

**CITY OF ELKO**  
**PLANNING COMMISSION**  
**REGULAR MEETING MINUTES**  
**5:30 P.M., P.S.T., TUESDAY, JUNE 6, 2017**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**

**CALL TO ORDER**

The meeting was called to order at 5:30 p.m. by Aaron Martinez, Chairman of the City of Elko Planning Commission.

**ROLL CALL**

**Present:**     **Aaron Martinez**  
                  **David Freistroffer**  
                  **Jeff Dalling**  
                  **John Anderson**  
                  **Kevin Hodur**  
                  **Stefan Beck.**  
                  **Tera Hooiman (arrived at 5:35 p.m.)**

**City Staff:**   **Scott Wilkinson, Assistant City Manager**  
                  **Jeremy Draper, Development Manager**  
                  **Bob Thibault, City Engineer**  
                  **Cathy Laughlin, City Planner**  
                  **Shelby Archuleta, Planning Technician**  
                  **John Holmes, Fire Marshal**  
                  **Matt Griego, Fire Chief**  
                  **Dave Stanton, City Attorney**

**PLEDGE OF ALLEGIANCE**

**COMMENTS BY THE GENERAL PUBLIC**

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

**APPROVAL OF MINUTES**

May 2, 2017 – Regular Meeting **FOR POSSIBLE ACTION**

**\*\*\*Motion: Approve the minutes from the May 2, 2017 Planning Commission Meeting as presented.**

**Moved by Kevin Hodur, Seconded by David Freistroffer.**

*\*Motion passed unanimously. (6-0)*

## I. NEW BUSINESS

### B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

3. Review, consideration, and possible action to initiate an amendment to the City of Elko district boundary, specifically APN 001-562-009, for a change in zoning from RS (Residential Suburban) to R1 (Single-Family Residential), approximately 93.52 acres of property located generally north of Jennings Way and South of Statice Street, and matters related thereto. **FOR POSSIBLE ACTION**

Joey Jennings asked if the parcels to be rezoned would be split, because there is a portion of one of the parcels that is on the airport side of Interstate-80.

Cathy Laughlin, City Planner, explained that the Chairman took the items on the agenda out of order, and they are currently discussing Item No. 3 under Petitions. The item Mr. Jennings's question was referring to was Item No. 1 under Public Hearings.

Commissioner Tera Hooiman arrived at 5:35 p.m.

Scott Wilkinson, Assistant City Manager wanted to provide some background information. The City recommended rezone of this property from R1 to RS, that zone change was initiated as a result of the applicant intending to subdivide the property. As a part of the Subdivision process it was determined that the RS Zone should be pursued. It was discovered after having the rezone hearing with the Planning Commission and the City Council that the rezone was not in conformance with the requirements for a subdivision within the City of Elko. Any proposed Subdivision must conform to the Master Plan as well as any zoning amendments. In the Master Plan the RS Zone does not support medium density residential land use. R1, the previous Zone, did support medium density land use. The City is recommending that we initiate a zone change back to the R1 District.

Chairman Aaron Martinez asked if this item would be to initiate staff to start the process, and then the zone change would come back as another application at the next meeting.

Mr. Wilkinson explained that it wouldn't be a new application, it would just be a new agenda item.

John Holmes, Fire Marshal, said that he would still require a second access egress, but other than that he had no additional comments.

Jim Winer, 700 Idaho Street, said in 27 Years of living in this community, being in the real estate business, he has never seen this happen. In the Staff Reports there is some verbiage that references, and speaks towards actions that would "Benefit or satisfy a single developer". Mr. Winer stated himself, nor any of the engineers he hired to design the subdivision, had ever asked for special benefit or treatment from the City. One year ago he engaged his engineer, and through analysis and data it was determined the highest and best use of the land would be though the RS Zone and large lot development. This body, in a public process, by motion and vote made a

recommendation to the City Council for approval of the property for RS Zoning subject to approval of a plat. Then the City Council, by a public process, by motion and by vote approved the property for RS Zoning subject to approval of a plat. With that approval Mr. Winer moved forward with design and engineering of the plat, which he was told was required. He relied upon the City's actions, did everything he was told, asked, and directed to do by the City, at considerable time and expense. When the City told him to submit a form or an application he did and with the fees that were required. The City said before he could submit the plat he would have to apply to the NDEP for approval of septic, which required soil studies, hydrology studies, and underground water movement studies. The City also asked him to dedicate road easements for Bizkaia Boulevard, which is the main road leading into the property, which he did. It should be noted that the staff reports and comments to both this body and the City of Elko stated that property did not conform to the Master Plan. With that knowledge this body and the City Council approved the Rezone Application. In summary Mr. Winer relied on the City's actions and directions and did what he was asked to.

Commissioner Kevin Hodur asked if this was the land that was not economically viable for it to be denser space. He said they had a conversation about having larger lots to make it more economically viable to develop the land.

Mr. Wilkinson explained that was the developer's position. The developer wished to have larger lots and septic. There is no maximum lot size stated in R1 District. The use of septic systems is not predicated by a particular zone. None of that factors into the decision making. The ingress and egress to the property, whether it's developed under a RS Zone or a R1 Zone, is going to be required. Those are some of the issues that have to be addressed regardless of what zone the property is developed under. Section 3-3-5(A) of the City Code, although it's not required, strongly suggests that the application for a zoning amendment be heard by the Planning Commission at the same meeting as the Preliminary Plat Application, but shall be acted on separately. Zone amendments outside of a Subdivision process don't have to be in strict conformance with the Master Plan, but under the Subdivision Process any zoning amendments must conform to the Master Plan. The RS District does not conform to the medium density land use designation in the Master Plan, so that zone change does not conform to the Master Plan. As a way to correct it, the City looked at the possibility of amending the Master Plan, but you can't amend the Master Plan for the benefit of an individual. When the Master Plan was last amended there was quite a bit of low density land use designations and they were removed entirely. Nowhere, within the incorporated boundaries, do we encourage low density land use. We need to correct the mistake. We have consulted with the attorney and we spent some time trying to understand the issues and how they could be corrected. Based on Mr. Stanton's advice, we brought back this initiation to change the zone back to R1.

Chairman Martinez asked Mr. Stanton to speak to the Commission on the key decision making points.

Dave Stanton, City Attorney, explained that this is an issue that has received attention from the Nevada Supreme Court within the last ten years. The issue comes up as how do zoning changes relate to Master Plans. The Nevada Revised Statutes say that zoning amendments have to conform to the Master Plan. The next question is what does that mean. The Nevada Supreme Court has interpreted the meaning of that to be whether the zone change is compatible or if it

frustrates the purposes and goals of the Master Plan. That's pretty important here, since the Master Plan was amended to take out low density zoning within the boundaries of the City.

Commissioner Jeff Dalling asked what the results were from the studies done for the septic systems.

Jeremy Draper, Development Director, stated that NDEP recommended that, for the proposed density, septic systems would not work for this area.

Mr. Winer further explained that the NDEP letter was a denial and it had four conditions. They invited the applicant to submit new data. The two engineers that were hired have reviewed NDEP's letter, and one of the engineers admitted he made mistakes in his report. He has not gone back to the NDEP, because there is no point to go back for corrections if there is no zoning.

Mr. Wilkinson reminded the Planning Commission that the use of septic systems is not determined by the zone. The RS Zone does not provide for the use of septic systems. The use of septic systems is determined on the distance from existing infrastructure under an entirely different chapter. The use of septic systems may, or may not, be approved by the State of Nevada and/or the City Council, in either an RS Zone or an R1 Zone.

Chairman Martinez asked Mr. Winer if he had a path moving forward for the development based on a higher density.

Mr. Winer said he asked his engineer to look at it from an R1 standpoint, the mass grading, streets, sidewalks, sewer, water, curb, and gutter was projected to cost \$31 Million. Which would mean every lot that sold would lose \$15,000.

Chairman Martinez said that they have no way of verifying those figures. He asked if the development would not be moving forward.

Mr. Winer explained that under the R1 Zone it would not be feasible. The way to develop this area is RS, that's why they started down that path.

Chairman Martinez asked Mr. Winer what the zone of the parcel was when he purchased it.

Mr. Winer said the property was annexed into the City in 1992 and he didn't know the history going back that far.

Chairman Martinez asked if there was any flexibility under a CUP for the R1 District to approach any of the concerns.

Mr. Wilkinson said that a CUP cannot be used to waive Code requirements. The discussion is about the initiation of the zone change.

Chairman Martinez said that this initiation was dictating a significant decision moving forward. The Commission has to have some significant questions answered, because Mr. Winer has spent a great deal of money, just on the engineering for this development. The Planning Commission

has made a decision about this application on different pretenses, which are now making the Commission go back on what they agreed to with Mr. Winer.

Mr. Wilkinson said that Mr. Winer made some assumptions about how the property was going to be developed regardless of what the zoning was and had considerable expenditures prior to presentation to the City of Elko.

Chairman Martinez pointed out that the presentation was accepted.

Mr. Wilkinson explained that Mr. Winer and his representatives bare some duty and responsibility that what they present to the City is code compliant. You could look at mistakes on both parties. There is a question of grading with regard to septic systems. The State has an issue of septic systems daylighting, because of the topography, so some grading will have to take place on the property. We took a look at grading that has occurred in similar topography, one of the projects was The Pointe, which Mr. Winer developed prior to this. The grading volumes that would be required to gravity sewer this property are similar to the grading volumes that were encountered at The Pointe Subdivision and also at Ruby View Subdivision. In reality the Development Costs drive product that will be developed, rather than starting out with a product that you wish and trying to fit everything else into that model. There is no guarantee that the City of Elko will grant a waiver for the use of septic systems in this area.

Mr. Winer said that he spent money doing due diligence with his engineers, as anyone would on a project. When the City voted to allow for the RS Zoning that's when he shifted into another gear of design. Knowing what he was told he had to do, he made additional engagements with engineers, applications, and fees to meet the criteria he was being told he needed to meet.

Chairman Martinez said the City's position brings up great points about the professionalism that Mr. Winer has hired to interpret the codes in which they operate in. Chairman Martinez thought this application was outside the Planning Commission's role and responsibility in terms of making that decision. The City has clearly identified the Code that we have gone against and that corrections had to be made in order to continue down the path of following the Elko City Code.

**\*\*\*Motion: Initiate an amendment to the City of Elko District Boundaries, specifically APN 001-562-009 for a change in zoning from RS (Residential Suburban) to R1 (Single Family Residential), approximately 93.52 acres of property located generally north of Jennings Way and south of Statice Street, and direct staff to bring this item back as a public hearing.**

**Moved by David Freistroffer, Seconded by Stefan Beck.**

*\*Motion passed unanimously. (7-0)*

## **A. PUBLIC HEARING**

1. Review, consideration, and possible recommendation to City Council for Rezone No. 3-17, filed by the City of Elko, for a change in zoning from RE (Residential Estate) to R (Single-Family & Multiple-Family Residential), approximately 22.67

acres of property, specifically APN 001-660-137 and a portion of 001-660-034, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the North side of Interstate 80, and east of El Armuth Drive. (APN 001-660-137 & a portion of APN 001-660-034).

Ms. Laughlin explained that this item was initiated by the Planning Commission last month, to initiate the rezone, similar to the last item on the agenda. The Residential Estate District was repealed in 1987 by Ordinance by the City of Elko. When the district was repealed there was a parcel and a portion of a second parcel that still remained as Residential Estate District. In doing the research for this rezone one of the parcels was thought to be a part of the parcel across the Freeway. Going back through with the City Engineer and the County Assessor it was determined, based on the research that was done, that they are two separate parcels.

Mr. Draper had nothing further and recommended approval without any conditions.

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

Mr. Holmes had no concerns at this time.

Mr. Wilkinson had no concerns.

Joey Jennings, 480 Milroy, Sparks NV, said his concern was getting the separate parcel numbers for the parcel that was thought to be connected to the one across the Freeway. He also mentioned that he didn't realize that there could be two zones on one parcel.

Ms. Laughlin said it is not a preferred method. We like our zoning to follow the property boundaries.

Mr. Joey Jennings asked when the parcels are going to get separate parcel numbers.

Ms. Laughlin explained that it had already been done. The Assessor's had provided the City with separate parcel numbers.

Mike Jennings, 1122 Calvada Drive, Sparks, NV, asked what the zoning was on the parcel by the airport.

Ms. Laughlin said it was zoned Public, Quasi-Public.

Mr. Mike Jennings asked what the other parcel was zoned.

Ms. Laughlin explained that it is currently zoned Residential Estate.

Mr. Mike Jennings then asked if it was zoned PQP at one time.

Ms. Laughlin said that as far as the records show it has been zoned Residential Estate.

Mr. Mike Jennings asked if there would be another meeting on this.

Ms. Laughlin answered that if the Planning Commission sends a recommendation of approval to the City Council there will be another public hearing at the City Council Meeting.

**\*\*\*Motion: Forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 3-17.**

**Commissioner Hodur's findings were that the proposed rezone is in conformance with Land Use and existing Transportation Component of the Master Plan. Development under the proposed rezone will not adversely impact natural resources or federal public lands, such as water ways, wetlands, drainages, floodplains, etc., or pose a danger to human health and safety. The proposed rezone is in conformance with City Code 3-2-4(B) & (C), 3-2-5(E), 3-2-17, and City of Elko Wellhead Protection Plan.**

**Moved by Kevin Hodur, Seconded by David Freistroffer.**

*\*Motion passed unanimously. (7-0)*

2. Review, consideration, and possible action on City Zoning Ordinance Amendment 2-17, Ordinance No. 819, specifically establishing a new zoning district along the 5<sup>th</sup> Street corridor which will be titled 3-2-6 Residential Business District, and matters related thereto. **FOR POSSIBLE ACTION**

Ann Steninger, 1091 5<sup>th</sup> Street, said her main concern was that this change was not going to affect her property taxes.

Ms. Laughlin explained that the City has no control over property tax increases. Based on the zoning and information from the Assessor's Office the taxes will not change, unless a change from Residential to Commercial or vice versa occurs.

Ms. Steninger asked if they would have to install water meters because of this change. (No)

Chairman Martinez explained that this district was developed as a Planning Commission initiative to try to focus certain types of development within the 5<sup>th</sup> Street Corridor. The Commission sees it as a combination of Business and Residential. They are allowing some development opportunities on the commercial side, but also protecting the residents. Now they are looking at taking this to City Council to finalize the process.

Ms. Laughlin said looking back at the process they have gone through for this district, it was initiated by Staff and the Planning Commission as a recommendation with the Master Plan. They have had many discussion about how this is in conformance with the Master Plan. This process was started in October of 2016 and has been through several meetings since then to define the district and make amendments. In front of you is the written ordinance, which will change the Zoning Code by adding Section 3-2-6, which will be defined as the Residential Business District. All of the changes that have been made are incorporated into this final draft. If you care to make modifications it will come back to the Planning Commission until it is approved with a recommendation to City Council. Once it goes to City Council it will have a first reading and a

second reading as a Public Hearing. Once approved, passed, and adopted as an Ordinance the properties will be automatically rezoned into the new district.

Mr. Draper, Mr. Thibault, Mr. Holmes, and Mr. Wilkinson had no comments or concerns.

Chairman Martinez suggested scratching Item No. 3 under Signage. He thought about it and Elko is a different community, we have people that are out about at 4 a.m. a lot more than they are out at 8 a.m., so the restriction of the hours of the lighting on a sign is an overstep. He thought they may modify the Sign Code to adjust the lighting requirements.

Mr. Wilkinson believed if they were to consider it, Item No. 4 requiring that the lighting be shielded helps address the issues.

Ms. Laughlin said she has started the amendment to the Sign Ordinance. It is a lengthy process. It is one of her priorities, but it will be similar to this ordinance and take months to get through it. If you take that out then we don't have control over signs adjacent to residential until the new ordinance gets adopted.

Chairman Martinez explained that he was just suggesting striking No. 3, which limits the time frame, but No. 4 would still be in effect, which requires shielding adjacent to residential.

Commissioner David Freistroffer thought it was a good idea.

**\*\*\*Motion: Strike Item F.1.3., renumber 4, 5, and 6, and bring it back as public hearing.**

**Moved by David Freistroffer, Seconded by Kevin Hodur.**

*\*Motion passed unanimously. (7-0)*

3. Review, consideration, and possible recommendation to City Council for Rezone No. 4-17, filed by Tjoa Properties, LLC, for a change in zoning from C (General Commercial) to IC (Industrial Commercial), approximately 1.542 acres of property, to be consistent with the existing use as an auto repair and body shop, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located approximately 450 feet northeast of the intersection of Alta Vista Drive and East Jennings Way. (2570 Alta Vista Drive)

Lucius Tjoa, Top Gun Collision Center, explained that they added an addition in 2007 and the City approved it, now he wants to add another addition and the City said he is on City property.

Ms. Laughlin pointed out that Mr. Tjoa was referring to the Vacation of the Public Utility and Drainage Easement, which is another agenda item. This agenda item is regarding the rezone of the property, and it is currently zoned Commercial. The applicant is requesting it be rezoned to Industrial Commercial, IC. She explained that the City of Elko issued a permit in 2005 for the conversion of this property from a bar to an auto body shop. The permit was issued and zoning wasn't questioned at that time. An auto body shop is not listed as a principal permitted use in a