

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**SPECIAL MEETING MINUTES**  
**6:30 P.M., P.S.T., TUESDAY, FEBRUARY 17, 2015**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**

**CALL TO ORDER**

The meeting was called to order by Greg Thornton, Chairman of the Elko City Planning Commission.

**ROLL CALL**

Present: Greg Thornton, Jose Negrete, John Anderson, Aaron Martinez,  
Joe Becker, David Freistroffer, Tera Hooiman (arrived at 6:40 p.m.)

City Staff Present: Scott Wilkinson, Assistant City Manager; Rick Magness, City Planner;  
Jeremy Draper, Development Manager; Bob Thibault, Civil Engineer;  
Rebecca Hansen, Planning Technician

**PLEDGE OF ALLEGIANCE**

**INITIAL PUBLIC COMMENT PERIOD**

There were no public comments made at this time.

**I. NEW BUSINESS**

**A. PUBLIC HEARINGS**

1. Review and reconsideration of Conditional Use Permit No. 2-15, filed by Riverside Villas Nevada LLC, to allow for a multiple family residential development consisting of 156 units within a C (General Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the easterly side of 12th Street near its intersection with Opal Drive (1525 Opal Drive).

Jarod Morgan, Asset Manager, Peg Development, explained the first two buildings were originally condominiums that morphed into apartments. The project was extended for a total of 96 three-bedroom units in phase one. The project was underwritten by Key Bank with the note held by Freddie Mac. Key Bank likes to phase out their financing due to market risk. They finished the permanent financing on that earlier this year, and then began phase two of the project. Initially they were looking at binding the two projects, but the financing worked out in a way that they had to underwrite both phases completely separate from one another. Phase two is

60 one and two-bedroom units for a total of 156 units. The city's concern was phase two's access to the amenities since there is separate underwriting. Both phases have the exact same ownership. The intent is to roll these into one loan as soon as the loans come due. The purpose is to make sure you're comfortable with that, and to move forward on the amendment of this conditional use permit.

Mr. Magness explained one of the conditions of Conditional Use Permit No. 13-13 was for the parcels to be merged. Since the two projects are financed separately we realized we had to do something about that. There is a mechanism that may meet that requirement which Mr. Draper will discuss. He added one condition to the original conditions regarding cleanup of the construction and other temporary materials, but other than that they've met all other Planning Department conditions.

Commissioner Hooiman arrived at the meeting.

Mr. Draper explained the applicant recorded a document which maintains access to the amenities in the event that one or both of the parcels are sold, but the way we read that it allows either one of the parties to terminate the access. His conditions were taken directly from CUP No. 13-13 with a modification to condition 13 that in the event the parcels aren't merged a document be recorded that is acceptable to both the City and Riverside Villas, and the addition of condition 14. He wanted condition 11 removed since there is a signalized crosswalk at Opal and 12<sup>th</sup>.

Mr. Wilkinson clarified that there already are two different owners or LLCs, and our attorney will have to review what's being proposed in the packet. He supported what's being proposed in concept: an agreement that runs with the land that can't be revised by either owner that guarantees access to the amenities, and addresses who's responsible for satisfying the conditions.

Commissioner Freistroffer wondered if attorney review needed to be a condition. (yes)

Commissioner Martinez wondered if the applicant is able to meet the condition of the agreement with the lending and players that are in place. (yes)

Commissioner Becker wondered if owner two would be transferred to owner one or if it would continue to run as two separate LLCs.

Mr. Morgan explained it will remain separate. The ownership structure is the same they just had to form two separate entities for the underwriting of each phase.

Commissioner Becker wondered if owner one (Riverside Villas Nevada LLC) was the parent company to owner two. (yes)

Chairman Thornton was concerned that the attorney hadn't looked at this yet because he didn't want to have to do a third conditional use permit.

Commissioner Becker wondered if they would have to see it again if it transfers to the parent company in the future because the condition says it's personal to the permittee.

Mr. Magness said no and then explained as long as there's a binding agreement that's recorded for the entire project to function as one then the CUP gets recorded. This wouldn't be the first time assets are transferred. This will not have to come back before this body once we have an agreement that is agreed upon by the City, them, and the attorneys.

Chairman Thornton wondered at what point it was realized that they wouldn't be able to merge the parcels.

Dave Mitton, 45 Teton Drive, Lindon, UT, co-owner, explained the product needed to be finished and occupied before Freddie Mac or Fannie Mae would come in and do a long-term loan. The next phase was just dirt. Since they didn't all come out of the ground at the same time they had to do two separate phases. Now that the second one is out of the ground and ready to be occupied they have to go through the same process of filling them up to satisfy the lender that they can do a 30 year mortgage. When that is done they will wrap the whole thing together. It is their intent that this project is homogenous.

Mr. Wilkinson wondered if there was a possibility in the future that the parcels could be merged. We can all be well intentioned, but people have financial difficulties and things could happen like parcel A is sold to a different owner. We really don't want different ownerships, and we don't want to place the City in the position where it has to be concerned with that going forward.

Mr. Mitton expressed the reason he and Tom Felt came tonight is so the Commission could see there is consistency and they're going to keep this thing together. He and Mr. Felt have been through a lot of challenges on this piece from the downturn in the economy, switching them from condos to apartments, and a national bank getting involved. It's been a long ordeal and they've taken it to the point where they're not going to see it get mixed up or broken up. They're trying to make it the nicest thing in town. They granted an easement to the City for the HARP trail. They were required to put in the crosswalk along with signal pole bases. They also added a meandering path in the City right-of-way. They need the City's help in getting the HARP trail finished and lit up since they spend a lot of time and dollars cleaning that up on a regular basis because of the riff-raff and homeless. They were wondering if there is a way to get a concession on the \$60,000 bond for the landscaping for maybe six weeks since they got all the rest done in good faith. They just can't get the sod in until the weather turns nicer.

Mr. Draper reported that the City has applied for a grant with NDOT to extend the HARP trail from 12<sup>th</sup> Street to Opal Drive. We weren't awarded the full grant, but with the money we have available we will be able to get a bridge under 12<sup>th</sup> Street for pedestrian access. The other portion of that grant is lighting improvements. Regarding the landscaping bond, he will work with the owners to get that reduced based on the work done so far.

Commissioner Becker wondered if the bond issue needed to be a condition. (no) He felt it was best to clarify condition 13 with regards to legal fees since there's Riverside Villas Nevada and Riverside Villas II.

Mr. Morgan noted it would be Riverside Villas Nevada. He wondered if the City would be able to grant a temporary certificate of occupancy as soon as legal approves it while the logistics of the document are worked out.

Mr. Wilkinson would talk to the Building Official and City Manager. In the past when we granted temporary occupancy permits conditions never got satisfied. It shouldn't take very long to work through it. What's the timing on finishing the covered parking and other things that are outstanding? (14 – 21 days)

Mr. Mitton reiterated that the names are different, but the owners are the same.

Commissioner Freistroffer felt the situation with two LLCs and two parcels was suboptimal. He wondered what the possibility of this being one LLC and one parcel in the future was.

Tom Felt, 1929 Heather Road, Orem, UT, expressed that they have no plans or intentions to sell the property, but if it were to be sold a project of this size is consumed by an institutional investor 90 - 95 percent of the time. An institutional investor would never consider a project that didn't have a mix of one, two and three-bedroom units. The market will force the very issue that is a valid concern.

Mr. Morgan pointed out that there should've been a letter from the lender in the packets explaining the underwriting principles.

Commissioner Becker added the corporation structure is complicated. He works for Newmont and their corporation structure fills up an entire binder, so he understands.

**\*\*Motion:** Conditionally approve Conditional Use Permit No. 2-15 subject to the following conditions:

1. Conditions in the Elko City Staff Report dated February 17, 2015 listed as follows:
  - 1) That conditions of this Conditional Use Permit will replace any conditions and/or requirements of Conditional Use Permit 13-13.
  - 2) That Conditional Use Permit No. 2-15 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.
  - 3) The Conditional Use Permit will expire within one (1) year of the date of approval if the Applicant is not actively engaged in developing the property.
  - 4) The complex shall comply with the development standards as outlined in City Code Section 3-2-5 E. 6.
  - 5) The public improvements shall be installed, completed, and accepted prior to a certificate of occupancy for buildings currently under construction as well as future buildings.
  - 6) That the development shall comply with City Code Section 3-2-17.
  - 7) Exterior lighting for the complex shall be shielded and cutoff with minimal lighting spilling over into the neighboring properties.
  - 8) That the trash enclosures shall accommodate for the collection and storage of separate recycling and solid waste receptacles.
  - 9) 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.

- 10) Architecture and building materials shall be equal to and be compatible with the existing structures.
  - 11) A Landscaping Plan showing locations and quantities of all landscape materials has been submitted and approved during building permit submittal. Applicant will complete landscaping on or before May 15, 2015.
  - 12) Conditions as outlined in the Development Department's, Engineering Department, Fire Department and Public Works Department memorandums as included in the review package.
  - 13) Construction and other temporary materials will be removed from site and adjacent easterly site (Opal Drive and 12<sup>th</sup> Street) before final Certificate of Occupancy can be approved.
2. Conditions in the Community Development Manager's report dated January 27, 2015 striking condition 11 and modifying condition 13 listed as follows:
- 1) The conditional use permit is granted to Riverside Villas, LLC for a 156 multi-family unit and related accessory use to be located on the describe properties in accordance with the submitted site plan and elevations.
  - 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) The Conditional Use Permit shall expire within one year unless the permit holder is actively engaged in development of the property.
  - 4) A screen wall is not required under Section 3-2-3(J) of City code.
  - 5) A traffic study is not required.
  - 6) All parking area and access lighting is to be shielded or cut-off design.
  - 7) A landscape plan will be required for submittal and approval. The landscape plan is to include the 12<sup>th</sup> Street frontage west of the existing right- in/right-out access on 12<sup>th</sup> Street.
  - 8) The landscaping on the 12th Street right-of-way shall be maintained in an acceptable manner at all times.
  - 9) The property shall be maintained in an acceptable condition at all times.
  - 10) It is expected the water and sewer throughout the development will be dedicated to the City. Recordation of proper utility easements is required. City utilities require a 20 foot wide easement centered of the main utilities. A blanket utility easement would be best suited for this circumstance.
  - 12) All site amenities are to be completed prior to issuance of a Certificate of Occupancy for the last 3 bedroom building.
  - 13) **The parcels are to be merged**, in the event the parcels cannot be merged a document shall be recorded against both properties guaranteeing the use of all amenities that shall be binding to the land and cannot be modified by either owner in the event of sale of one of the properties to a third party. The document shall be acceptable to the City of Elko and Riverside Villas Nevada, LLC shall pay for all legal fees associated with the review of the document.

- 14) Record a public utility easement over all utilities on the property in the event the parcel map merging the properties is not recorded.
  - 15) Conditional Use Permit 13-13 is no longer valid.
  - 16) The Conditional Use Permit is to be recorded as a condition of Certificate of Occupancy.
3. This be reviewed and approved by the City attorney in regards to the multiple owner reciprocal use for the project.

Commissioner Freistroffer's findings are the conditional use permit is in accordance with the City of Elko Master Plan Land Use and Transportation Components, the City of Elko Redevelopment Plan, the City of Elko Wellhead Protection Plan, and the City of Elko Zoning Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-10(B), 3-2-17, 3-2-18, and 3-8.

**Moved by David Freistroffer, Seconded by Jose Negrete**

**\*\*\*The motion passed unanimously.**

## **II. REPORTS**

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

Chairman Thornton is getting upset about all the stuff they keep redoing. It's objectionable when people get approval, renege on it, and then we reapprove them. Aren't our actions binding?

Commissioner Martinez noted to make an agreement and then live up to it speaks loudly. This commission entered into an agreement and said we approve something based on what you're doing, so we also have to follow suit with what we say as a council. Just a little perspective from the other side of the fence.

Commissioner Freistroffer added when we give an inch and they take a yard it opens up the potential to get burned at some point.

Mr. Magness pointed out that when you have something of a grander scale quite often there are a number of conditions placed upon it, and then sometimes as they start developing things come up. It's not uncommon in other municipalities to have a review of conditions, but the only structure we have is to review everything all over again, rewrite an entire conditional use permit and have it replace an older conditional use permit. This particular developer is constructed. When they got into their lending they couldn't bring the thing together as one. Our attorney and their attorney agreed there is an instrument that could do exactly what we wanted them to, but it wasn't going to comply with merger of the parcels. If we had a review of conditions in our zoning we would've only been reviewing one condition.

Chairman Thornton asked why there had to be a special meeting when the developer admitted they won't be finished with their parking structures for another three weeks.

Mr. Magness explained this was about one final building. They were closing out things with their contractor, and when there isn't closure a lot of times fees start getting added.

Mr. Wilkinson agreed with Chairman Thornton's concern because staff spends a lot of time analyzing the applications to recommend appropriate conditions. It should be painful for them to come back and try to change those conditions because they should be paying attention up front. The next time somebody proposes a project with multiple properties they should probably merge the properties before even making application for the project. A lot of these hearings are public hearings, so if they want to change the conditions they should have to go through a public hearing again.

Commissioner Martinez was with Chairman Thornton, but felt this board has attempted to treat every applicant uniquely and fairly. We have laid down a few times, but in the best interest of our citizens sometimes we need to do that.

Chairman Thornton's point was we repeatedly have people enter into agreements with the City and then don't live up to them. There's no recourse or penalty. The point he was trying to make is a lot of time the Commission gets used for land speculation. They knew last summer that they wouldn't be able to live up to condition 13, so why did they wait until today. He agreed with Commissioner Martinez that we have to take things on an individual basis and look at what's best for the community. It's just frustrating when you see it happening again and again.

Commissioner Martinez thought as they become more seasoned as a council they will be able to see some of those with a little more foresight.

Mr. Magness brought up how the detailer that they approved on Idaho Street was not complying, so it will be back in two weeks for them to hear again. This process works.

Commissioner Becker pointed out the last special meeting was for getting asphalt in before the cold weather and that is still a dirt lot.

G. Staff.

Mr. Draper introduced Bob Thibault the new City Engineer who came to us from Summit Engineering.

**FINAL PUBLIC COMMENT PERIOD**

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.**

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Greg Thornton, Chairman

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Jose Negrete, Secretary