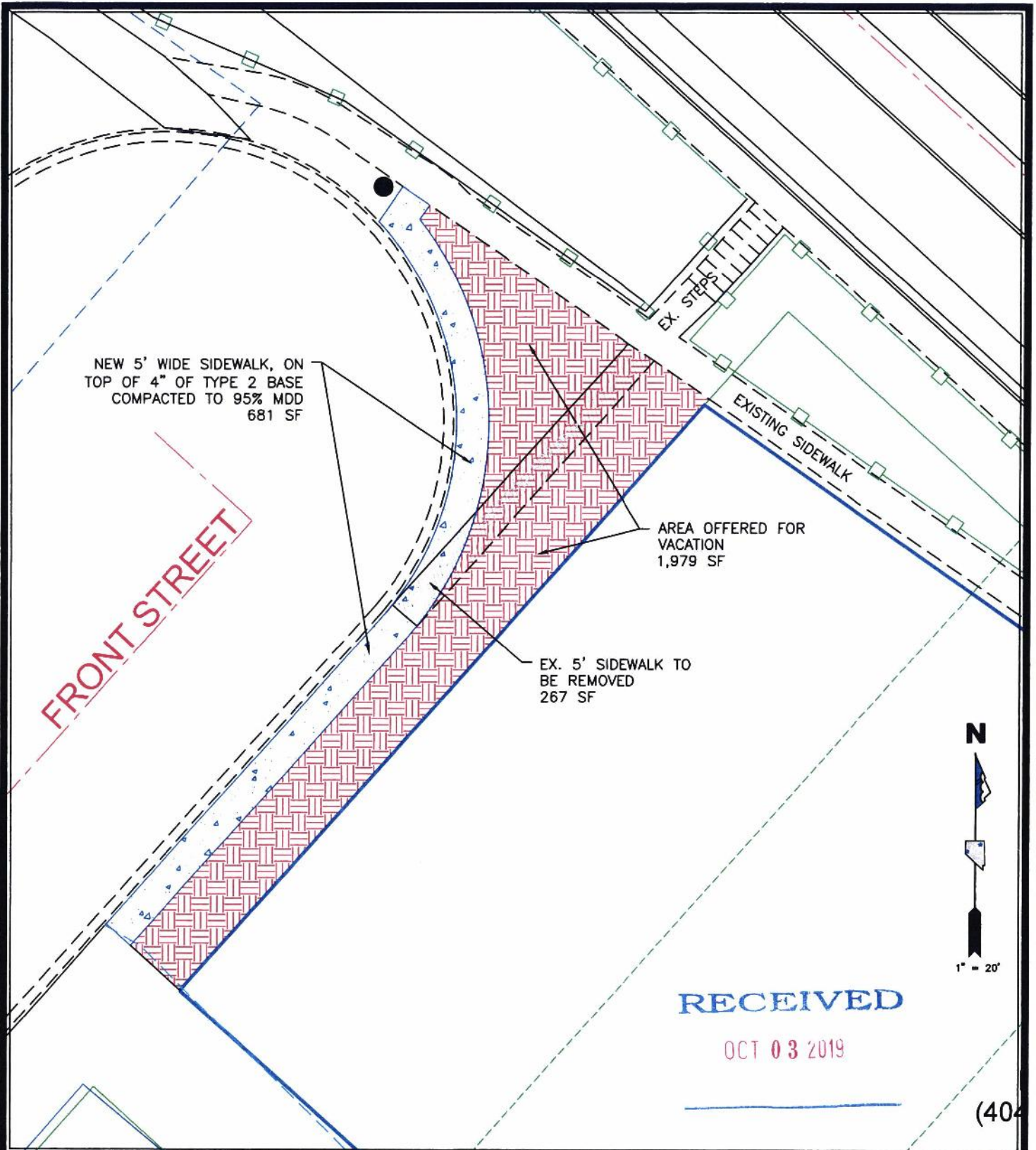
(404)

ELLISON PROPERTY
404 S. 5TH STREET
LEGAL DESCRIPTION

BHAKTA
SCALE 1" = 20
APN 001-422-002
October 2, 2019


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

SHEET 2
OF 3



ELLISON PROPERTY
404 S. 5TH STREET
SITE PLAN

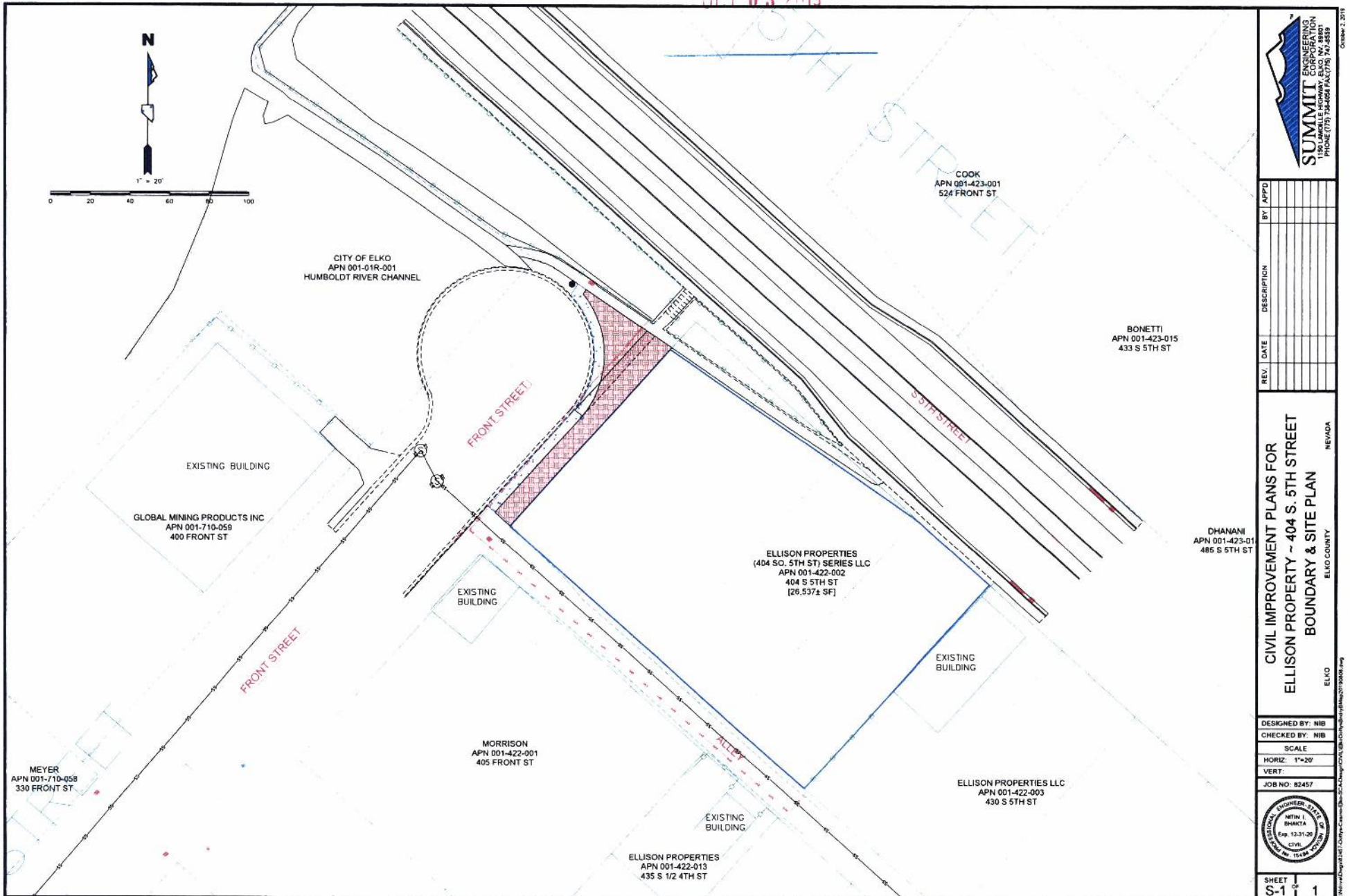
BHAKTA
SCALE 1" = 20
APN 001-422-002
October 2, 2019

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

SHEET
1
OF
1

RECEIVED

OCT 03 2019



REV.	DATE	DESCRIPTION	BY	APPD

**CIVIL IMPROVEMENT PLANS FOR
ELLISON PROPERTY ~ 404 S. 5TH STREET
BOUNDARY & SITE PLAN**

ELKO COUNTY NEVADA

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=20'
VERT:
JOB NO: 82457



SHEET
S-1 OF 1

Zoning Bulletin

in this issue:

Nonconforming Uses—Landowner uses residentially-zoned property for storage of fill and concrete barriers and for grinding of stones

1

First Amendment/Vagueness/Equal Protection—City denies permit for adult-oriented business finding it fails to meet distance restrictions under state law

3

Validity of Consent Judgment/First Amendment/Equal Protection/Due Process/Establishment

Clause/Open Meetings Act—City residents challenge validity of consent judgment that allows mosque in a residential zoning district

5

Zoning News from Around the Nation

7

Nonconforming Uses—Landowner uses residentially-zoned property for storage of fill and concrete barriers and for grinding of stones

Township and landowner dispute whether such uses are lawful nonconforming uses

Citation: *Sowich v. Zoning Hearing Board of Brown Township*, 2019 WL 3402927 (Pa. Commw. Ct. 2019)

PENNSYLVANIA (07/29/19)—This case addressed the issue of whether or not a landowner's uses of property constituted lawful nonconforming uses. More specifically, the case addressed whether evidence was sufficient to establish whether a use had been "abandoned" such that it was no longer legally nonconforming. It also addressed whether evidence was sufficient to establish that an expansion of a legally nonconforming use involved an expansion of land area beyond that permitted under the local zoning ordinance.

The Background/Facts: In 2006, Edgewood Estates, Inc. ("Edgewood") purchased a 23-acre property (the "Property") in Brown Township (the "Township"). At the time of that purchase, a portion of the Property was zoned R-1 (Rural Residential) and another portion of the Property was zoned C (Commercial). In February 2011, the Township amended its Zoning Ordinance, and, in doing so, placed nearly all of the Property in the R-1 Zoning District.

In September 2015, the Township's zoning officer issued a notice of violation to Edgewood for its use of the Property in ways not permitted in an R-1 District. Specifically, the zoning officer asserted that certain of Edgewood's uses of the Property violated the Township's Zoning Ordinance, including: moving fill to and from the Property; grinding stone on the Property to make small stones from large stones; and storing numerous concrete barriers on the Property.

Edgewood appealed to the Township's Zoning Hearing Board (the "ZHB"). Edgewood contended that those activities were all comparable to sawmill or planning mill uses, which had been permitted in the R-1 District prior to the 2011 Zoning Ordinance amendment. Thus Edgewood argued that the uses were lawful nonconforming uses that predated the 2011 Zoning Ordinance amendment. Edgewood maintained that fill had been stored on the property since early 2000, and had been moved onto and off of the Property since Edgewood's ownership of the Property began in 2006. Edgewood also maintained that it had crushed stone on the Property three times since 2006, including in 2013 and 2015—and thus had not "abandoned" that use. Further, Edgewood contended five concrete barriers were on the Property when it was acquired in 2006, and since 2015 it had



contracted to store 400 concrete barriers on the Property—which it argued was a permissible expansion of its nonconforming use.

The ZHB concluded that Edgewood's use of the Property for depositing, storing, and removing fill was a lawful nonconforming use because it was (a) similar to "warehousing and storage" which was a permitted use in the Commercial or Industrial Zoning Districts and (b) had been "ongoing more or less continuously since [Edgewood] purchased the [P]roperty in 2006." The ZHB, however, concluded that Edgewood's stone grinding operation was not a lawful nonconforming use because it had been "abandoned." And, the ZHB found that the increase from five to 400 concrete barriers stored on the Property was "well outside the acceptable expansion" of a lawful nonconforming use of the [P]roperty."

Under the Township's Zoning Ordinance, abandonment

of a nonconforming use would be established when there is a two-year period of non-use, or, in the case of the use of land for junk storage—after 90 days of non-use. The party asserting abandonment would have the burden to present evidence of intent to abandon the use and actual abandonment of the use. Also under the Township Zoning Ordinance, expansion of a nonconforming use (such as the storage of concrete barriers here) was limited to 150 feet beyond the original area and/or a more than 25% increase in area used.

Edgewood appealed to the trial court. The trial court affirmed the ZHB's findings. It agreed that Edgewood's use of the Property for the deposit, storage and removal of fill "constituted preexisting nonconforming uses that were permitted under the 1979 Zoning Ordinance." The trial court also concluded that Edgewood's use of the Property for grinding stone had been "abandoned." The trial court further concluded that Edgewood's use of the Property for storing concrete barriers was "not a lawful natural expansion of a lawful nonconforming use because it constituted 'an 80-fold increase in storage,' which was a significant change."

Edgewood again appealed. On appeal, Edgewood argued again that its stone grinding activity was a lawful nonconforming use, which had not been abandoned, and the storage of 400 concrete barriers on the Property was a natural expansion of a preexisting nonconforming use.

DECISION: Judgment of Court of Common Pleas affirmed in part, reversed in part, vacated in part, and remanded.

The Commonwealth Court of Pennsylvania held that the trial court had erred in holding that Edgewood had abandoned its grinding use and the ZHB had erred in finding that an increase in the number of concrete barriers stored on the Property was not a natural expansion of a preexisting nonconforming use.

With regard to its evaluation of the grinding use: The court explained that a use that predates the enactment of a prohibitory zoning restriction is a lawful nonconforming use, and that there is a right to continue such use pursuant to constitutional due process protections. The court explained that right to continue the legal nonconforming use "runs with the land" and continues unless the use is abandoned.

Here, the court found that the Township failed to present evidence of abandonment of the stone grinding use. As such, the court found the trial court erred in holding that Edgewood had abandoned its grinding use. Moreover, the court found that the trial court failed to make findings of fact as to whether the grinding use existed before 2011 and whether it was substantially similar to uses allowed in the R-1 District under the former Zoning Ordinance (i.e., sawmill or planning mill uses)—all necessary to determine whether or not the grinding use was a legally nonconforming use. Accordingly, the court remanded to the trial court to make those necessary findings.

With regard to its evaluation of the concrete barrier storage use: The court explained that, under the doctrine of natural expansion, a landowner has a right to expand the

Contributors

Corey E. Burnham-Howard

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use “ ‘as required to maintain economic viability or to take advantage of increases in trade’ so long as the expansion is not detrimental to the public welfare, safety and health.” The court further explained that, under that doctrine, the expanded use must be “sufficiently similar so as not to constitute a new or different use.” Notably, the court stated that “[t]he fact that an expansion is sizeable does not make it unreasonable *per se*.” The court also acknowledged the Township Zoning Ordinance’s restrictions on expansions of nonconforming uses to 150 feet beyond the original area and/or a no more than 25% increase in area used.

Here, the court concluded that ZHB had failed to make the necessary findings under the Zoning Ordinance as to whether the increase in the number of concrete barriers involved an expansion of land area. Accordingly, the court concluded that the ZHB erred in holding that the increase in number of concrete barriers violated the Zoning Ordinance’s limitations on expansion of nonconforming uses.

Case Note:

Owners of property adjacent to Edgewood’s Property had also intervened in the case, arguing that the ZHB had erred in finding Edgewood’s use of the property for depositing, storing, and removing fill constituted a lawful nonconforming use. The Commonwealth Court of Pennsylvania disagreed, finding substantial evidence revealed that the Property had been used since 2006 for such fill uses.

First Amendment/ Vagueness/Equal Protection—City denies permit for adult-oriented business finding it fails to meet distance restrictions under state law

Business challenges state law as unconstitutionally vague, as well as unconstitutional in violation of free speech and equal protection rights

Citation: *Adam and Eve Jonesboro, LLC v. Perrin*, 2019 WL 3770210 (8th Cir. 2019)

The Eighth Circuit has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

EIGHTH CIRCUIT (ARKANSAS) (08/12/19)—This case addressed the issue of whether a state zoning law that prevented adult-oriented businesses from opening within 1,000 feet of schools or other places frequented by chil-

dren violated a retailer’s First Amendment right to free speech, was unconstitutionally vague, and/or violated the retailer’s equal protection rights.

The Background/Facts: Adam and Eve Jonesboro, LLC (the “Franchise”) sought to open an Adam and Eve franchise in the City of Jonesboro, Arkansas (the “City”). Adam and Eve stores bill themselves as the “#1 Adult Toy Superstore” and the “leading sex toy company in the USA.” The Franchise planned to sell lingerie, adult toys, costumes, novelties, games, massage oils, and personal lubricants. It did not plan to sell DVDs, videos, books, literature, periodicals, or posters.

In December 2017, the Franchise received a license to do business in the City. A month later, the City building inspector refused to issue to the Franchise a certificate of occupancy required to open the business. The City explained that because of the zoning district in which the Franchise was located, the Franchise’s business would require a conditional use permit. The City further explained that such a permit “could not issue” because the proposed business did not meet the distance requirements of Arkansas’ Act 387 of 2007 (the “Act”). (Ark. Code Ann. § 14-1-301(a).)

The Act prohibits adult-oriented businesses from locating within 1,000 feet of a “child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.” (Ark. Code Ann. § 14-1-303(a).) The Arkansas legislature implemented the Act in order to “minimize the impact” of “harmful secondary effects,” including: “property crime, illicit drug use, prostitution, the potential spread of disease, and sexual assault.” (Ark. Code Ann. § 14-1-303(a).) Specifically, the Act applies to an “adult bookstore or video store,” which is defined as a commercial establishment that “offers for sale or rent any of the following as one (1) of its principal business purposes”: various forms of media depicting or describing “specific sexual activity”; instruments, devices, or paraphernalia “designed for use in connection with a specific sexual activity.” (Ark. Code Ann. § 14-1-302(2).) Under the Act, stores opened before July 31, 2007 are grandfathered. (See Ark. Code Ann. § 14-1-303(c), 307.) The Act also authorizes local governments to pass ordinances that are “at least as restrictive” as the Act. (Ark. Code Ann. § 14-1-304.)

The Franchise responded to the City’s denial to issue it a certificate of occupancy by filing a lawsuit alleging that the Act violated its First, Fifth, and Fourteenth Amendment rights under the United States Constitution. The Franchise sued the Mayor of the City, and the State of Arkansas intervened in the case to defend the Act. In its lawsuit, the Franchise asserted that the Act violated the First Amendment because it “restrain[ed] the [Franchise’s] retail sale of merchandise, based on the content of the merchandise.” The Franchise also argued that the Act was unconstitutional because it was vague in its failure to define the term “principal business purpose[]” in its restrictions on commercial establishments offering for sale or rent as “one of its principal business purposes” products related to sexual activities. Specifically, the Franchise contended that the Act “doesn’t contain percentages, [and] it doesn’t contain

definitions of what [] a principal business purpose is.” The Franchise argued that the legislature “must define it ‘by floor space, gross revenue, net revenue, [or] amount in inventory.’ ” The Franchise further argued that the Act violated the Franchise’s equal protection rights because the Act had not been applied to restrict two other area retail stores—a Walmart and a Spencer’s—“who also sell regulated items.” (Walmart sold regulated items like condoms, and the Spencer’s opened prior to 2007 and had an inventory that contained less than 10% of regulated items.)

The district court concluded that the Act did not violate the First Amendment. The court found that the state legislature in implementing it had a reasonable and rational intention of minimizing clearly defined secondary effects of adult-oriented businesses. The district court also rejected the Franchise’s vagueness challenge. The court interpreted the term “principal business purposes” as having a plain meaning of “main or chief.” The court further found that the fact that “more than 30%” of the Franchise’s revenue was derived from regulated items qualified it as an Act-regulated adult-oriented business with a principal business purpose of selling products related to sexual activities. Finally, the district court also rejected the Franchise’s claim that the Act violated equal protection because it had not been applied to Walmart and Spencer’s. The court found that although Spencer’s was similar to the Franchise, “it was not similarly-situated because the Act grandfathered in nonconforming businesses” of which Spencer’s was such a grandfathered business. As to other stores, the court found that there was “no evidence that the sale, offering for sale of these kind of materials at Walmart or Walgreen’s or CVS is anything other than incidental” and thus such stores were not regulated under the Act since their principal business purpose was not the selling of products related to sexual activities.

The Franchise appealed.

DECISION: Judgment of district court affirmed.

The United States Court of Appeals, Eighth Circuit, also rejected the Franchise’s constitutional challenges. The court held that the Franchise had not engaged in “speech” and thus did not have a First Amendment challenge to the Act. The court held that the Act was not unconstitutionally vague because the term “principal business purpose” had an ordinary meaning of “chief or main.” And, the court held that the Franchise failed to establish an equal protection rights violation since it failed to show the Act treated similarly situated entities differently.

In reaching its holding on the First Amendment claim, the court explained that the First Amendment prohibits laws “abridging the freedom of speech.” (U.S. Const. amend. I.) The court said that such protections “extend[] beyond verbal and written statements to expressive conduct that is ‘sufficiently imbued with elements of communication.’ ” Still, the court acknowledged that “not all conduct is ‘protected speech simply because the person engaging in [it] intends thereby to express an idea.’ ” The court explained that in evaluating a First Amendment violation claim, the court must first look to whether there is expressive conduct to which the First Amendment applies.

Here, the court found that the Franchise failed to show

that there was any such expressive conduct or speech to protect. The Franchise had stressed that it would not sell “DVDs, videos, books, literature, periodicals, posters of any kind” and that there would be “no videos. . . no movie booths . . . no movie screens . . . and no live entertainment” at the Franchise’s store. Further, the court found that the Franchise failed to cite authority that selling sexually-oriented devices is “speech” or “expressive conduct” protected under the First Amendment. The court concluded that the Franchise therefore could not state a claim under the First Amendment “[b]ecause there [was] no speech to protect.”

With regard to the Franchise’s vagueness challenge, the court explained that “[a] statute is unconstitutionally vague if it ‘fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.’ ” The court said that legislatures are not required to define every term in a statute. The court said that where a term is not defined “words are given their ordinary meaning.” Further, the court noted that where a plaintiff—such as the Franchise here—“engages in some conduct that is clearly proscribed,” the plaintiff “cannot complain of the vagueness of the law as applied to the conduct of others.”

Here, the court found that “the ordinary meaning of principal business purpose [was] not vague,” but meant “chief or main.” The court also found that people of ordinary intelligence could understand from that meaning what conduct was prohibited. The court rejected the Franchise’s claim that the term “principal business purpose” required more specificity such as quantification by “floor space, gross revenue, net revenue, or amount in inventory.” The court said such precision was not required since it was clear what the Act as a whole prohibited. Notably, the court said that was “especially true here, as the Act permit[ed] localities to address these concerns in their ordinances.” The court agreed with the district court that an activity generating 30% of a store’s gross revenue amounted to a “principal business purpose.” Finding the Franchise’s conduct—with at least 30% of its sales comprising sexually-oriented devices and products—was “clearly proscribed” by the Act, the court concluded that the Franchise could not “raise a successful vagueness claim under the Due Process Clause of the Fifth Amendment for lack of notice” based on hypothetical situations not before the court.

Finally, addressing the Franchise’s equal protection claim, the court explained that “the Equal Protection Clause generally ‘requires the government to treat similarly situated people alike.’ ” The court further explained that to have a viable equal protection claim, the Franchise had to show it was treated differently than other similarly situated retailers. The court concluded that the Franchise failed to make that showing. The court found that Spencer’s was not similarly situated because it was grandfathered under the Act since it opened before 2007, while the Franchise was not so grandfathered. The court also found that the Franchise failed to show it was similarly situated to other stores in the City since there was “no evidence” that regulated

sexually-oriented items were “staples of such general stores” (e.g., Walgreen’s, Walmart, and CVS) such as they were “to a franchise of America’s leading sex toy company” (e.g., the Franchise). Moreover, the court concluded that even if the Franchise had shown that it was treated differently from similarly situated entities, the Act did not violate equal protection since it had a purpose of serving a substantial governmental interest and was not simply aimed at harming adult-oriented businesses.

See also: *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S. Ct. 1728, 152 L. Ed. 2d 670, 30 Media L. Rep. (BNA) 1769 (2002).

See also: *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed. 2d 29, 12 Media L. Rep. (BNA) 1721 (1986).

See also: *Holder v. Humanitarian Law Project*, 561 U.S. 1, 130 S. Ct. 2705, 177 L. Ed. 2d 355, 49 A.L.R. Fed. 2d 567 (2010).

See also: *In re Kemp*, 894 F.3d 900 (8th Cir. 2018), cert. denied, 139 S. Ct. 1176, 203 L. Ed. 2d 199 (2019).

Validity of Consent Judgment/First Amendment/Equal Protection/Due Process/Establishment Clause/Open Meetings Act—City residents challenge validity of consent judgment that allows mosque in a residential zoning district

Residents contend city restrictions on public comments at public meeting on consent judgment violated the constitution and state open meetings law

Citation: *Youkhanna v. City of Sterling Heights*, 2019 WL 3808509 (6th Cir. 2019)

The Sixth Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

SIXTH CIRCUIT (MICHIGAN) (08/14/19)—This case addressed the issue of whether a city council in entering into a consent judgment with a nonprofit religious organization serving a Muslim community, which allowed construction of a mosque in a residential area within the city, violated the constitutional rights of residents and/or Mich-

igan’s Open Meetings Act. More specifically, the case addressed whether City-enforced rules at the public meeting at which the City Council voted to approve the settlement agreement that led to the consent judgment—rules which restricted speakers’ comments to those “relevant to agenda items” and which prohibited comments that attacked persons or institutions—violated the constitutional rights of the residents. The case also addressed whether the removal of the public from the City Council chambers after public comments and before City Council deliberations, violated the constitutional rights of residents and/or violated Michigan’s Open Meetings Act.

The Background/Facts: In July 2015, the American Islamic Community Center (“AICC”) applied for zoning permission to build a mosque in a residential zoning district in the City of Sterling Heights, Michigan (the “City”). The City’s planning commission denied the AICC’s request, finding the proposed mosque would be incompatible with the residential neighborhood. Thereafter, the AICC sued the City, alleging violations of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) and the First Amendment. The City decided to settle the lawsuit and negotiated a consent judgment that allowed AICC to build the mosque, subject to certain conditions including restrictions on the height of the mosque, lot parking only with shuttles required for larger events, and a ban on outside sound projection.

The settlement between AICC and the City, allowing for construction of the mosque, had to be approved by a City Council vote. The meeting at which the City Council considered the settlement was open to the public and “well attended.” At the meeting, the City Mayor instituted two rules: (1) public comments had to be relevant to agenda items being considered (i.e., the approval of a settlement that would give zoning permission to AICC to build a mosque); and (2) public comments could not attack persons or institutions. In other words, there was a relevance rule and a no-attack rule. After the public comment period closed and the Council members were in discussions, there was an “audience-wide uproar.” The Mayor and City Council then removed the audience from Council chambers to a vestibule during deliberations. The press was allowed to stay in Council chambers, and the deliberations were broadcast to the audience in the vestibule and recorded. The City Council concluded deliberations by voting to settle the case with AICC, and the consent judgment was entered.

Subsequently, City residents who resided near the mosque site (the “Residents”) filed a lawsuit against the City, challenging the validity of the consent judgment. The Residents contended that the consent judgment was invalid and unenforceable because it violated the constitution in a number of ways, as well as the Michigan Open Meetings Act.

Specifically, the Residents argued that the consent judgment was invalid because it violated due process. The Residents contended that the manner in which the City approved the settlement violated the City Zoning Ordinance and the Michigan Zoning Enabling Act because the City “failed to consider and make appropriate findings about a variety of factors listed in the [City] Zoning Ordinance.”

The Residents also maintained that the City Council in approving the settlement violated the First Amendment and Equal Protection Clause of the United States Constitution by restricting public comment with the relevance rule and no-attack rule. Specifically, the Residents argued that these rules were “content- and viewpoint-based prior restraints on speech that violated their First Amendment and Equal Protection Clause rights.”

The Residents also claimed that the City Council violated the Establishment Clause because “its actions had the effect of endorsing Islam.”

Finally, the Residents contended that the City Council’s decision to remove the audience from Council chambers during deliberations violated Michigan’s Open Meetings Act, which requires “[a]ll meetings of a public body shall be open to the public and shall be held in a place available to the general public . . .”

Finding there were no material issues of fact in dispute, and deciding the matter based on the law alone, the district court issued summary judgment in favor of the City.

The Residents appealed.

DECISION: Judgment of district court affirmed.

The United States Court of Appeals, Sixth Circuit, found in favor of the City on all of the Residents’ claims.

Addressing the Residents’ due process claims, the court first concluded that the consent judgment was not invalid for failure to follow state and local law. Contrary to the Residents’ arguments, the court found that the City Council had considered the criteria of the City Zoning Ordinance and the Michigan Zoning Enabling Act when it approved the settlement. The court pointed to the fact that the consent judgment addressed zoning issues of building size and height restrictions, parking and traffic, and noise. Further, the court found that, during deliberations, the City Council members and City Mayor “considered and made findings on [those] relevant [zoning] criteria.”

Next, the court concluded that, contrary to the Residents’ arguments, the relevance rule and no-attack rule implemented at the City Council meeting on the settlement agreement were not content- and viewpoint-based restraints on speech that violated residents’ First Amendment and Equal Protection Clause rights. The court explained that in a limited public forum (as opposed to a “traditional public forum” like a park or street)—which was the type of forum for the City Council meeting—“the government can impose reasonable restrictions based on speech content.” Still, the court noted that such restrictions cannot amount to viewpoint discrimination. In other words, in a limited public forum, there may be restrictions on speech so as to confine the forum “to the limited and legitimate purposes for which it was created.” However, warned the court, while such restrictions may discriminate based on content (i.e., limiting speech only to content related to the purposes of the forum), the restrictions may not discriminate based on viewpoint when the speech is “otherwise within the forum’s limitations.”

Here, the court found the relevance rule implemented at the City Council meeting was content-based, reasonable,

and viewpoint-neutral. The court said it could “think of no content-based restriction more reasonable than asking that content be relevant.” The Residents had argued that the relevance rule had amounted to viewpoint discrimination because it banned discussion of religion. But the court disagreed. The court acknowledged that “it is viewpoint discrimination to ban discussion of [a certain topic] from a religious perspective.” Here, however, the court found that the City allowed “comments mentioning religion or Islam when the comment was relevant to zoning considerations—for example, noise and traffic—but not when the comment was irrelevant—for example, expressing the commenters’ preference not to live near Muslims.” The court said that where comments from any viewpoint are irrelevant, prohibiting such irrelevant comments is not viewpoint discrimination in violation of the Constitution.

The court next found that the no-attack rule which forbade attacks on people or institutions “could be construed as viewpoint discrimination.” However, the court concluded that it “need not address the constitutionality of [the City’s] no-attack rule” because residents’ comments were “restricted by the entirely appropriate relevance rule.” Through testimony of residents, the court found that the comments restricted by the no-attack rule would have spoken about resident desires “not to live near Muslims” because of fear of religious persecution for practicing Christianity. Since those comments were restricted anyway by the constitutional relevance rule, the court concluded that the Residents’ First Amendment claims failed.

The court also concluded that the Residents’ equal protection arguments similarly failed. The Residents had argued that the City had granted the use of the City Council meeting forum “to people whose views it [found] acceptable, but den[ie]d use to those wishing to express less favored or more controversial views.” The court rejected that argument, finding speech was simply restricted to comments relevant to the zoning consideration topic of the meeting.

The court also rejected the Residents’ claim that the City violated the Establishment Clause by endorsing Islam. In support of that claim, the Residents had argued that the Council approved the mosque in violation of the zoning regulations, and had “suppressed speech critical of Islam.” The court found that claim was grounded in “mischaracterizations of the record and already-rejected arguments.” Thus, the court concluded that the claim failed.

Finally, the court addressed the Residents’ Open Meetings Act violation claims. The Residents had argued that removal of the audience from City Council chambers during City Council deliberations on the settlement agreement with AICC violated Michigan’s Open Meetings Act. The court acknowledged that under Michigan’s Open Meetings Act, meeting of a public body must be open to the public and held in a place available to the general public. Still, the court noted that the Open Meetings Act allows for the establishment of “reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.” (Mich. Comp. Laws § 15.263(1).) The court found that the Act prohibited exclusion of a person from a meeting otherwise open to the public “except for a breach of the

peace actually committed at the meeting.” Looking at the evidence here, the court concluded that “[e]ven assuming the removal of the audience violated the general provisions of the Act, there was clearly ‘a breach of the peace actually committed at the meeting.’” An “audience-wide uproar” was a breach of peace committed at the meeting, allowing for the removal of audience members without violation of the Open Meetings Act, concluded the court.

See also: *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700, 101 Ed. Law Rep. 552 (1995).

See also: *Matal v. Tam*, 137 S. Ct. 1744, 198 L. Ed. 2d 366, 45 Media L. Rep. (BNA) 1849, 122 U.S.P.Q.2d 1757 (2017).

Case Note:

In its decision, the court also addressed a resident's claimed violation of her due process rights when she was removed from the City Council's meeting during the public comment period. The court rejected her claim, finding she had “lost her privilege to remain in the otherwise-public meeting” because of her behavior. The court found that she had attempted to speak for a prohibited second time, and had spoke loudly and gesticulated, which contributed to disruption of the meeting.

Case Note:

In its decision, the court also addressed the issue of whether the Residents had standing to bring their constitutional claims. The court explained that for them to have standing, they had to “allege an actual or imminent injury that is traceable to the defendant and redressable by the court.” Here, the court found the Residents who lived near the site of the mosque had standing to challenge the validity of the consent decree because they alleged an injury of an effect on their properties caused by the consent decree, which would allow for a large public facility near them.

Zoning News from Around the Nation

CALIFORNIA

The state legislature is considering several zoning bills intended to address the state's housing crisis. SB 330 “limit[s] how strict cities can make their zoning,” “prevents [local] governments from downzoning until 2025” such as through “setting parking minimums or imposing housing moratoriums; or enacting other local measures that have made housing development nearly impossible in space-strapped areas.” SB 330 “also limits the number of public hearings on a zoning-compliant housing development proposal to five, and the length of time its permits can be considered.” AB 1485 seeks to “streamline zoning-compliant, mixed-income housing developments in the nine-county Bay Area.” AB 1485 “aims to broaden the types of projects qualifying for the shortened process by

giving developers more flexibility in the income mix of their proposal.” “Under the proposed bill, a project can have 10% of its units reserved for residents with incomes 80% or less of area median income, or 20% of units for incomes less than 120% of AMI.” SB 13 would “waive[] impact fees on [accessory dwelling] units under 750 [square feet] and decrease[] existing fees for spaces over that size.” SB13 would also allow for “automatic approval of an [accessory dwelling unit] permit application if a local agency has not acted upon the application in 60 days,” and would “remove[] the requirement that the owner of an [accessory dwelling unit] live in the main home while renting out the [unit].”

Source: *BISNOW*; www.bisnow.com

MARYLAND

Howard County Councilman David Yungmann has reportedly filed legislation to create a community liaison position intended to help resident stakeholders understand zoning and land use processes. Under the proposal, the County Council could create a “zoning case navigator” position that would “provide the public with unbiased information to those inquiring about the process and procedures of land-use cases before the county.”

Source: *The Baltimore Sun*; www.baltimoresun.com

MICHIGAN

Several bills pending in the state legislature are aimed at short-term rental regulation. One bill sponsored by Rep. Jason Sheppard would prohibit zoning bans of short-term rentals but would “allow local governments to enforce ordinances and to set fees and taxes.” Another package of bills sponsored by Rep. Jim Lilly “would create a statewide short-term rental registry and require operators to pay state excise taxes that fund tourism promotion . . . and allow exemptions for homes rented for 14 or fewer days per calendar year.”

Source: *The Center Square*; www.thecentersquare.com

NEW YORK

Governor Andrew Cuomo has signed into law legislation that now “prohibits vessels operating digital billboards in navigable waters . . . that feature ‘flashing, intermittent or moving’ lights.” Under the new law, local governments may “prohibit vessels equipped with billboards from operating or anchoring within 1,500 feet of their shores.”

Source: *Crain's New York Business*; www.crainnewyork.com

NORTH CAROLINA

Governor Roy Cooper recently vetoed House Bill 645 which would have eased restrictions on relocating billboards. More specifically, the bill would have allowed billboards taken through eminent domain or billboards no longer allowed by the landowner to be relocated without local government interference provided billboard owners “abide by zoning and other conditions spelled out in the bill.” The bill also would have “allowed the cutting of trees in the public right-of-way that block the view of the relocated sign . . . without the consent of nearby communities.” Those who opposed the bill, including

environmental groups, had contended that the bill would allow the conversion “to digital displays over the objections of local governments.” It was not clear whether the General Assembly had the votes to override the Governor’s veto.

Source: *The News & Observer*; www.newsobserver.com

PENNSYLVANIA

The City of Philadelphia’s Planning Commission recently approved a bill that would allow “accessory dwell-

ing units” on historically designated properties. The bill is intended to incentivize historical property preservation while meeting the needs of affordable housing and “aging in place.” The City’s Planning Commission has also approved bills that would “eliminate parking requirements for historic structures,” and “allow[] for greater diversity of uses in protected buildings in some residential neighborhoods.”

Source: *WHYY*; <https://whyy.org>

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First Amendment/Free Speech— Municipal code limits operating hours of adult cabarets

Adult cabaret operator contends such regulation violates
constitutional free speech rights

Citation: *Club SinRock, LLC v. Municipality of Anchorage, Office of the
Municipal Clerk*, 445 P.3d 1031 (Alaska 2019)

ALASKA (08/02/19)—This case addressed the issue of whether a municipal code provision prohibiting adult-oriented establishments from operating during early morning hours violated state constitutional free speech rights as applied to adult cabarets.

The Background/Facts: Club SinRock, LLC (“SinRock”) operates an adult cabaret in the Municipality of Anchorage (the “Municipality”). In 2016, the Municipal Clerk determined that SinRock regularly remained open past 2:00 a.m. in violation of the Anchorage Municipal Code (“AMC”). AMC 10.40.015(A) mandates that adult-oriented establishments close between 2:00 a.m. and 6:00 a.m. In March 2016, the Municipal Clerk conditioned renewal of SinRock’s adult-oriented establishment license on SinRock “abid[ing] by the provisions of the Municipal Code.”

Thereafter, SinRock challenged the Municipal Clerk’s decision. Among other things, SinRock argued: (1) that the AMC closing hour restriction did not apply to adult cabarets; and (2) the closing hour restriction violated free speech rights under the United States and Alaska Constitutions. Specifically, SinRock argued that although the plain language of AMC 10.40.015(A) restricted the closing hours of adult cabarets, the legislative history showed that the Anchorage Municipal Assembly did not intend for the closing-hours restriction to apply to adult cabarets because it was enacted originally to address problems attributable to massage parlors. Alternatively, SinRock also contended that the closing-hours restriction was a content-based restriction that violated free speech rights under a strict scrutiny analysis because it was not “narrowly tailored to promote a compelling governmental interest” or “the least restrictive means available to vindicate that interest.”

A Municipal hearing officer determined that she had no authority to decide SinRock’s constitutional claims and recommended “the Municipality conclude that the closing-hours restriction applies to adult cabarets, that SinRock violated the restriction, and that no conflict exists in the code provisions (but also that any potential conflict did not need to be decided).” The Municipal Clerk adopted the recommendations a few days later.



SinRock appealed to the superior court. The superior court affirmed the Municipal Clerk's decision. The superior court concluded that the plain language and legislative history of AMC 10.40.015(A) indicated that the closing-hours restriction applied to adult cabarets. The court also concluded that the closing-hours restriction did not violate SinRock's free speech rights under either the United States or Alaska Constitutions.

SinRock appealed, again arguing that the closing-hours restriction did not apply to adult cabarets or, alternatively, that the restriction was unconstitutional under the federal and Alaska constitutional free speech provisions.

DECISION: Judgment of Superior Court reversed.

The Supreme Court of Alaska held that (1) the municipal closing-hours restriction applied to adult cabarets; and (2) under a strict scrutiny analysis, the application of

the restriction by the Municipality against adult cabarets was "an impermissible government suppression of free speech under the Alaska Constitution."

In finding that the closing-hours restriction applied to adult cabarets, the court rejected SinRock's argument that the legislative history showed that the Anchorage Municipal Assembly did not intend for the closing-hours restriction to apply to adult cabarets because it was enacted originally to address problems attributable to massage parlors. The court determined that "[w]hether the Assembly considered the ramifications of applying the ordinance to adult cabarets [was] irrelevant." The court found that the Assembly's minutes reflected that the 2003 ordinance—which explicitly added adult cabarets to the municipal licensing scheme—was intended to "simply correct[] an error in the original law." Thus, the court concluded that the Assembly "clearly intended to subject adult cabarets to the same regulations as other adult-oriented businesses."

In addressing the free speech violation claims, the court first determined that the Alaska Constitution's free speech clause "is more protective of individual rights" than the free speech clause of the United States Constitution. Thus, the court focused its analysis on the Alaska Constitution. Based on those "strong constitutional protections" afforded under the Alaska Constitution, the court concluded that "laws regulating the sexual content of message, and thereby restricting one's right to liberty, are content-based" and subject to strict scrutiny analysis in determining their constitutionality.

In applying strict scrutiny, the court explained that it would uphold AMC 10.40.015(A) only if it was found to be "narrowly tailored to promote a compelling government interest" and to be "the least restrictive means available to vindicate that interest." Here, the court found "in general the Municipality's interests in regulating the 'negative effects of cabarets on the community' " included limiting: potential "increased crime rates, declining property values, disinvestment[,] . . . decline in economic and pedestrian activity," and "the harmful effects of cabarets on young girls in the community." The court, however, found that the Municipality failed to meet its burden of evidence demonstrating that the closing-hours restriction as applied to adult cabarets was narrowly drawn to achieve those interests. Specifically, the court found that the Municipality failed to offer "specific evidence that forcing adult cabarets to close in the early morning was designed to help reduce th[ose] negative effects." Instead, the court found that the Municipality merely offered general conclusions with regard to the "perceived negative effects of adult cabarets on the surrounding communities." The court concluded that the Municipality had not shown that it "could not effectively reduce secondary effects without infringing on otherwise constitutional speech." Accordingly, the court found no basis for concluding that the closing-hours restriction was constitutional.

See also: *Mickens v. City of Kodiak*, 640 P.2d 818 (Alaska 1982).

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Case Note:

In applying strict scrutiny analysis here, the court compared that level of scrutiny to that given by the United States Supreme Court in analyzing “sexual speech.” The court found the United States Supreme Court subjected sexual speech to “a lesser degree of free speech protection,” reviewing “otherwise content-based restrictions as content-neutral under intermediate scrutiny.”

Case Note:

In its decision, the court emphasized that although the municipal ordinance here was found to be unconstitutional because it was not shown to be narrowly tailored to meet the government interests, there was “the possibility that a similar ordinance may be constitutional.” The court said that a government could demonstrate how a similar hourly restriction on adult-oriented establishments is narrowly tailored to meet specific, compelling government interests by: “relying on solid evidence of other communities’ experiences or by specific studies presented to the legislature prior to enactment”; and demonstrating “both that there is evidence of potential harm and that non-infringing law enforcement techniques ‘are unavailable or likely to be ineffective.’ ”

Dimensional Variance/ Special Exception/ Telecommunications Act—Neighbor appeals grant to wireless communications operator of a dimensional variance and special exception

Neighbor contends operator failed to show necessary elements for granting of variance or special exception

Citation: *Vineyard Oil and Gas Company v. North East Township Zoning Hearing Board*, 2019 WL 3432069 (Pa. Commw. Ct. 2019)

PENNSYLVANIA (07/31/19)—This case addressed the issue of whether, in seeking to construct a telecommunications antenna, a telecommunications company was entitled, under the local township zoning ordinance and/or under the federal Telecommunications Act, to a dimensional variance and/or special exception.

The Background/Facts: Capital Telecom Holdings (the “Applicant”) is in the business of constructing, owning, and managing wireless communications facilities. In September 2016, the Applicant entered into an agreement to lease a portion of property (the “Property”) in North East Township (the “Township”) for the purpose of erecting and operating a wireless communications facility thereon. Under the Township’s Zoning Ordinance (the “Ordinance”), any new antenna support structure erected in the Township required a minimum setback distance between its base and any adjacent property of “equal to the maximum height of the antenna and antenna support structure.” The Ordinance also provided that although a monopole antenna support structure is ordinarily required, a freestanding support structure may be permitted by special exception when certain requirements are met.

The Applicant proposed to construct on the Property a 195-foot freestanding antenna support structure. Under the Ordinance, the Applicant was thus required to place the tower a distance of at least 195 feet from adjoining properties. The Applicant sought to place the Tower closer to adjacent properties, with its closest distance being 54 feet, 4 inches from property to the north. In furtherance of its proposal, the Applicant submitted to the Township’s Zoning Hearing Board (“ZHB”) an application for a dimensional variance from the Ordinance’s setback requirements and for a special exception to construct the freestanding support structure in lieu of a monopole support structure.

The ZHB granted to the Applicant the dimensional variance and the special exception.

Vineyard Oil and Gas Company (the “Objector”) owned property next to the Applicant’s leased Property. The Objector appealed the ZHB’s decision to grant to the Applicant the dimensional variances and special exception. The Objector argued first that the Applicant failed to satisfy the requirements under the Ordinance for a dimensional variance. Specifically, the Objector contended that the Applicant failed to establish the existence of an unnecessary hardship as required by the Ordinance to obtain a dimensional variance. The Objector also argued that the Applicant failed to establish certain conditions required by the Ordinance for approval of a special exception, namely that: “the [c]ost of erecting a monopole would preclude the provision of adequate service to the public, or erection of a safe antenna support structure requires a type other than a monopole”; and/or “[t]he proposed antenna structure would have the least practical adverse visual impact on the environment and closely resemble[] a monopole.” The Objector further argued that the federal Telecommunications Act (the “TCA”) did not support the grant of the dimensional variances and special exception. The TCA provides in relevant part that local zoning authorities may not “prohibit or have the effect of prohibiting the provision of personal wireless services” (47 U.S.C.A. § 332(c)(7)) that are the “least intrusive means for closing a significant gap in cell service.” The Objector contended that the TCA did not support the ZHB’s decisions here because the Applicant

had failed to establish that the service coverage gap that it intended to fill with the construction of this telecommunications tower was a “significant gap” or that the proposed tower was the “least intrusive.”

The trial court affirmed the ZHB’s decision to grant to the Applicant the dimensional variances and the special exception.

The Objector appealed.

DECISION: Judgment of Common Pleas Court reversed.

The Commonwealth Court of Pennsylvania held that the Applicant was not entitled, under the Township’s Ordinance or the TCA, to dimensional variances or a special exception for its proposed telecommunications tower construction.

The court agreed with the Objector that the Applicant failed to demonstrate the required significant or unnecessary hardship required by the Ordinance for a dimensional variance. The court explained that to show an unnecessary hardship under the Ordinance, the Applicant had to establish “unique physical characteristics or conditions” peculiar to the Property or use that prohibited the Property from being developed in conformance with the Ordinance (i.e., without a variance). The ZHB had found that a stream bisecting the Property and the Property’s size created an unnecessary hardship on the Applicant. The Commonwealth Court rejected that finding. The court found that the Objector could not make the necessary showing of unnecessary hardship because the Property was already being used as a salvage yard, automobile repair business, and gas well. Since the Property had reasonable uses that conformed to the Ordinance, there could be no establishment of unnecessary hardship, concluded the court.

The court also agreed with the Objector that the Applicant failed to present evidence sufficient to satisfy the Ordinance’s requirements for a special exception to erect a self-supporting cell tower structure in lieu of a monopole structure for cell tower antennas. The court explained that for special exception approval of a freestanding antenna, the Ordinance required the Applicant establish, among other things, that: the “[c]ost of erecting a monopole would preclude the provision of adequate service to the public” or “a safe antenna support structure require[d] a type other than a monopole”; “[t]he proposed antenna structure would have the least practical adverse visual impact on the environment . . .”; and “[t]he proposed antenna support structure [would be] architecturally compatible with surround buildings and land use . . .” The ZHB had found that: the cost difference between the monopole and the self-supporting tower proposed by the Applicant was “not proffered as a reason for the request for the self-supporting tower”; “the nature of the monopole, which [could] sway and vibrate in the wind, compromise[d] the quality of the cellular service . . .”; “[t]he proposed self-supporting structure would not have any adverse visual impact on the industrial environment surrounding the [] Property”; and “[t]he proposed self-

supporting structure [was] architecturally compatible with the auto repair shop on the [] Property” as well as the surrounding properties. Reviewing the evidence presented by the Applicant to the ZHB, the Commonwealth Court found that the evidence was not sufficient to adequately support conclusions that “the [c]ost of erecting a monopole would preclude the provision of adequate service to the public, or erection of a safe antenna support structure require[d] a type other than a monopole” and/or “[t]he proposed antenna structure would have the least practical adverse visual impact on the environment and closely resemble [] a monopole.” In fact, the court found that the ZHB did not make such findings on those criteria. Because the Applicant failed to establish those elements required by the Ordinance for a special exception, the court concluded that the ZHB abused its discretion by determining that the Applicant satisfied the requirements for the special exception.

Finally, the court also agreed with the Objector that the TCA did not support the grant of dimensional variances and a special exception here. Again, the TCA provides, in relevant part, that local zoning authorities—like the ZHB here—may not “prohibit or have the effect of prohibiting the provision of personal wireless services” (47 U.S.C.A. § 332(c)(7)) that are the “least intrusive means for closing a significant gap in cell service.” The court acknowledged that the evidence proffered by the Applicant “established a service coverage gap existed that [the] Applicant’s proposed service would fill.” However, the court found that evidence was insufficient to support a finding that the proposed service filled by the proposed telecommunications tower would fill “an existing significant gap” in cell service coverage and/or that the proposed tower was the “least intrusive.” Accordingly, the court concluded that the TCA did not support the grant of the dimensional variances and special exception to the Applicant.

See also: *Township of East Caln v. Zoning Hearing Bd. of East Caln Tp.*, 915 A.2d 1249 (Pa. Commw. Ct. 2007).

See also: *Schomaker v. Zoning Hearing Bd. of Borough of Franklin Park*, 994 A.2d 1196 (Pa. Commw. Ct. 2010).

See also: *Bray v. Zoning Bd. of Adjustment*, 48 Pa. Commw. 523, 410 A.2d 909 (1980).

Conflict of Interest— Zoning board members who denied use variance application also served on mayor's civic association

Use variance applicant contends those members had a disqualifying conflict of interest in voting on the application since mayor opposed the applicant's proposed use

Citation: *Central 25, LLC v. Zoning Board of City of Union City*, 2019 WL 3310016 (N.J. Super. Ct. App. Div. 2019)

NEW JERSEY (07/24/19)—This case addressed the issue of whether any members of a city's zoning board of adjustment who voted to deny a use variance application had a conflict of interest that might have tainted their judgment such that they should have been barred from voting on the use variance application.

The Background/Facts: Manuel and Niurka Alvarez (the "Alvarezes") operated a poultry market. After the rent in their commercial space increased significantly, they sought a new location for their business. In 2015, they purchased property (the "Property") in Union City (the "City") at which they intended to relocate their business. The Property was zoned for residential use, so the Alvarezes applied to the City's Zoning Board of Adjustment (the "Board") for a use variance. Their application expressed that they intended to operate a retail fish market and a retail poultry market at the Property.

While the Alvarezes' application was pending with the Board, the City's Mayor—Mayor Brian Stack—actively campaigned against the Alvarezes' use variance application. Among other things, the Mayor sent letters and flyers to area residents, which expressed the Mayor's opposition to the proposed markets in the residential zone.

Eventually, the Board voted to deny the Alvarezes' use variance application. The Board explained that the denial was because the proposed uses would "change the characteristic of the neighborhood [in the] established residential zone . . ."

The Alvarezes appealed the Board's decision. They argued that the decision should be reversed. They contended that, among other things, three of the six Board members that voted to deny the application were impartial and had conflicts of interest that should have disqualified them from voting on the use variance application. Those three members were all officers and trustees of the Brian

Stack Civic Association, an association whose activities were "intended and designed to promote the Mayor's interests." The Alvarezes argued that those Board members "should have disclosed their membership and participation in the Association and thereafter recused themselves because the Mayor's campaign against the application created an impermissible conflict of interest."

The superior court judge rejected the Alvarezes' argument. The judge was "unconvinced that being merely members of an association or political organization would disallow someone from being a member of a . . . Board, such as the Board of Adjustment . . ."

The Alvarezes appealed.

DECISION: Judgment of superior court, law division, reversed, and matter remanded.

The Superior Court, Appellate Division, held that the Alvarezes "presented sufficient evidence to establish reasonable grounds to question the impartiality of two members of the Board." The court remanded to the Law Division to conduct an evidentiary hearing to "determine whether th[ose] two Board members should have been barred from hearing the [Alvarezes'] application for a use variance because their personal interests might reasonably be expected to impair their objectivity or independence of judgment."

The court explained that "[p]ublic confidence in the integrity of our municipal planning and zoning boards requires that board members be free of conflicting interests that have the capacity to compromise their judgments." The court further explained that a member of the Board would have a disqualifying conflict of interest if they were found to have a personal interest that "might reasonably be expected to impair [their] objectivity or independence of judgment."

To determine whether any of the Board members here had a disqualifying conflict of interest that required their recusal, the court looked to New Jersey's Local Government Ethics Law, N.J.S.A. 40A:9-22.2. The statute provides that no "local government officer"—including those with authority to approve development applications or grant zoning variances—"shall act in his [or her] official capacity in any matter where he [or she], a member of his [or her] immediate family, or a business organization in which he [or she] has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his [or her] objectivity or independence of judgment." (N.J.S.A. 40A:9-22.5(d).) The court also looked to New Jersey's Municipal Land Use Law ("MLUL"), which prohibits a member of a board of adjustment from "act[ing] on any matter in which he [or she] has, either directly or indirectly, any personal or financial interest." (N.J.S.A. 40:55D-69.) Summarizing and generalizing these conflict-of-interest statutes, the court explained that "a public official—such as the Board members here—has a disqualifying conflict of interest when the circumstances could reasonably be interpreted to show that [conflicting interests] had the likely capacity to tempt the official to depart from his [or her] sworn public duty."

Guided by those standards, the court concluded that there was not sufficient information to determine whether the circumstances surrounding two of the Board members' "membership in and relationship with the Brian Stack Civic Association and Mayor Stack's active opposition to the Alvarez's application could reasonably be construed to show a likely capacity to tempt the officials to depart from their sworn public duty at the time they voted to deny [the Alvarez's] application." One of those Board members was the Chief Executive Officer of the Civic Association, and the other was the Association's Vice-President. The Association's activities were "intended and designed to promote the Mayor's interests," and the Mayor had actively campaigned against the Alvarez's application. The court found that "[t]he high-level of participation in the Mayor's Association by these two Board members might reasonably be viewed by the applicant and the public at large as significant factors capable of impairing their objectivity or independence of judgment."

The court remanded to the Law Division judge to determine whether those Board members' high level positions in the Association at the time of the Alvarez's application, viewed in the context of the Mayor's "aggressive opposition" to the Alvarez's application, "constituted an indirect personal interest under [the MLUL] N.J.S.A. 40:55D-69, precluding both of them from participating in this matter." The court also remanded for the Law Division judge to determine "whether the Mayor's aggressive advocacy against the granting of [the Alvarez's] application created reasonable grounds to establish a conflict of interest for [the two Board members] under N.J.S.A. 40A:9-22.2 and/or provided reasonable grounds under the common law for the public to doubt the impartiality of these two Board members."

See also: *Piscitelli v. City of Garfield Zoning Board of Adjustment*, 237 N.J. 333, 205 A.3d 183 (2019).

Rezoning/Vested Rights/ Due Process—Under city code, annexed land was automatically rezoned

Property owner challenges code as
being void and in violation of its
procedural due process rights

Citation: *Bragg Hill Corporation v. City of Fredericksburg*, 831 S.E.2d 483 (Va. 2019)

VIRGINIA (08/15/19)—This case addressed the issue of whether a city code provision that automatically rezoned property annexed from the county was void ab initio (i.e., from the beginning) or violated the procedural

due process rights of a property owner. It also addressed whether a property owner had a vested right to develop property according to a revised master plan submitted to the county prior to annexation of the property by the city.

The Background/Facts: Bragg Hill Corporation ("Bragg Hill") owned property (the "Property") in Spotsylvania County (the "County"). In 1970, the County Planning Commission approved a master plan (the "Master Plan") for Bragg Hill's development of the Property. Bragg Hill planned to construct townhouses on the Property. In 1972, the County Planning Commission approved a revised master plan (the "Revised Master Plan") for Bragg Hill's development. The Revised Master Plan allowed for a density of eight dwelling units to an acre for the development.

By the end of the 1970s, Bragg Hill had fully built out and constructed the first six sections of its townhouses project. Bragg Hill then encountered "difficult prevailing economic conditions," and did not seek the approval of the County's Board of Supervisors to build out the remaining sections of the townhouses project.

Meanwhile, in 1973, the County adopted its first zoning ordinance. The zoning ordinance zoned Bragg Hill's Property as "R-2," allowing for a development density of eight dwelling units per acre. Then in 1984, the City of Fredericksburg (the "City") annexed nearly 3,000 acres from the County. That annexed acreage included Bragg Hill's Property. Pursuant to the City Code, all of the annexed land—including the Property—was automatically zoned into the City's R-1 zoning classification. The City's R-1 zoning classification allowed for a permissible housing density of two dwelling units per acre, and did not permit by-right development of townhouses.

In 1991, Bragg Hill asked the City to rezone the Property from R-1 to R-8 so that Bragg Hill could develop its property according to the Revised Master Plan (e.g., with a density of eight dwelling units per acre). (The City's R-8 zone was similar to the County's R-2 zone.) In 1991, the City adopted an ordinance that rezoned a portion of property, but not Bragg Hill's Property, which thus continued to have an R-1 zoning classification.

In 2009, Bragg Hill asked the City's zoning administrator to determine that Bragg Hill had a vested right to develop the Property according to the Revised Master Plan, despite the Property being zoned R-1 by the City. The zoning administrator determined that Bragg Hill did not have such a vested right because: (1) the administrator found no proof of approval of the Revised Master Plan by the County Board of Supervisors; and (2) even if there had been such approval, the approval had expired after five years, and thus there was no basis for finding there was a vested right.

Bragg Hill appealed the zoning administrator's determination to the City's Board of Zoning Appeals (the "BZA"). The BZA upheld the zoning administrator's decision. Bragg Hill did not appeal the BZA's decision.

In 2017, Bragg Hill brought a legal action against the

City. Bragg Hill alleged that the City's automatic zoning of the property—pursuant to the City Code—upon the annexation violated Virginia law and Bragg Hill's constitutional procedural due process rights. Bragg Hill pointed to the fact that the automatic rezoning of the Property was done without adoption of any ordinance or resolution and/or following a public hearing. Bragg Hill further contended that it had a vested right to develop the Property according to the Revised Master Plan (i.e., at a density of eight dwelling units per acre), and that right was violated by the City's automatic rezoning of the Property upon annexation.

The circuit court rejected Bragg Hill's claims. It found that the City acted within its statutory authority regarding the rezoning of the Property upon its annexation. The court also found that since Bragg Hill had failed to appeal its vested rights claim that was rejected by the BZA, it had failed to exhaust its administrative remedies and the issue was not subject to court challenge.

Bragg Hill appealed, reiterating its claims.

DECISION: Judgment of circuit court affirmed.

The Supreme Court of Virginia agreed with the circuit court, first holding that the City Code provision that automatically rezoned the Property upon annexation from the County was not void because it was within the authority of the City. The court explained that a municipal ordinance is invalid "if it exceeds the scope of authority granted by statute, or is inconsistent with a statute such that the ordinance and statute cannot coexist." Here, the court found that the enabling statute—Va. Code Ann. § 15.1-491(b)—"allowed a municipality to pass a zoning ordinance that applied to recently annexed land that came into the governing body's jurisdiction." That statute provided that a zoning ordinance may include provisions for "the temporary application of the ordinance to any property coming into the territorial jurisdiction of the governing body by annexation . . ." (Va. Code Ann. § 15.1-491(b).) The court found that the City Code "executed that granted authority" when it automatically classified annexed land as R-1. Given the statutory authority, the court concluded that the City Code provision automatically rezoning annexed land "was valid, not void."

The court also concluded that the automatic rezoning of the Property without a public hearing upon annexation did not, as Bragg Hill had claimed, violate Bragg Hill's constitutional procedural due process rights. The court explained that to find a violation of due process, it would have to find: (1) Bragg Hill had a property interest protected by due process guarantees; and (2) the procedures applied in rezoning the Property were insufficient "to satisfy the due process 'fairness' standard." Here, the court found that Bragg Hill's procedural due process violation claim failed because Bragg Hill did not have a property interest that was deprived. The court explained that Bragg Hill's alleged "property interest" was its alleged vested right to develop the Property according to the Revised Master Plan. The court noted that the BZA had determined that Bragg Hill had no such vested prop-

erty right, and the court determined that since Bragg Hill had failed to appeal that determination—the determination was a "thing decided" and final. Thus, the court found that Bragg Hill had claimed that the City had deprived it of a vested property right that Bragg Hill did not have. Moreover, the court found that Bragg Hill had no vested right "in the continuation of the Property's zoning status before annexation." The court explained that "even if Bragg Hill had a vested right to develop the Property according to the Revised Master Plan, the change of the Property's zoning upon it being annexed did not deprive it of that vested right." "Vested rights are not affected by a subsequent change in zoning status," said the court (See Va. Code Ann. § 15.2-2307.) In other words, said the court: "[i]f Bragg Hill had a vested right in the Revised Master Plan pre-annexation, that vested right continued after the annexation and rezoning. Thus, the change in zoning could not have deprived Bragg Hill of its alleged vested property interest."

See also: *Board of Sup'rs of Stafford County v. Crucible, Inc.*, 278 Va. 152, 677 S.E.2d 283 (2009).

Zoning News from Around the Nation

CALIFORNIA

The Santa Cruz City Council recently voted "to terminate its so-called Corridor Plan, which aimed to align city zoning laws with the long-term 2030 General Plan vision for the city." The City Council has now directed city planning staff members to update the Corridor Plan and General Plan by November 2020. "Specifically, staff members were told to prioritize the preservation of existing neighborhoods and businesses and encourage 'appropriate' new residential and mixed-use development with a focus on affordable housing."

Source: *Santa Cruz Sentinel*; www.santacruzsentinel.com

ILLINOIS

The Naperville City Council recently voted to ban all recreational cannabis-related businesses. The City Council, however, also is reportedly looking to develop a ballot question on the issue for future vote.

Source: *Chicago Sun-Times*; <https://chicago.suntimes.com>

MASSACHUSETTS

Pending in the state legislature are two bills that would amend the state's Zoning Act, known as "Chapter 40A." Senate Bill 1024 would affect the standing of abutters to challenge zoning decisions. Currently under Chapter 40A, section 17, only those "aggrieved" by a zoning decision have standing to appeal. S. 1024 would reportedly create "a mandatory standing review in zoning cases." The bill would amend Chapter 40A prohibiting any party from joining an appeal after the appeal period has expired,

and it would require plaintiffs to file affidavits establishing their aggrievement within 30 days of the filing the appeal, followed by a hearing within 90 days. The bill also “appears to eliminate the presumption of aggrievement” for certain parties. House Bill No. 1765 would impact what is known as the “Dover Amendment”—Chapter 40A, Section 3. H. 1765, Section 3—to make clear that “nonprofit educational corporations” are subject to local “wetlands or natural resource area protections.”

Source: *The National Law Review*; www.natlawreview.com

MISSOURI

A county judge has issued a restraining order delaying the enforcement of Senate Bill 391, a new law related to Concentrated Animal Feeding Operations (“CAFO”). Senate Bill 391 effectively “prohibits counties or cities from imposing agricultural standards as ordinances that would be more stringent than what is spelled out in state law and enforced by the Missouri Department of Natural Resources.” Several plaintiffs had challenged Senate Bill 391 as unconstitutional. A hearing was expected in mid-September at which the judge was to determine whether to enter a preliminary injunction against Senate Bill 391.

Source: *Christian County Headliner News*; <https://ccheadliner.com>

MONTANA

Some City of Bozeman property owners have sued the City in an effort to void a City zoning change that

increased the density of units per acre. The property owners reportedly allege that the zoning change violates state and city laws by spot zoning and failing “to respect . . . [the] neighborhood character and quality.”

Source: *Bozeman Daily Chronicle*; www.bozemandailychronicle.com

TEXAS

Effective September 1, 2019, a new state law (House Bill 3231) prohibits municipalities from adopting regulations relating to “the transfer, possession, wearing, carrying, [private] ownership, storage [keeping], transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; [or] . . . commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or . . . the discharge of a firearm or air gun at a sport shooting range.” It does not affect municipal zoning authority except when “the ordinance or regulation is designed or enforced to effectively restrict or prohibit the manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition that is otherwise lawful in this state.” Senate Bill 535 strikes “churches, synagogues, or other places of worship” from the prohibited locations list in the Penal Code, clarifying that these places can decide whether to allow licensed-to-carry holders on-premises.

Sources: *NRA-ILA*; www.nraila.org; *LegiScan*; <https://legiscan.com/TX/text/HB3231/2019>

Ethics Codes: Not Just for Planners

ET'S SAY YOU HAVE JUST BEEN appointed to serve on your local planning commission. You have had your briefings, along with an orientation to the tasks ahead, and you are developing a trusting relationship with your planning staff. Your orientation likely included a section on ethics, targeted to your unique role in making decisions with financial, legal, and ethical impacts. In addition to local and state laws that govern your conduct, you should have learned about the ethical standards set by the American Institute of Planning's Code of Ethics and Professional Conduct. You should also be aware that the American Planning Association publishes an advisory set of standards for lay planners and non-AICP members, known as the Ethical Principles in Planning.

What you may be unfamiliar with are the ethical commitments of related professionals—the engineers, architects, landscape architects, economic development professionals, and city managers that you encounter at public meetings. Do they abide by the same standards as you and your planning colleagues?

Those questions are currently being asked by Bonnie Johnson, AICP, associate professor of urban planning at the University of Kansas. Her past research has focused on analyzing the differences between the ethical codes that govern planners and those that apply to city managers. "You can learn a lot about how a profession views the world by studying its code of ethics," she says.

City managers aren't the only players who regularly interact with planners and planning commissioners and who influence how they do their jobs. Every project considered by a planning commission brings with it a distinct cast of characters from both the public and private sectors—architects, engineers, urban designers, redevelopment and housing officials, and social workers to name a few.

Codes 'not all the same'

Each profession has its own code prescribing the ethical standards that are appropriate for its practitioners. No two codes, it turns out, are the same. That's

why Johnson's research is so important. By analyzing the nuances that separate city planning and city management, planning commission members get a clearer sense of how those professionals see their roles in the planning process.

The assumption, she says, is that bringing city managers and planners together leads to better decisions. "But this does not happen automatically. It requires work," she says.

As part of her research, Johnson is comparing the codes of ethics of 11 professional organizations involved in the planning process. She has set out to find where similarities begin and end, and how differences in these organizations' ethical perspectives play out in different communities.

"We're particularly interested in identifying unique innovations or new approaches to ethical behavior that might have value for those of us in planning," says Johnson. "An important aspect in this process is identifying what we, as interconnected professions, can learn from each other."

Johnson has selected a series of contemporary issues to define the ways in which various professions respond: cultural competency; conflicts of interest; technology; public, private, and nonprofit work; and sexual harassment.

A major question is how transparent, accessible, and understandable each of

these ethics codes is—not only for an organization's members but also for the general public. As part of her research, Johnson considers how each organization disseminates its code, whether sample ethical scenarios and training aids are readily available, and how easy it is to secure guidance from ethics staff at each organization.

Observations to date

While Johnson and her colleagues are continuing to seek answers to these questions, certain themes emerge. The first is that ethics codes are not static, although change is often slow. While many of the issues explored (cultural competency, for example) have not yet emerged in many of these ethics codes, other issues such as discrimination and sexual harassment are gradually making their way into them.

Second, codes in largely private-sector professions—e.g., architecture and landscape architecture—have significantly different approaches than those in largely public city planning and city management. Private-sector codes tend to focus on protecting the client's interest, while publicly oriented codes often place a greater emphasis on the "public good." Neither approach is wrong, but it does suggest that it is helpful for planning commission members to understand the perspectives of other professions.

Third, certain ethics codes emphasize issues that may be of specific concern to their practitioners. For example, because of the size and value of public works contracts, the American Society of Civil Engineers focuses on preventing corruption. Other professions emphasize the need to protect private work documents in competitive proposal processes.

Finally, the researchers are finding a wide variation in how transparent these organizations are with respect to reporting ethics violations and taking action. The National Association of Housing and Redevelopment Officials, for example, has posted a three-year rolling report on violations, while some other websites contain no specific data to demonstrate that violations are being enforced.

OBSERVATIONS ON ALLIED CODES OF ETHICS

As part of ongoing research seeking to gauge how the ethical standards of professions that intersect with planning impact communities, researcher Bonnie Johnson, AICP, has analyzed the codes of 10 organizations, in addition to AICP. The table below outlines key differences.

American Institute of Architects (AIA) bit.ly/aia-ethics	Commentary to help members understand ethical standards References concerning Obligations to the Environment Information regarding pro bono work Commitments to environmental equity and justice Urges provision of "equitable work environment"
American Society for Public Administration (ASPA) bit.ly/aspa-ethics	<i>Implementing the Code of Ethics: Workbook and Assessment Guide</i> Eight principles Seeks to "promote affirmative action and other initiatives to reduce unfairness, injustice, and inequality in society"
American Society of Civil Engineers (ASCE) asce.org/code-of-ethics	Greatest variety of ethics content among organizations studied Interactive ethics page "Order of the Engineer" provides opportunity to commit to ethical behavior "A Question of Ethics"—regular column Ethics Hotline YouTube videos, training aids
American Society of Landscape Architects (ASLA) bit.ly/asla-ethics	Structure not user-friendly Focused on private practice Guidance and enforcement protocols embedded in ethics policies Separate Code of Environmental Ethics available on the website but not enforceable in same manner as the code of ethics
Institute of Transportation Engineers (ITE) bit.ly/ite-ethics	Principles to "Support a Sustainable Society" Adverse consequences Professional development for employees Political contributions
International Association of Emergency Managers (IAEM) iaem.org/CEM-Code-of-Ethics	When they don't take your advice—put it in writing "Quality may be assessed by audits, monitoring, quality processes, or other appropriate means"
International City and County Management Association (ICMA) icma.org/icma-code-ethics	29 scenario categories Ethics 101 E-Course Blog post: "Ethics on the International Stage: ICMA is Not Alone" Violations made public
International Economic Development Council (IEDC) bit.ly/iedc-ethics	Board membership—private and public sector 12 principles Warning against exploiting areas impacted by natural disasters
National Association of Housing and Redevelopment Officials (NAHRO) nahro.org/code-of-prof-conduct	Short, not fully developed Minimal information Three-year history of violations reported
National Association of Social Workers (NASW) bit.ly/nasw-codeofethics	Do not exploit others to further "personal, religious, political, or business interests" "Technology-assisted social work services" Need to "assess cultural, environmental, economic, mental or physical ability, linguistic, and other issues" Code designed to "ensure that employers are aware of social workers' ethical obligations"

AICP has come out rather well in the study, in part because of ongoing enhancements made to APA's ethics program in recent years. Members (including planning commissioners) can analyze data from AICP's ethics enforcement processes on the website—updated annually and sorted by geography. An increased number of training programs, "ethics case of the year" presentations, and other features also provide useful guidance.

What it means for you

Practitioners and commissioners should find it useful to learn about the ethical commitments that participants in the planning process are expected to observe. The bad news: Not all professions that you deal with are held to the same standards.

For that reason, both planning practitioners and commissioners must remain alert to potential conflicts of interest or violations of ethics codes or laws. It is up to you to bring these matters to the attention of appropriate staff. Remember that our ethics code—and those of other organizations—are designed not only to enforce standards of behavior but to protect the reputation of the profession itself.

Certainly, it helps to know that most of the professional disciplines related to planning have their own codes of ethics. Even if those codes differ from your own, they are still enforceable, and knowing something about them may help you identify questionable behavior.

Always keep in mind that there is a difference between ethics and law. Perfectly lawful behavior may not be ethical, and behavior that is ethical may not always conform to what is permitted by law. Always turn to your trusted advisors to discuss ethical concerns.

Finally, contact AICP's ethics officer if you have any sort of question about ethics pertaining to members of AICP or within the profession generally. You can find more on the ethics page of the APA website at planning.org/ethics. ■

—Steven A. Preston, FAICP
Preston is the retired city manager of San Gabriel, California, and a participant in the research effort described in this article.