

CLARK COUNTY BOARD OF COMMISSIONERS

ZONING / SUBDIVISIONS / LAND USE

AGENDA ITEM

Petitioner: Sami Real, Director, Department of Comprehensive Planning

Recommendation: ORD-24-900222: Introduce an ordinance to consider adoption of a Development Agreement with Axiom 3, LLC for a multi-family residential development on 4.5 acres, generally located south of Sunset Road and west of Montessouri Street within Spring Valley. MN/lg (For possible action)

FISCAL IMPACT:

None by this action.

BACKGROUND:

The Board of County Commissioners (Board) approved a land use application ZC-23-0042 for a multi-family residential development on 4.5 acres, generally located south of Sunset Road and west of Montessouri Street within Spring Valley. Conditions of approval included the developer and/or owner entering into a Development Agreement prior to any permits being issued in order to provide their fair-share contribution towards public infrastructure necessary to provide service in the southwest portion of the Las Vegas Valley.

In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes, a Development Agreement must be approved by ordinance.

Staff recommends the Board set a public hearing for July 17, 2024.

Cleared For Agenda
07/03/24

BILL NO. _____

SUMMARY - An ordinance to adopt the Development Agreement with Axiom 3, LLC for a multi-family residential development on 4.5 acres, generally located south of Sunset Road and west of Montessouri Street within Spring Valley.

ORDINANCE NO. _____
(of Clark County, Nevada)

AN ORDINANCE TO ADOPT THE DEVELOPMENT AGREEMENT WITH AXIOM 3, LLC FOR A MULTI-FAMILY RESIDENITAL DEVELOPMENT ON 4.5 ACRES, GENERALLY LOCATED SOUTH OF SUNSET ROAD AND WEST OF MONTESSOURI STREET WITHIN SPRING VALLEY, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATED THERETO.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLARK, STATE OF NEVADA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. In accordance with the provisions of Section 278.0203 of the Nevada Revised Statutes and Chapter 30.06 of the Clark County Code, the Development Agreement with Axiom 3, LLC for a multi-family residential development on 4.5 acres, generally located south of Sunset Road and west of Montessouri Street within Spring Valley, is hereby adopted.

SECTION 2. If any section of this ordinance or portion thereof is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not invalidate the remaining parts of this ordinance.

SECTION 3. All ordinances, parts of ordinances, chapters, sections, subsections, clauses, phrases or sentences contained in the Clark County Code in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, together with names of the County Commissioners voting for or against its passage, in a newspaper published in and having a general circulation in Clark County, Nevada, at least once a week for a period of two (2) weeks and shall be effective on and from the fifteenth day after passage.

PROPOSED on the _____ day of _____, 2024

INTRODUCED by: _____

PASSED on the _____ day of _____, 2024

VOTE:

AYES: _____

NAYS: _____

ABSTAINING:

ABSENT:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, NEVADA

By: _____
TICK SEGERBLOM, Chair

ATTEST:

Lynn Marie Goya, County Clerk

This ordinance shall be in force and effect from and after the _____ day
of _____ 2024.

APN(s): **176-03-511-006**
Please Return to: Sami Real
Comprehensive Planning Department
1st Floor, Clark County Government Center
500 South Grand Central Parkway
Las Vegas, Nevada 89155

DEVELOPMENT AGREEMENT

BETWEEN

THE COUNTY OF CLARK

AND

AXIOM 3, LLC

FOR

SUNSET & MONTESSOURI

ORD-24-900222

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into by and between the *County of Clark, State of Nevada* (hereinafter referred to as the "County") and **AXIOM 3, LLC** the Owner of the real property described on Exhibit "A" attached hereto (hereinafter referred to as the "Owner") and incorporated herein by reference.

SECTION 1 – DEFINITIONS

1.01 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings:

- (a) "Agreement" has the meaning assigned to it in the first paragraph hereof. Agreement at any given time includes all addenda and exhibits incorporated by reference and all amendments, which have become effective as of such time.
- (b) "Applicable Rules" means the specific code, ordinances, rules, regulations and official policies of the County as adopted and in force at the time of permit issuance or map recordation and as amended from time to time, regarding planning, zoning, subdivisions, timing and phasing of development, permitted uses of the Subject Property, density, design, and improvement standards and specifications applicable to the Project, including the Public Facilities Needs Assessment Report, and the fees incorporated herein, except that:
 - (1) The fees required in the County Code specifically for the Major Projects shall *not* apply to the Project, unless and until the parties agree that the development of the Project will be processed as a Major Project;
and
 - (2) The zoning established by the Concurrent Approvals will not be amended or modified during the term of this Agreement without Owner's prior written approval.
- (c) "Best Efforts" means, in the case of any contingent obligation of County or Owner, that the party so obligated will make a good faith effort to accomplish the stated goal, task, project or promised performance, provided such term does not imply a legal obligation to take any specific action if:
 - (i) In the case of a County obligation, such action would, in the reasoned opinion of the County Commission, be imprudent given competing public needs and projects; or
 - (ii) In the case of an Owner obligation, such action would, in the reasoned opinion of the Owner, be commercially unreasonable.

In either case, upon request, the responsible party shall give written notice to the other party that it has considered such contingent obligation and the reason for its decision not to perform.

- (d) "Builder" means any person or entity, which constructs final improvements (other than off-site improvements or infrastructure) with respect to a subdivision or parcel of the Subject Property.
- (e) "Code" means the Clark County Code, including all rules, regulations, standards, criteria, manuals and other references adopted herein.
- (f) "Concurrent Approvals" means the zoning, land use or map approvals and authorizations, relating to the Subject Property, together with the applicable conditions, as granted by the County Commission, including without limitation those approvals and conditions of

approval per **ZC-23-0042**, the Agenda Sheet, Notice of Final Action and agenda map attached hereto as Exhibit "C" and incorporated herein by this reference.

- (g) "County" means the County of Clark, State of Nevada together with its successors and assigns.
- (h) "County Commission" means the Board of County Commissioners or Planning Commission of the County of Clark, State of Nevada.
- (i) "County Master Plan" means the comprehensive plan adopted by the County Commission in 1983 and all amendments thereto including, but not limited to, all adopted land use, development guides and elements, including the land use and development guide and the general plan map for unincorporated portions of the Las Vegas Valley adopted by the County Commission on January 24, 1974, except as amended by the adoption of more recent plans in effect as of the Effective Date.
- (j) "Development Agreement Ordinance" means an ordinance adopted per Chapter 30.06 of the Clark County Unified Development Code (Title 30) along with any other Chapters of the Clark County Code that are relevant to the Development Agreement being considered.
- (k) "Effective Date" means the date, on or after the adoption by the County Commission, of an ordinance approving execution of this Agreement whereas the Agreement has been executed and signed by both parties, that this Agreement is recorded in the Office of the County Recorder of Clark County, Nevada.
- (l) "NDOT" means Nevada Department of Transportation.
- (m) "NRS" means Nevada Revised Statutes.
- (n) "PFNA" means the Southwest Las Vegas Valley Public Facilities Needs Assessment Report, dated December 1, 2000, incorporated herein by this reference and approved by the County Commission on January 2, 2001.
- (o) "Project" means the Subject Property and the proposed development of the Subject Property described in this Agreement.
- (p) "Subject Property" means that certain real property, which Owner owns or has the right to acquire, located in the County and more particularly described on Exhibit "A".
- (q) "Term" means the term of this Agreement together with any extension agreed upon pursuant to Section 7.02 hereof.

SECTION 2 – RECITAL OF PREMISES, PURPOSE AND INTENT

2.01 Recitals. This Agreement is predicated upon the following facts and findings:

- (a) Statutory Authorization. The County is authorized, pursuant to NRS §278.0201 through 278.0207, inclusive, to enter into binding Development Agreements with persons having a legal or equitable interest in real property to establish long range plans for the development of such property.
- (b) Ownership Interest. Owner represents that it has, will acquire, or has the right to acquire, fee title ownership of the Subject Property.
- (c) County Authorization, Hearing and Ordinance. All preliminary processing with regard to the Project has been duly completed in conformance with all applicable laws, rules and regulations. The County Commission, having given notice as required by law, held a public hearing on Owner's application seeking approval of the form of this Agreement and the execution hereof by the County. At the described meeting, the County Commission found that this Agreement is consistent with the County's plans, policies and regulations, including the County Master Plan, that the Agreement meets the requirements of Title 30 of the Code, and that the execution hereof by and on behalf of the County is in the public interest and is lawful in all respects. During the same meeting at which the public hearing was held, the County Commission adopted the Ordinance approving this Agreement and authorizing the execution hereof by duly constituted officers of the County. Said ordinance was scheduled to be effective two weeks after adoption. County agrees to record a certified copy of the ordinance as required by NRS §278.0207.
- (d) County Intent. The County desires to enter into this Agreement in conformity with the requirements of NRS, and as otherwise permitted by law, and this Agreement to provide for public services; public uses and urban infrastructure; to promote the health, safety and general welfare of the County and its inhabitants; to minimize uncertainty in planning for and securing orderly development of the Project and surrounding areas; to insure attainment of the maximum efficient utilization of resources within the County at the least economic cost to its citizens; and to otherwise achieve the goals and purposes for which the State statute and County ordinance authorizing Development Agreements were enacted.
- (e) Owner Intent. In accordance with the legislative intent evidenced by NRS §278.0201 through §278.0207, inclusive, authorizing Development Agreements and the intent of the County in adopting an ordinance allowing Development Agreements, Owner wishes to obtain reasonable assurances that Owner may develop the Project in accordance with the conditions established in this Agreement. Owner acknowledges that there are insufficient public services, which includes facilities and infrastructure, existing or planned at this time. In order to develop the Subject Property, Owner is willing to enter into this Development Agreement in order to pay Owner's fair share of the costs to provide certain public services, facilities, and infrastructure in the area of this Project. Owner further acknowledges that this Agreement was made a part of the County Record at the time of its approval by the County Commission and that the Owner agrees without protest to the requirements, limitations, or conditions imposed by this Agreement and the Concurrent Approvals.
- (f) Acknowledgment of Uncertainties. The parties acknowledge that circumstances beyond the control of either party could defeat their mutual intent that the Project be developed in the manner contemplated by this Agreement. Among such circumstances is the unavailability of

water or other limited natural resources, federal regulation of air and water quality, and similar conditions. Owner recognizes that water shortages could affect the County's ability to perform its obligations hereunder. Owner further acknowledges and agrees this Agreement does not relieve the Owner from compliance with existing, changed, modified or amended rules regulations, laws, ordinances, resolutions, fees codes, etc., of other governmental agencies. Such rules, regulations, laws, ordinances, resolutions, fees, codes, etc. of governmental entities must be complied with by the Owner and are not locked in nor a part of this Agreement. It is not the intent of the parties nor shall this Section be construed as excusing the County of any obligation hereunder or depriving Owner of any right under this Agreement, which can be performed.

(g) Provision of Water and Sewer Service. Owner clearly understands and agrees that, amongst other requirements, water commitment and sanitary sewer system development approval must be obtained from the proper governmental entities namely the Las Vegas Valley Water District and the Clark County Water Reclamation District. Fees and services for such commitments and systems are established by said governmental entities and must be paid and complied with by the Owner in accordance with said governmental entities requirements as amended from time to time. This Agreement or the County does not guarantee or provide the provision of water and sewer services.

2.02 Incorporation of Recitals. The foregoing recitals shall be deemed true and correct in all respects with respect to this Agreement and shall serve as the basis for the interpretation of this Agreement.

2.03 Permitted Uses, Density, Height and Size of Structures. Pursuant to NRS §278.0201 and the Code, this Agreement must set forth the maximum height and size of structures to be constructed on the Subject Property, the density of uses and the permitted uses of the land. County agrees the Project may be developed to the density and with the land uses set forth in the Land Use and Development Guide/Plan, along with the development standards set forth in the Concurrent Approvals and the Applicable Rules.

SECTION 3 – DEVELOPMENT OF THE PROJECT

3.01 Time for Construction and Completion of the Project. Subject to the terms of this Agreement and Applicable Rules, Owner shall have discretion as to the time of commencement, construction, phasing, and completion of any and all development of the Project. Nothing herein shall be construed to require the Owner to develop the Project or any part thereof.

3.02 Reliance on Concurrent Approvals and Applicable Rules. County hereby agrees that Owner will be permitted to carry out and complete the entire Project in accordance with the uses and densities set forth in the Concurrent Approvals subject to the terms and conditions of this Agreement and the Applicable Rules. Pursuant to the terms of this Agreement and subject to Owner's infrastructure obligations described in this Agreement, the development of the Project may proceed.

3.03 Air Quality Conformity. Owner acknowledges County has adopted an air quality plan and agrees to comply with the applicable provisions thereof, including any state and federal rules and regulations.

3.04 Dust Mitigation. Owner will educate Builders and contractors within the Project of the applicable rules of the Clark County Department of Air Quality & Environmental Management with respect to dust mitigation and will encourage compliance therewith.

3.05 Water Conservation. Owner agrees to encourage water conservation in the Project. Owner agrees to design any open space using the best available, water conserving techniques, including but not

limited to proper soil preparation and water conserving irrigation systems and equipment. Landscaping adjacent to public streets shall be limited to water conserving plant materials.

- 3.06 Temporary Storm Water Construction Permit. Owner agrees to educate Builders and contractors within the Project on the requirements for a Temporary Storm Water Construction Permit issued from the Nevada Division of Environmental Protection (NDEP).

SECTION 4 – PUBLIC FACILITIES

- 4.01 Public Facilities. Owner agrees that prior to issuance of any building permit for a single family dwelling, multiple family dwelling, retail, office, industrial or hotel use in the Project, they will pay the fees as set forth in the Public Facilities Chart below, hereinafter referred to as Chart 4.01-A, except as modified by this Section 4.01.

In addition, the fees set forth in Chart 4.01-A below may be increased or decreased from time to time during the term of this Agreement if the modified fees are uniformly applied to all development and construction within the Public Facilities Needs Assessment area. The County and Owner agree that any fee modifications shall be applied only for building permits not yet issued. Owner and the County will not be entitled to any payment or reimbursements for fees paid for building permits issued prior to any such fee modification.

CHART 4.01-A PUBLIC FACILITIES CHART			
Type Of Development	Infrastructure Category		Total Per Unit
	Parks	Public Safety	
Single Family Dwelling Unit (per dwelling unit)	\$585.88	\$990.31	\$1,576.19
Multi Family Dwelling Unit (per dwelling unit)	\$585.88	\$970.99	\$1,556.87
Retail (per square foot gross floor area)	N/A	\$0.66	\$0.66
Office (per square foot gross floor area)	N/A	\$0.74	\$0.74
Industrial (per square foot gross floor area)	N/A	\$0.44	\$0.44
Hotel (per room)	N/A	\$991.91	\$991.91

- 4.02 Parks. In addition to the fees in Chart 4.01-A above, Owner agrees that this development is subject to the Residential Construction Tax if required by Chapter 19.05 of the Clark County Code.

- 4.03 Traffic Study. Owner shall prepare and submit to the County (and NDOT if applicable) a Traffic Study (if required) acceptable to the County (and NDOT if applicable) for the Subject Property prior to submittal of any final map for technical review, or prior to County issuance of any grading or building permits; whichever occurs first, and Owner agrees to comply with said Study as approved by the County. Any modification to the Traffic Study must be approved by the Director of the Department of Public Works.

In addition to the fees in Chart 4.01-A above, Owner agrees to construct at its sole cost and expense and dedicate to the County (or NDOT if applicable) any such roadway and traffic improvements identified in the Traffic Study as approved with conditions by the County (and NDOT if applicable), which are necessary for the Subject Property or for the mitigation of any traffic impacts caused by the development of the Subject Property.

Each facility must be built in the manner prescribed by the Code, NRS, and in accordance with the, “Uniform Standard Drawings for Public Works Construction, Off-Site Improvements, Clark County Area, Nevada”, as amended by the Concurrent Approvals as approved by the County, and the State’s Design Manual prior to issuance of any building permits for the area impacted by the facilities, as identified in the Traffic Study as approved with conditions by the County (and NDOT if applicable).

Nothing herein shall be construed to require Owner to construct the applicable traffic improvements if Owner does not develop the impacted area. Owner acknowledges it shall be responsible for all public and private roadway construction (if applicable), utility installations and modifications, lighting, traffic control equipment and signage, and aesthetic improvements relating to the development.

4.04 Drainage Study. Owner shall prepare and submit to the County a Drainage Study, if required by the Clark County Department of Public Works, acceptable to the County for the Subject Property prior to recording any final map or the issuance of any grading and/or building permits. In addition to the fees in Chart 4.01-A above, Owner agrees to construct at its sole cost and expense and dedicate to the County such flood and drainage facilities identified in the Drainage Study which are necessary for the flood protection of the Subject Property or for the mitigation of any downstream flood impacts caused by the development of the Subject Property.

Each facility must be built, in the manner prescribed by Code, prior to issuance of any grading and/or building permits for the area impacted by the facilities as identified in the approved Drainage Study in accordance with Code. Notwithstanding any other provision in this section no grading or building permit shall be issued in any area not protected by the drainage facilities identified in the approved Drainage Study.

SECTION 5 – REVIEW AND DEFAULT

5.01 Frequency of Reviews. As required by NRS §278.0205 and the Development Agreement Ordinance, at least once every twenty-four (24) months during the Term of this Agreement, Owner shall provide and County shall review in good faith a report submitted by Owner documenting the extent of Owner's and County's material compliance with the terms of this Agreement during the preceding twenty-four (24) months. If at the time of review an issue not previously identified in writing is required to be addressed, the review, at the request of either party, shall be continued to afford sufficient time for response.

5.02 Opportunity to be Heard. County and Owner shall be permitted an opportunity to be heard orally and in writing before the County Commission regarding their performance under this Agreement in the manner set forth in Development Agreement Ordinance.

5.03 Procedures in the Event of Noncompliance. In the event of any noncompliance with any provision of this Agreement, the party alleging such noncompliance shall deliver to the other in writing a courtesy notice, not less than thirty (30) calendar days prior to declaring a default under this Agreement. The time of notice shall be measured from the date of post mark which may be sent by regular mail.

The courtesy notice shall state the reason for noncompliance, any action necessary to correct the noncompliance, specify the nature of the alleged default and, where appropriate, the manner and period of time in which the noncompliance may be satisfactorily corrected. During the period of time the default letter is pending, the party alleged to be in default shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is corrected, then no default shall exist and the noticing party shall take no further action. If the default is not corrected within thirty (30) calendar days, the following courses of action shall apply:

(a) County Procedures

(i) Intent to Remedy Noncompliance. After proper notice and the expiration of the above-referenced periods for correcting the alleged default, the Director of

Development Services, or his or her designee, may do one or both of the following options:

- (1) Immediately direct County staff to recommend that all future zoning, land use, and mapping applications within the Project be conditioned so that the building permits to be issued as a result of those approvals shall not be issued until the default is corrected, or;
 - (2) Issue a letter providing notice of County's intent to set the matter for hearing before the County Commission. The letter shall notify Owner of the action taken. In the event the County selects this option, County shall give Owner at least seven (7) business days notice to correct the default before the matter is scheduled for a hearing. The letter notifying Owner of the hearing shall contain the intended hearing date. The seven (7) business days will be measured from the date of the certified mailing of the notice.
 - (ii) Hearing Schedule. If the default is not corrected within the time specified above, the matter shall be scheduled and noticed as required by law for consideration and review by the County Commission on the next available Commission zoning agenda.
 - (iii) Review by County Commission. Following consideration of the evidence presented before the County Commission and a finding based on substantial evidence that a default has occurred by Owner and the default remains uncorrected, the County Commission may authorize the suspension of building permits within the Project or may amend or terminate this Agreement. Termination shall not in any manner rescind, modify, or terminate any Vested Right in favor of Owner, existing or received, as of the date of the termination. Owner shall have twenty-five (25) calendar days after the date of notice of the County Commission's decision is filed with the Clark County Clerk, Commission Division, to institute legal action pursuant to Sections 5.05 and 5.06 hereof, to determine whether the County Commission abused its discretion in determining whether a default existed and remained uncorrected.
- (b) Owner Procedures
- (i) After proper notice and the expiration of the above-referenced periods for correcting the alleged default, Owner may issue a letter requesting a hearing before the County Commission for review of the alleged default. Upon receipt of the letter, County shall schedule an item to consider the alleged default on the next available Commission zoning agenda.
 - (ii) Review by County Commission. Following consideration of the evidence presented before the County Commission and a finding based on substantial evidence that a default has occurred by County and remains uncorrected, the County Commission shall direct County staff to correct the default. Owner shall have twenty-five (25) calendar days after the date of notice of the County Commission's decision is filed with the Clark County Clerk, Commission Division, to institute legal action pursuant to this Section hereof to determine whether the County Commission abused its discretion in determining whether a default existed and remained uncorrected.
- (c) Waiver. Failure or delay in giving any notice provided for herein shall not constitute a waiver of any default. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies in respect to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceeding which it may deem necessary to protect, assert, or enforce any of its right or remedies.

(d) Notices. All notices provided for herein shall be sent to and in the manner provided in Section 7.08 of this Agreement.

5.04 Option to Terminate. After proper notice and the expiration of the above-referenced period for correcting the alleged default, the party alleging the default shall give notice of intent to amend or terminate this Agreement pursuant to NRS §278.0205 (the "Notice of Intent"), with notices sent in the manner provided by Section 7.08 of this Agreement. Following any such Notice of Intent, the matter shall be scheduled and noticed as required by law for consideration and review by the County Commission.

5.05 Unavoidable Delay or Default, Extension of Time for Performance. Neither party hereunder shall be deemed to be in default, and performance shall be excused, where delays or defaults are caused by war, acts of terrorism, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by governmental entities, failure of governmental agencies (other than County) to perform acts or deeds necessary for the performance of this Agreement, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation, or similar matters beyond the control of the parties. If written notice of any such delay is given to County within thirty (30) calendar days after the commencement thereof, an automatic extension of time, unless otherwise objected to by County within ten (10) business days of such written notice, shall be granted coextensive with the period of the enforced delay, or longer as may be required by circumstances or as may be subsequently agreed to between County and Owner.

5.06 Institution of Legal Action. The County and Owner agree that the County would not have entered into this Agreement if it were liable for damages under or with respect to this Agreement. Accordingly, the County and the Owner may pursue any remedy at law or equity available for breach, except that neither the Owner nor the County shall be liable to the other or to any other person or entity for any monetary damages whatsoever. Prior to the institution of any legal action, the party seeking legal action must give the thirty (30) day notice of default as set forth in Section 5.03. Following such notice, a public hearing must be held by the County Commission where the allegations will be considered and a decision regarding their merits will be reached. Any judicial review of the County Commission's decision or any legal action taken pursuant to this Agreement will be heard by a Court under the standard review appropriate to Court review of zoning actions, and the decision of the County Commission shall be overturned or overruled if its decision is clearly arbitrary and capricious. Judicial review of the decision of the County Commission shall be limited to the evidence presented to the County Commission at the public hearing. If a party desires to present new or additional evidence to the Court, such party may petition the Court to remand the matter to the County Commission to consider the additional or new evidence. Jurisdiction for judicial review or any judicial action under this Agreement shall rest exclusively with the Eighth Judicial District Court, State of Nevada.

5.07 Applicable Laws. This Agreement shall be construed and enforced in accordance with the law of the State of Nevada.

SECTION 6 – CONFLICTING LAWS

6.01 Conflicting State or Federal Rules. In the event that any conflicting state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the County,

this Agreement shall remain in full force and effect as to those provisions not affected, and the conflicting laws or regulations shall not be applied retroactively, and:

- (a) Notice and Copies. Either party, upon learning of any such matter, will provide the other party with written notice thereof and provide a copy of any such law, regulation or policy or an account of any such action or inaction together with a statement of how any such matter conflicts with the provisions of this Agreement; and
- (b) Modification Conferences. The parties shall, within thirty (30) calendar days of the notice referred to in the preceding subsection, meet and confer in good faith and attempt to modify this Agreement to bring it into compliance with any such federal or state law or regulation, or accommodate any such action or inaction.

6.02 County Commission Hearings. In the event the County believes that an amendment to this Agreement is necessary pursuant to this Section 6 due to the effect of any federal or state law or regulation, the proposed amendment shall be scheduled for hearing before the County Commission. The County Commission shall determine the exact nature of the amendment or suspension necessitated by such federal or state law or regulation or action or inaction. Owner shall have the right to offer oral and written testimony at the hearing. Any suspension or modification ordered by the County Commission pursuant to such hearing is subject to judicial review as set forth in Section 5.06. The parties agree that any matter submitted for judicial review shall be subject to expedited review in accordance with Rule 2.15 of the Eighth Judicial District Court of the State of Nevada.

6.03 Cooperation in Securing Permits. The County shall use its Best Efforts to cooperate with Owner in securing any County permits, licenses or other authorizations which may be required as a result of any amendment or suspension resulting from actions initiated under this Section 6. Owner will be responsible to pay all applicable fees in connection with securing of the permits.

SECTION 7 – GENERAL PROVISIONS

7.01 Enforcement and Binding Effect. Subject to the limitations of NRS §278, this Agreement is enforceable by either party in accordance with its terms notwithstanding any change (which, except for this Agreement, would otherwise be applicable) in any of the Applicable Rules. Nothing in this Agreement shall prevent the County from increasing "cost based fees" which are deemed to be administrative fees for issuance of land use approvals, building permits, plan checks, or inspections which are based upon actual costs to the County and which are uniformly applied to all development and construction subject to the County's jurisdiction. "Cost based fees" do not include the fees addressed in Section 4.01 of this Agreement.

7.02 Duration of Agreement. The Term of this Agreement shall commence upon the Effective Date and shall expire on the date the land use application expires or upon the eighth (8th) anniversary of the Effective Date, or when all obligations hereunder are satisfied, whichever occurs earliest, unless extended by written agreement executed by County and Owner.

7.03 Assignment.

- (a) Transfer Not to Relieve Owner of its Obligation. Except as expressly provided herein, no assignee or transferee of any portion of the Project within the area covered by a recorded subdivision map shall be subject to the obligations of Owner as to the portion of the Project so assigned or transferred nor be deemed to have assumed all such obligations, and such assignment or transfer shall not relieve Owner of its obligation as to the assigned or transferred portion of the Project.

- (b) Transfer to an Affiliate of Owner. The rights of Owner under this Agreement may be freely transferred or assigned to any entity, partnership, or corporation, which Owner controls, or in which Owner has a controlling interest, or which controls Owner; provided, such entity shall assume in writing all obligations of Owner hereunder.
- (c) Third Party Assignment. The rights and obligations of Owner under this Agreement may be freely transferred or assigned to a third party not affiliated with Owner, provided such third party assumes in writing all obligations of Owner hereunder as to the assigned or transferred portion of the Project along with a copy of the sale, transfer, conveyance, or assignment agreement wherein the third party assumes the obligations of the Owner. Upon any such assignment hereunder, the Owner shall be relieved of all obligations and liabilities under or in connection with this agreement. In connection with the conveyance of any portion of the property, Owner shall provide County with written notice of any sale, transfer, conveyance or assignment of any unimproved portion of the Project.
- (d) Financial Transactions. Owner has full discretion and authority to transfer, assign or encumber the Project or portions thereof in connection with financing transactions, without limitation on the size or nature of any such transaction, the amount of land involved or the use of the proceeds therefrom, and may enter into such transaction at any time and from time to time without permission of or notice to County.

7.04 Amendment or Cancellation of Agreement. Except as otherwise permitted by NRS §278.0205 and Section 5 of this Agreement, this Agreement may be amended from time to time or canceled only upon the mutual written agreement of the parties hereto; provided however, that to the extent this Agreement expires pursuant to Section 7.02 above.

7.05 Indemnity; Hold Harmless. Except as expressly provided in this Agreement, Owner shall hold County, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees, or other persons acting on Owner's behalf which relate to the development of the Project. Owner agrees to and shall defend County and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Owner's activities in connection with the development of the Project. Owner agrees to indemnify, hold harmless, and provide and pay all costs for a defense for County in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section shall not apply to the extent such damage, liability, or claim is solely caused by the intentional or negligent act of County, its officers, agents, employees, or representatives.

7.06 Binding Effect of Agreement. Subject to Section 7.03 hereof, the burdens of this Agreement bind, and the benefits of this Agreement inure to the parties' respective successors in interest.

7.07 Relationship of Parties. It is understood that the contractual relationship between County and Owner is such that Owner is an independent contractor and not an agent of County for any purpose.

7.08 Notices. All notices, demands and correspondence required or provided for under this Agreement shall be in writing and delivered in person or sent by overnight courier or mailed by certified mail postage prepaid, return receipt requested. Notices shall be sent to the address on file to Owner and/or Applicant, as shown on "Exhibit B" and the Comprehensive Planning Department and Office of the District Attorney-Civil Division addressed as follows:

To County: COUNTY OF CLARK
Department of Comprehensive Planning, Current Planning Division
Clark County Government Center
500 South Grand Central Parkway, 1st Floor
P.O. Box 551741
Las Vegas, NV 89155-1741

With a Copy to: COUNTY OF CLARK
OFFICE OF THE DISTRICT ATTORNEY-CIVIL DIVISION
Clark County Government Center
500 South Grand Central Parkway, 5th Floor
P.O. Box 552215
Las Vegas, Nevada 89155-2215

Either party may change its address by giving notice in writing to the other and thereafter notices, demands and other correspondence shall be addressed and transmitted to the new address. Notices given in the manner described shall be deemed delivered on the day of personal delivery or the delivery date by overnight courier or mail is first attempted.

- 7.09 Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.
- 7.10 Waivers. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate officers of the County or Owner, as the case may be.
- 7.11 Recording Amendments. Promptly after the Effective Date, an executed original of this Agreement shall be recorded in the Official Records of Clark County, Nevada. All amendments hereto must be in writing signed by the appropriate officers of County and Owner in a form suitable for recordation in the Official Records of Clark County, Nevada. Upon the completion of performance of this Agreement or its earlier revocation or termination, a statement evidencing said completion or revocation signed by appropriate officers of County and Owner shall be recorded in the Official Records of Clark County, Nevada.
- 7.12 Release. Each unit within the Subject Property shall be automatically released from the encumbrance of this Agreement without the necessity of executing or recording any instrument of release upon the issuance of an Occupancy Permit for the building in which the unit is located.
- 7.13 Headings, Exhibits, Cross-references. The headings and captions used in this Agreement are for convenience and ease of reference only and shall not be used to construe, interpret, expand or limit the terms of this Agreement. All exhibits attached to this Agreement and the recitals at the front of this Agreement are incorporated herein by the references thereto contained herein. Any term used in an exhibit hereto shall have the same meaning as in this Agreement unless otherwise defined in such exhibit. All references in this Agreement to Sections and Exhibits shall be to Sections and Exhibits of or to this Agreement, unless otherwise specified.
- 7.14 Severability of Terms. If any term or other provision of this Agreement is held to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect, provided that the invalidity, illegality or unenforceability of such term does not materially impair the parties' ability to consummate the transactions contemplated hereby. If any term or other provision is invalid, illegal

or incapable of being enforced, the parties hereto shall, if possible, amend this Agreement so as to affect the original intention of the parties.

7.15 Voluntary Agreement. Owner acknowledges that they had the option of conducting their own public facilities needs assessment study, but instead voluntarily chose to accept the findings, conclusions and fee schedule contained within the County PFNA defined in Section 1.01(n) of this Agreement. Owner further acknowledges and agrees that it voluntarily, willingly and without protest and duress freely enters into this Agreement and accepts the terms and conditions herein.

7.16 No Third Party Beneficiary Rights. This Agreement shall inure solely to the benefit of each party hereto and its successors and permitted assigns and nothing in this Agreement, express or implied, shall confer upon any other person or entity, including the public or any member thereof, any rights, benefits or remedies of any nature whatsoever.

[signatures appear on following page]

IN WITNESS WHEREOF, this Agreement has been executed by the parties to be effective on the date described in Section 1.01(k).

COUNTY:

BOARD OF COUNTY COMMISSIONERS,
COUNTY OF CLARK, STATE OF NEVADA

Attest:

By: _____
Tick Segerblom, Chair

Lynn Marie Goya, County Clerk

OWNER:

NEIL SANSONE
PRINT OWNER NAME

ENTITY NAME:

AXIOM 3. LLC
PRINT ENTITY NAME

By: Neil Sansone
Owner Signature

ACKNOWLEDGMENT:

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

This instrument was acknowledged before me on the 29th day of MAY, 2024,

by NEIL SANSONE
(Printed Name of Document Signer)

NOTARY PUBLIC

Rhonda Lynn Main
Signature

My Commission expires: MARCH 2, 2027

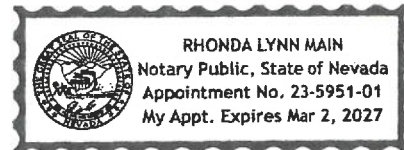


Exhibit "A"
Legal Description

(see next page for attachment)

EXHIBIT "A"
SURVEYED PROPERTY DESCRIPTION LOT 1-2A

A PORTION OF LOT 1 OF BOOK 162 OF PLATS, PAGE 38, BEING THE "NEW RAINBOW, LLC - RAINBOW/215" COMMERCIAL SUBDIVISION MAP, LYING WITHIN THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 3, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, THENCE ALONG THE WESTERLY BOUNDARY OF SAID LOT 1, NORTH 00°30'09" EAST, 639.88 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE ALONG THE NORTHERLY BOUNDARY OF SAID LOT 1, NORTH 88°14'22" EAST, 286.19 TO THE BEGINNING OF A 52.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, TO WHICH BEGINNING A RADIAL LINE BEARS SOUTH 88°14'22" WEST; THENCE SOUTHERLY ALONG SAID BOUNDARY OF LOT 1 AND CURVE TO THE LEFT, AN ARC LENGTH OF 79.87 FEET THROUGH A CENTRAL ANGLE OF 88°00'29" TO A POINT ON THE EASTERLY BOUNDARY OF SAID LOT 1; THENCE ALONG THE EASTERLY BOUNDARY OF SAID LOT 1, SOUTH 00°13'53" WEST, 281.63; THENCE DEPARTING SAID EASTERLY BOUNDARY, NORTH 89°46'07" WEST, 44.85 FEET; THENCE SOUTH 00°59'26" WEST, 200.39 FEET; THENCE NORTH 89°00'04" WEST, 19.61 FEET; THENCE NORTH 11°06'15" WEST, 21.73 FEET; THENCE NORTH 89°24'24" WEST, 202.02 FEET; THENCE SOUTH 02°24'25" EAST, 107.15 FEET; THENCE SOUTH 89°24'24" EAST, 185.89 FEET TO THE BEGINNING OF A 26.60 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY; THENCE EASTERLY ALONG SAID CURVE TO THE LEFT, AN ARC LENGTH OF 47.21 FEET THROUGH A CENTRAL ANGLE OF 101°41'49"; THENCE NORTH 11°06'15" WEST, 34.42 FEET; THENCE SOUTH 89°00'04" EAST, 35.32 FEET;



◊ 6140 Brent Thurman Way, Suite 230 ◊
◊ Las Vegas, Nevada 89148 ◊
◊ Office: (702) 823-3257 ◊ Fax: (702) 933-9030 ◊
◊ www.diamondbacklandsurveying.com ◊

PAGE 2 OF 3

THENCE NORTH 00°59'26" EAST, 200.66 FEET; THENCE SOUTH 89°46'07" EAST, 25.12 FEET TO A POINT ON THE SAID EASTERLY BOUNDARY OF LOT 1; THENCE ALONG SAID EASTERLY BOUNDARY, SOUTH 00°13'53" WEST, 286.14 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1; THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 1, SOUTH 88°14'18" WEST, 341.22 FEET TO THE **POINT OF BEGINNING.**

EXCEPTING THEREFROM: **SURVEYED PROPERTY DESCRIPTION LOT 1-3A**

A PORTION OF LOT 1 OF BOOK 162 OF PLATS, PAGE 38, BEING THE "NEW RAINBOW, LLC - RAINBOW/215" COMMERCIAL SUBDIVISION MAP, LYING WITHIN THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 3, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1, THENCE ALONG THE SOUTHERLY BOUNDARY OF SAID LOT 1, NORTH 88°14'18" EAST, 45.90 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY, NORTH 01°45'42" WEST, 11.82 FEET TO THE POINT OF BEGINNING; THENCE NORTH 09°52'47" WEST, 14.16 FEET; THENCE NORTH 88°14'18" EAST, 7.50 FEET; THENCE SOUTH 06°21'23" WEST, 14.16 FEET; THENCE SOUTH 88°14'18" WEST, 3.50 FEET TO THE POINT OF BEGINNING.

CONTAINING 77 SQUARE FEET MORE OR LESS.

LOT 1-2A CONTAINS 4.30 ACRES (187,528 SQUARE FEET), MORE OR LESS.



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PAGE 3 OF 3

GRAPHICALLY DEPICTED ON FILE 235 OF SURVEY, PAGE 46, OFFICIAL RECORDS,
CLARK COUNTY, NEVADA.

BASIS OF BEARINGS: **SOUTH 01°18'16" WEST**, BEING THE BEARING OF THE
CENTERLINE OF TENAYA WAY AND THE WEST LINE OF THE NORTHWEST
QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 3,
TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, AS
SHOWN IN BOOK 162 OF PLATS, AT PAGE 38, OFFICIAL RECORDS OF CLARK
COUNTY, NEVADA.

PREPARED BY:
ROBERT L. CARRINGTON
NEVADA PLS #9103



◇ 6140 Brent Thurman Way, Suite 230 ◇
◇ Las Vegas, Nevada 89148 ◇
◇ Office: (702) 823-3257 ◇ Fax: (702) 933-9030 ◇
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Exhibit "B"
Development Agreement Owner Correspondence

Exhibit "B"

Development Agreement Owner/Applicant Correspondence

In accordance with Section 7.08, all notices, demands and correspondence required or provided for under this agreement shall be sent to the Owner and/or Applicant as follows:

Address all Correspondence as follows:

Owner

AXIOM 3, LLC

2580 St. Rose Pkwy. # 125

Henderson, NV 89074

Applicant/Correspondent

Sansone Companies

2580 St. Rose Pkwy. # 125

Henderson, NV 89074

Exhibit "C"
Agenda Sheet, Notice of Final Action, and Agenda Map

(see next page for attachments)



Department of Comprehensive Planning

500 S Grand Central Pkwy · Box 551741 · Las Vegas NV 89155-1741
(702) 455-4314 · Fax (702) 455-3271

Nancy A. Amundsen, Director

NOTICE OF FINAL ACTION

May 01, 2023

KAEMPFER CROWELL
1980 FESTIVAL PLAZA DR, STE 650
LAS VEGAS, NV 89135

REFERENCE: ZC-23-0042

On the date indicated above, a Notice of Final Action was filed with the Clark County Clerk, Commission Division, pursuant to NRS 278.0235 and NRS 278.3195, which starts the commencement of the twenty-five (25) day limitation period specified therein.

The above referenced application was presented before the Clark County Board of County Commissioners at their regular meeting of **April 19, 2023** and was **APPROVED** subject to the conditions listed below. You will be required to comply with all conditions prior to the issuance of a building permit or a business license, whichever occurs first.

Time limits to commence, complete or review this approval, apply only to this specific application. A property may have several approved applications on it with each having its own expiration date. **It is the applicant's responsibility to keep the application current.**

CONDITIONS OF APPROVAL - Comprehensive Planning

- **No Resolution of Intent and staff to prepare an ordinance to adopt the zoning;**
- **Provide a loading zone by striping 3 parking spaces;**
- **Record a parcel map prior to the issuance of building permits;**
- **Provide cross access and shared parking through the recording of perpetual cross access, ingress/egress and shared parking easements or agreements between APNs 176-03-511-002 and 176-03-511-003 prior to the issuance of building permits;**
- **Enter into a standard development agreement prior to any permits or subdivision mapping in order to provide fair-share contribution toward public infrastructure necessary to provide service because of the lack of necessary public services in the area;**
- **Certificate of Occupancy and/or business license shall not be issued without final zoning inspection.**
- **Applicant is advised that the County is currently rewriting Title 30 and future land use applications, including applications for extensions of time, will be reviewed for conformance with the regulations in place at the time of application; a substantial change in circumstances or regulations may warrant denial or added conditions to an extension of time; the extension of time may be denied if the project has not commenced or there has been no substantial work towards completion within the time specified; and that the waivers of development standards and design reviews must commence within 2 years of approval date or they will expire.**

BOARD OF COUNTY COMMISSIONERS

JAMES B. GIBSON, Chair · JUSTIN C. JONES, Vice Chair
MICHAEL NAFT · MARILYN KIRKPATRICK · TICK SEGERBLOM · ROSS MILLER · WILLIAM MCCURDY II
KEVIN SCHILLER, County Manager



Department of Comprehensive Planning

500 S Grand Central Pkwy · Box 551741 · Las Vegas NV 89155-1741
(702) 455-4314 · Fax (702) 455-3271

Nancy A. Amundsen, Director

Public Works - Development Review

- Drainage study and compliance;
- Traffic study and compliance;
- 30 days to coordinate with Public Works - Design Division and to dedicate any necessary right-of-way and easements for the Beltway Frontage Road improvement project.

Department of Aviation

- Applicant must record a stand-alone noise disclosure form against the land, and provide a copy of the recorded document to the Department of Aviation;
- Applicant must provide a copy of the recorded noise disclosure form to future buyers/renters, separate from other escrow documents, and provide a copy of the document to the Department of Aviation;
- Applicant must provide a map to future buyers/renters, as part of the noise disclosure notice, that highlights the project location and associated flight tracks, provided by the Department of Aviation when property sales/leases commence;
- Incorporate an exterior to interior noise level reduction of 30 decibels into the building construction for the habitable space that exceeds 35 feet in height or 25 decibels into the building construction for the habitable space that is less than 35 feet in height.
- Applicant is advised that the Federal Aviation Administration will no longer approve remedial noise mitigation measures for incompatible development impacted by aircraft operations which was constructed after October 1, 1998; and that funds will not be available in the future should the residents wish to have their buildings purchased or soundproofed.

Clark County Water Reclamation District (CCWRD)

- Applicant is advised that a Point of Connection (POC) request has been completed for this project; to email sewerlocation@cleanwaterteam.com and reference POC Tracking #0046-2023 to obtain your POC exhibit; and that flow contributions exceeding CCWRD estimates may require another POC analysis.

BOARD OF COUNTY COMMISSIONERS

JAMES B. GIBSON, Chair · JUSTIN C. JONES, Vice Chair

MICHAEL NAFT · MARILYN KIRKPATRICK · TICK SEGERBLOM · ROSS MILLER · WILLIAM MCCURDY II
KEVIN SCHILLER, County Manager

UPDATE

MULTIPLE FAMILY DEVELOPMENT
(TITLE 30)

MONTESSOURI ST/WAGON TRAIL AVE

PUBLIC HEARING

APP. NUMBER/OWNER/DESCRIPTION OF REQUEST

ZC-23-0042-AXIOM 3 LLC:

ZONE CHANGE to reclassify 4.5 acres from a C-2 (General Commercial) (AE-60) Zone to an R-5 (Apartment Residential) (AE-60) Zone.

WAIVERS OF DEVELOPMENT STANDARDS for the following: **1)** increase building height; **2)** reduce building separation; and **3)** allow modified driveway design standards.

DESIGN REVIEWS for the following: **1)** alternative parking lot landscaping; **2)** off-site parking; and **3)** a multiple family development in the CMA Design Overlay District.

Generally located on the southwest corner of Montessori Street (alignment) and Wagon Trail Avenue (alignment) within Spring Valley (description on file). MN/md/syp (For possible action)

RELATED INFORMATION:

APN:

176-03-511-003

WAIVERS OF DEVELOPMENT STANDARDS:

1. Increase building height to 65 feet where a maximum building height of 50 feet is permitted per Table 30.40-3 (a 30% increase).
2. Eliminate building separation to zero feet where a minimum of 10 feet is required between the proposed multiple family building and existing parking garage per Table 30.40-3 (a 100% reduction).
3. Eliminate the throat depth to zero feet for a driveway at the intersection of Montessori Street and Wagon Trail Avenue where a minimum of 150 feet is required per Uniform Standard Drawing 222.1 (a 100% reduction).

LAND USE PLAN:

SPRING VALLEY - BUSINESS EMPLOYMENT

BACKGROUND:

Project Description

General Summary

- Site Address: N/A
- Site Acreage: 4.5
- Number of Units: 131
- Density (du/ac): 29.7

- Project Type: Multiple family development
- Number of Stories: 5
- Building Height (feet): 65
- Open Space Required/Provided: 13,100/14,877
- Parking Required/Provided: 223 (multiple family)/320 (existing office building)/550 (total number of existing parking spaces)

History & Request

The applicant is requesting a conforming zone boundary amendment to reclassify 4.5 acres from a C-2 to an R-5 zoning district for a proposed 5 story multiple family building on the subject property. Application PA-23-700004 is the corresponding plan amendment for the subject property requesting to change the planned land use from Business Employment (BE) to Urban Neighborhood (UN). Application WS-18-0953 was approved by the Board of County Commissioners in January 2019 for an existing office building, with a complete glass exterior, measuring 80,000 square feet with a maximum height of 70 feet. The existing office building, constructed immediately south of the project site, is located on APN 176-03-511-002 which will remain classified as a C-2 zoning district. The parcel containing the existing office building is not a part of this request and will not include any site modifications or alterations.

Site Plans

The plans depict a 5 story multiple family residential development consisting of 131 dwelling units with a density of 29.7 dwelling units per gross acre. The proposed multiple family building is located on the north portion of the project site and has been designed with the following setbacks: 1) 382 feet from the south property line, adjacent to Rafael Rivera Way; 2) 63.5 feet from the east property line; 3) 54 feet from the north property line; and 4) 65.5 feet from the west property line. Immediately to the south of the proposed multiple family building is an existing 3 story parking garage featuring the following setbacks: 1) 200 feet from the south property line, adjacent to Rafael Rivera Way and 42 feet from the front property line adjacent to the rear of the office building; 2) 74.5 feet from the east property line; 3) 257 feet from the north property line; and 4) 10 feet from the west property line. A waiver of development standards is required to eliminate the building separation between the existing parking garage and the proposed multiple family development. The proposed multiple family development requires 223 parking spaces while the existing office building, located on APN-176-03-511-002, requires 320 parking spaces. A total of 543 parking spaces are required for the proposed multiple family building and the existing office building where 550 parking spaces are provided. However, no parking spaces are located within the boundaries of the parcel containing the office building; therefore, a design review for off-site parking is required as part of this request. Therefore, staff is recommending an "if approved" condition between the office building and multiple family building sites to provide cross access and shared parking through the recording of perpetual cross access, ingress/egress, and shared parking easements or agreements. Access to the project site is granted via an existing driveway located along Rafael Rivera Way. A secondary point of access is granted via an existing driveway located at the intersection of Montessori Street and Wagon Trail Avenue. A waiver of development standards is requested to eliminate throat depth at this intersection.

Landscaping

The plans depict an existing street landscape area adjacent to Rafael Rivera Way measuring 15 feet in width with an attached 5 foot wide sidewalk. The street landscape area consists of trees, shrubs, and groundcover. The existing landscaping around the perimeter of the site has been designed as follows: 1) 10 foot wide landscape area on the west property line; 2) 5 foot wide landscape area on the north property; and 3) 6 foot wide landscape area on the east property line. All landscape areas consist of trees, shrubs, and groundcover.

The proposed multiple family development requires 13,100 square feet of open space where 14,877 square feet of open space is provided. The open space for the project consists of the following: 1) courtyard and pool is 9,529 square feet; 2) dog park (northwest corner of site) is 1,938 square feet; and 3) fifth level amenity deck is 3,410 square feet. A design review for alternative parking lot landscaping is part of this request. In lieu of providing the required amount of landscape finger islands within the interior of the site, additional trees have been distributed throughout the interior of the development. The development requires a total of 107 trees where 157 trees are distributed throughout the interior and perimeter of the site.

Elevations

The plans depict a 5 story multiple family building with varying rooflines measuring between 61 feet to 65 feet in height to the top of the parapet wall. A waiver of development standards is required to increase building height up to a maximum of 65 feet. The building materials consist of a stucco exterior with accent wood tiles and an aluminum storefront window system. The parapet walls will screen the rooftop mounted equipment from the right-of-way and public view. The building will be painted with neutral, earth tone colors.

Floor Plans

The plans depict a 5 story multiple family building featuring 65, one bedroom units, and 66, two bedroom units.

Signage

New signage is not proposed with this application; however, WS-22-0576 was approved by the Board of County Commissioners in December 2022 for a freestanding sign with a maximum height of 49 feet. The previously approved freestanding sign will be located at the southwest corner of the multiple family project site, between the retaining wall and parking lot. The freestanding sign will be set back 23 feet from the south property line, adjacent to Rafael Rivera Way. Furthermore, the building permit for the freestanding sign was recently approved in February 2023 via BD22-36526.

Applicant's Justification

The applicant is proposing to build a 65 foot tall building where 50 feet is allowed in an R-5 zoned district. Although the applicant is requesting an increase in height, the proposed request is reasonable and compatible for the following reasons: 1) the site is near the CC 215; 2) the site is located just north of an existing 70 foot tall office building; and 3) just on the north side of Sunset Road is an existing office building close to 100 feet in height. Also, it is important to note the fifth level plate is less than 44 feet in height. The main reason for the increase in height of up to 62 feet is to provide architectural enhancements and shield the mechanical units. Eliminating

the building separation between the existing parking garage and proposed multiple family building will not have any negative impacts for the following reasons: 1) the setback is internal to the site and does not impact neighboring properties; 2) the setback is to an existing garage; 3) the end-caps of the multiple family building meet the garage, 4) the garage structure helps create the courtyard for the pool and amenities area; and 5) the multiple family building's footprint cannot be pushed any farther north as the site needs drive aisle and parking areas north of the multiple family building.

The applicant is requesting to eliminate the throat depth where 150 feet is required. While the applicant is requesting to eliminate the throat depth, the reduction will not cause safety concerns for the following reasons: 1) the development is not gated; therefore, reducing any stacking in the right-of-way; 2) Montessouri Street terminates at the site as it does not go farther south; 3) Wagon Trail Avenue terminates at the site as it does not go any farther west; and 4) at the entrance, the first parking space is about 18 feet from the west side and 32 feet from the south side, respectively, and thereby providing additional queuing and stacking on the site.

The applicant is sharing the existing parking garage and surface parking with the office use. When combining the office use and the multiple family use, a total of 543 parking spaces are required. Here, the total amount of parking provided is 550 spaces. Therefore, the amount of parking provided exceeds the amount of parking required.

The applicant is utilizing the existing surface parking and parking garage on the site. The existing surface parking was part of the approval for the existing office building on the neighboring parcel. The existing surface parking is providing landscape islands just not at the required ratio of every 6 parking spaces. However, the site is exceeding the overall required landscaping; therefore, the applicant is requesting a design review for the alternative parking lot landscaping. The applicant is providing a total of 157 trees where only 107 trees are required.

Prior Land Use Requests

Application Number	Request	Action	Date
WS-22-0576	Increased freestanding sign height to a maximum of 49 feet in conjunction with a previously approved office building	Approved by BCC	December 2022
WS-19-0776	Increased the height of a freestanding sign - expired	Approved by BCC	November 2019
WS-18-0953	Increased building height to 70 feet and increased the length of the roofline without articulation with a design review for office buildings and a parking garage	Approved by BCC	January 2019
WS-0607-08	Reduced separation between 2 freestanding signs with a design review for a comprehensive sign package - expired	Approved by BCC	December 2008
UC-0586-08	Increased building height and a design review for a professional office complex and parking garage - expired	Approved by BCC	July 2008

Prior Land Use Requests

Application Number	Request	Action	Date
ZC-0803-07	Reclassified the northern 2.5 acres to C-2 zoning with a design review for an office complex on 5 acres	Approved by BCC	August 2007
ZC-0759-06	Reclassified the middle 1.3 acres to C-2 zoning for a future commercial development	Approved by BCC	July 2006
ZC-2027-97	Reclassified the southern 1.3 acres to C-2 zoning for a convenience store and gasoline station	Approved by BCC	January 1998

Surrounding Land Use

	Planned Land Use Category	Zoning District	Existing Land Use
North & East	Business Employment	M-D	Undeveloped
South	Business Employment	C-2	CC 215, office building, & shopping center
West	Business Employment	R-3	Multiple family development

The subject site is within the Public Facilities Needs Assessment (PFNA) area.

Related Applications

Application Number	Request
PA-23-700004	Plan Amendment to re-designate the land use category from Business Employment (BE) to Urban Neighborhood (UN) is a companion item on this agenda.

STANDARDS FOR APPROVAL:

The applicant shall demonstrate that the proposed request meets the goals and purposes of Title 30.

Analysis**Comprehensive Planning**Zone Change

Staff finds the proposed R-5 zoning is not compatible with the existing R-3 zoning district to the west and the existing M-D zoning to the north and east. The Development Code defines "spot zoning" as the reclassification of an isolated parcel of land which is detrimental or incompatible with the uses of the surrounding area, particularly when such an act favors a particular owner. Furthermore, the adjacent parcels to the north and east are zoned for industrial uses, which may have an adverse or detrimental impact on the higher density multiple family residential use. Therefore, staff does not support this request.

Waivers of Development Standards

According to Title 30, the applicant shall have the burden of proof to establish that the proposed request is appropriate for its existing location by showing that the uses of the area adjacent to the property included in the waiver of development standards request will not be affected in a substantially adverse manner. The intent and purpose of a waiver of development standards is to

modify a development standard where the provision of an alternative standard, or other factors which mitigate the impact of the relaxed standard, may justify an alternative.

Waiver of Development Standards #1

Staff recognizes the existing office building to the south was approved up to a maximum height of 70 feet. However, staff finds the proposed building height increase up to 65 feet is inconsistent and incompatible with the adjacent multiple family residential use to the west. The multiple family residential use to the west is 2 stories, while the proposed multiple family building consists of 5 stories. Therefore, staff does not support this request.

Waiver of Development Standards #2

Staff finds the request to reduce the separation requirement between the buildings is a self-imposed burden. The multiple family building can be redesigned to meet the required building separation of 10 feet from the existing parking garage. Therefore, staff does not support this request.

Design Review #1

The intent of parking lot landscaping is to provide climate adaptable plant materials that improve the visual appearance of the project site, enhance environmental conditions by providing shade and reducing storm water run-off, and to provide buffer areas between land uses of varying intensity. Staff recognizes the fact the applicant has provided additional trees within the interior and around the perimeter of the site to compensate for the absence of the required landscape finger islands. However, since staff is not supporting the zone change, waivers of development standards, and design reviews #2 and #3, staff recommends denial of the alternative parking lot landscaping request.

Design Review #2

The required number of parking spaces is provided for both the proposed multiple family building and the existing office building. However, since the required 543 parking spaces for both buildings will be provided on the same parcel as the multiple family project, a design review for off-site parking is required. Staff recommends an "if approved" condition to provide cross access and shared parking through the recording of perpetual cross access, ingress/egress and shared parking easements or agreements between both parcels, APNs 176-03-511-002 (office building) and 176-03-511-003 (multiple family development). Staff is not supporting design reviews #1 and #3; therefore, staff cannot support this request.

Design Review #3

Staff finds a variety of design elements are utilized on all sides of the residential building, including articulating building facades. The proposed multiple family building height is not compatible with the existing multiple family development to the west of the project site, which consists of 2 stories. The reclassification of the project site will create a nonconforming structure, being the previously approved freestanding sign, within a residential zoning district. Freestanding signs are only permitted in residential districts when in conjunction with special uses and boarding stables, limited to a maximum height of 35 feet, and not being located along a freeway. Due to staff's concerns with building height compatibility, eliminating building

separation, a nonconforming structure (freestanding sign), in addition to not supporting the zone change, staff recommends denial of this request.

Public Works - Development Review

Waiver of Development Standards #3

Staff has no objection to the reduction of throat depth as Montessouri Street sees low volumes of traffic as it ends at the site. Additionally, while the provided throat depth is zero feet, there is over 18 feet available before vehicles encounter the first parking space. However, since Planning is recommending denial of the application, staff cannot support this waiver.

Department of Aviation

As stated in the meeting with the project representative in December 2022, the currently planned land use designation is Business Employment (BE), and current zoning is General Commercial (C-2), which permits many airport compatible uses. The proposed land use designation of Urban Neighborhood (UN) and proposed zoning of Apartment Residential - 50 units per acre (R-5), the most dense residential category, would significantly increase the number of residences impacted by aircraft over-flights. Due to this fact, this request is incompatible with current and future noise levels at this location. APN 176-03-511-003 lies fully within the AE-60 (60-65 DNL) noise contour for Harry Reid International Airport and is subject to continuing and significant aircraft noise and over-flights. Future demand for air travel is expected to increase significantly, and the subject property lies beneath flight paths that have been used since the 1960's. Clark County intends to continue to upgrade Harry Reid facilities to meet future air traffic demand. Due to these facts, this nonconforming zone change is incompatible with current and future noise levels present at this location. Staff recommends denial.

Staff Recommendation

Denial. This item has been forwarded to the Board of County Commissioners' meeting for final action.

If this request is approved, the Board and/or Commission finds that the application is consistent with the standards and purpose enumerated in the Master Plan, Title 30, and/or the Nevada Revised Statutes.

PLANNING COMMISSION ACTION: March 21, 2023 – APPROVED – Vote: Unanimous Comprehensive Planning

- No Resolution of Intent and staff to prepare an ordinance to adopt the zoning;
- Provide a loading zone by striping 3 parking spaces;
- Record a parcel map prior to the issuance of building permits;
- Provide cross access and shared parking through the recording of perpetual cross access, ingress/egress and shared parking easements or agreements between APNs 176-03-511-002 and 176-03-511-003 prior to the issuance of building permits;
- Enter into a standard development agreement prior to any permits or subdivision mapping in order to provide fair-share contribution toward public infrastructure necessary to provide service because of the lack of necessary public services in the area;
- Certificate of Occupancy and/or business license shall not be issued without final zoning inspection.

- Applicant is advised that the County is currently rewriting Title 30 and future land use applications, including applications for extensions of time, will be reviewed for conformance with the regulations in place at the time of application; a substantial change in circumstances or regulations may warrant denial or added conditions to an extension of time; the extension of time may be denied if the project has not commenced or there has been no substantial work towards completion within the time specified; and that the waivers of development standards and design reviews must commence within 2 years of approval date or they will expire.

Public Works - Development Review

- Drainage study and compliance;
- Traffic study and compliance;
- 30 days to coordinate with Public Works - Design Division and to dedicate any necessary right-of-way and easements for the Beltway Frontage Road improvement project.

Department of Aviation

- Applicant must record a stand-alone noise disclosure form against the land, and provide a copy of the recorded document to the Department of Aviation;
- Applicant must provide a copy of the recorded noise disclosure form to future buyers/renters, separate from other escrow documents, and provide a copy of the document to the Department of Aviation;
- Applicant must provide a map to future buyers/renters, as part of the noise disclosure notice, that highlights the project location and associated flight tracks, provided by the Department of Aviation when property sales/leases commence;
- Incorporate an exterior to interior noise level reduction of 30 decibels into the building construction for the habitable space that exceeds 35 feet in height or 25 decibels into the building construction for the habitable space that is less than 35 feet in height.
- Applicant is advised that the Federal Aviation Administration will no longer approve remedial noise mitigation measures for incompatible development impacted by aircraft operations which was constructed after October 1, 1998; and that funds will not be available in the future should the residents wish to have their buildings purchased or soundproofed.

Fire Prevention Bureau

- No comment.

Clark County Water Reclamation District (CCWRD)

- Applicant is advised that a Point of Connection (POC) request has been completed for this project; to email sewerlocation@cleanwaterteam.com and reference POC Tracking #0046-2023 to obtain your POC exhibit; and that flow contributions exceeding CCWRD estimates may require another POC analysis.

TAB/CAC: Spring Valley - denial.

APPROVALS: 2 cards

PROTESTS: 2 cards

APPLICANT: AXIOM 3, LLC

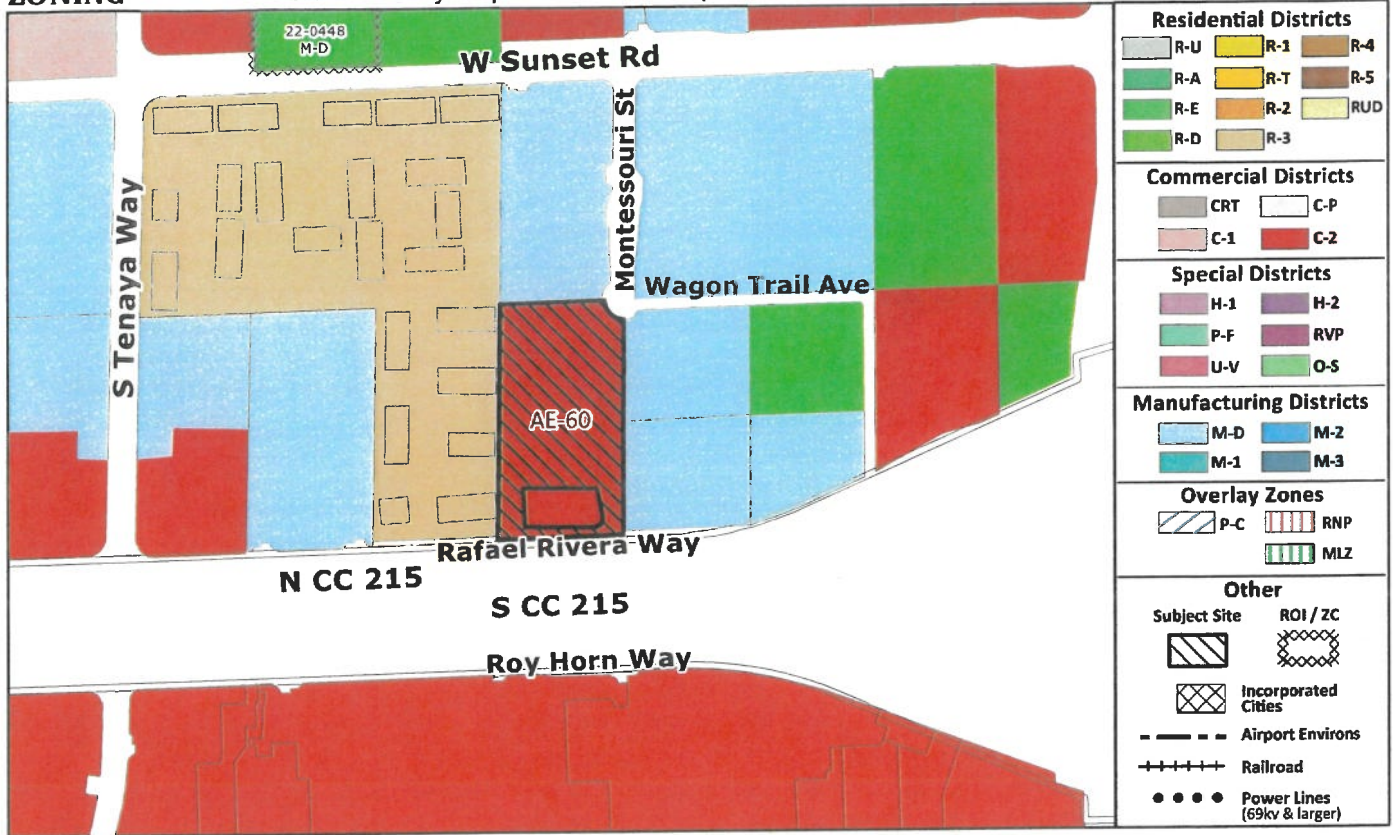
CONTACT: KAEMPFER CROWELL, 1980 FESTIVAL PLAZA DRIVE, SUITE 650, LAS VEGAS, NV 89135

Commission Agenda Map

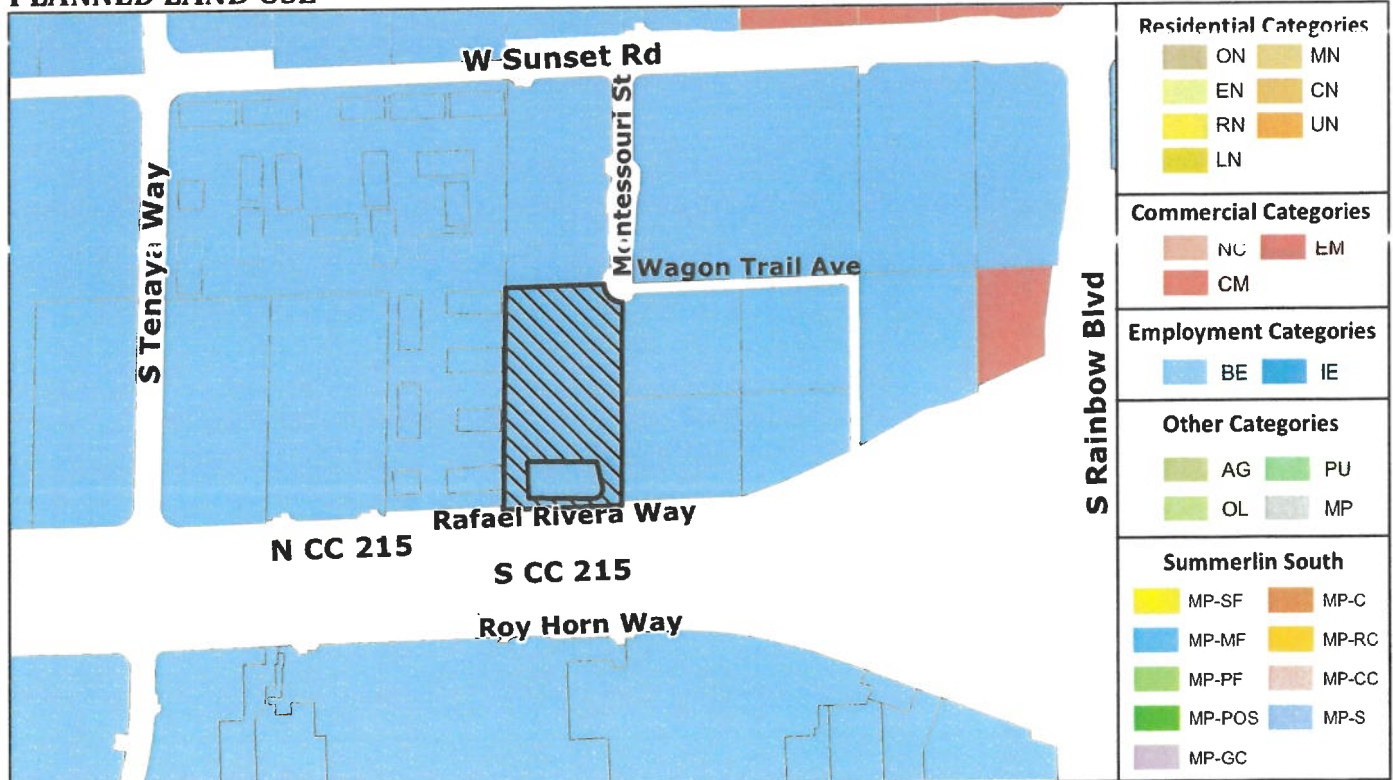
ZC-23-0042

Clark County Department of Comprehensive Planning, Clark County, Nevada

ZONING

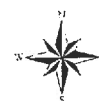


PLANNED LAND USE



This information is for display purposes only. No liability is assumed as to the accuracy of the data delineated hereon.

Subject Parcel(s)
17603511003



0 1:5 2:50 5:00 Feet
Map Created on 1/26/2023

