

**CLARK COUNTY BOARD OF COMMISSIONERS**  
**ZONING / SUBDIVISIONS / LAND USE**  
**AGENDA ITEM**

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**Petitioner:** Nancy A. Amundsen, Director, Department of Comprehensive Planning

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**Recommendation:** ORD-22-900108: Conduct a public hearing on an ordinance to consider adoption of a Development Agreement with KB Homes Las Vegas, Inc for a single family residential development (Agate - Dean Martin) on 14.6 acres, generally located east of Dean Martin Drive and north of Serene Avenue within Enterprise. JJ/tk (For possible action)

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**FISCAL IMPACT:**

None by this action.

**BACKGROUND:**

The Board of County Commissioners (Board) approved a land use application NZC-21-0522 for a single family residential development (Agate - Dean Martin) on 14.6 acres, generally located east of Dean Martin Drive and north of Serene Avenue within Enterprise. 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 conduct a public hearing.

**Cleared For Agenda**  
05/04/22

BILL NO. 4-20-22-2

SUMMARY - An ordinance to adopt the Development Agreement with KB Homes Las Vegas, Inc for a single family residential development (Agate - Dean Martin) on 14.6 acres, generally located east of Dean Martin and north of Serene Avenue within Enterprise.

ORDINANCE NO. \_\_\_\_\_  
(of Clark County, Nevada)

**AN ORDINANCE TO ADOPT THE DEVELOPMENT AGREEMENT WITH KB HOMES LAS VEGAS, INC FOR A SINGLE FAMILY RESIDENTIAL DEVELOPMENT (AGATE – DEAN MARTIN) ON 14.6 ACRES, GENERALLY LOCATED EAST OF DEAN MARTIN AND NORTH OF SERENE AVENUE WITHIN ENTERPRISE, 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 30.20 of the Clark County Code, the Development Agreement with KB Homes Las Vegas, Inc for a single family residential development (Agate – Dean Martin) on 14.6 acres, generally located east of Dean Martin and north of Serene Avenue within Enterprise, 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 \_\_\_\_\_, 2022

INTRODUCED by: \_\_\_\_\_

PASSED on the \_\_\_\_\_ day of \_\_\_\_\_, 2022

VOTE:

AYES: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAYS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ABSTAINING:

\_\_\_\_\_  
\_\_\_\_\_

ABSENT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS  
CLARK COUNTY, NEVADA

By: \_\_\_\_\_  
JAMES B. GIBSON, Chair

ATTEST:

\_\_\_\_\_  
Lynn Marie Goya, County Clerk

This ordinance shall be in force and effect from and after the \_\_\_\_\_ day  
of \_\_\_\_\_ 2022.

APN(s): 177-20-204-003, 177-20-204-005, 006, 007, 010, & 012

Please Return to: Joel McCulloch

Comprehensive Planning Department

1<sup>st</sup> Floor, Clark County Government Center

500 Grand Central Parkway

Las Vegas, Nevada 89155

DEVELOPMENT AGREEMENT

BETWEEN

THE COUNTY OF CLARK

AND

**KB Homes Las Vegas, Inc**

FOR

**AGATE – DEAN MARTIN**

**ORD-22-900108**

# 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 **KB Homes Las Vegas, Inc** 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 and refers to the following:

(i) 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 Planned Community, 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 Planned Community, unless and until the parties agree that the development of the Planned Community 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) "CCRFCD" means the Clark County Regional Flood Control District.
- (f) "Code" means the Clark County Code, including all rules, regulations, standards, criteria, manuals and other references adopted herein.
- (g) "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 **NZC-21-0522**, the Agenda Sheet, Notice of Final Action and agenda map attached hereto as Exhibit "C" and incorporated herein by this reference.
- (h) "County" means the County of Clark, State of Nevada together with its successors and assigns.
- (i) "County Commission" means the Board of County Commissioners or Planning Commission of the County of Clark, State of Nevada.
- (j) "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.
- (k) "Development Agreement Ordinance" means Chapter 30.20 of the Clark County Unified Development Code (Title 30) along with any other Chapters of the Clark County Code that are relevant to this agreement.
- (l) "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.
- (m) "NDOT" means Nevada Department of Transportation.
- (n) "NRS" means Nevada Revised Statutes.
- (o) "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.
- (p) "Planned Community" means the Subject Property and the proposed development of the Subject Property described in this Agreement.
- (q) "Street Improvements" means public or private facilities that may include but are not limited to fire hydrants, sidewalks, curbs, gutters, pavement, gravel, aggregate base, streetlights, street name signs, traffic signals and signs, pavement markings, other applicable traffic control

devices, survey monuments, flood control and drainage facilities which are permitted within public rights-of-way as required by the County.

(r) "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".

(s) "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 Planned Community 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 Clark County 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 Planned Community 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 Planned Community 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 Planned Community. 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 Planned Community 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 Planned Community 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 PLANNED COMMUNITY**

3.01 Time for Construction and Completion of the Planned Community. 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 Planned Community. Nothing herein shall be construed to require the Owner to develop the Planned Community 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 Planned Community 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 Planned Community may proceed as if all of it were in an area designated "Community District 2" notwithstanding that portions of the Planned Community which otherwise have the characteristics of "Community District 3".

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 Planned Community 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 Planned Community. 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 Planned Community 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 Planned Community, 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.

<b>CHART 4.01-A PUBLIC FACILITIES CHART</b>			
<b>Type of Development</b>	<b>Infrastructure Category</b>		<b>Total</b>
	<b>Parks</b>	<b>Public Safety<sup>1</sup></b>	
<b>Single Family Dwelling Unit</b> (per dwelling unit)	<b>\$532.93</b>	<b>\$900.81</b>	<b>\$1433.74</b>
<b>Multi Family Dwelling Unit</b> (per dwelling unit)	<b>\$532.93</b>	<b>\$883.24</b>	<b>\$1416.17</b>
<b>Retail</b> (per square foot gross floor area)	<b>N/A</b>	<b>\$0.60</b>	<b>\$0.60</b>
<b>Office</b> (per square foot gross floor area)	<b>N/A</b>	<b>\$0.67</b>	<b>\$0.67</b>
<b>Industrial</b> (per square foot gross floor area)	<b>N/A</b>	<b>\$0.40</b>	<b>\$0.40</b>
<b>Hotel</b> (per room)	<b>N/A</b>	<b>\$902.27</b>	<b>\$902.27</b>
<sup>1</sup> Fees only for Fire; no Metro			

4.02 Parks. In addition to the fees for parks in Chart 4.01-A above, Owner agrees that this development is subject to the Residential Construction Tax, as set forth and defined in Nevada Revised Statutes.

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 if 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 Transportation 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 (an 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 Planned Community 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 Planned Community 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-reference 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 their 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, they 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 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, 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 Planned Community within the area covered by a recorded subdivision map shall be subject to the obligations of Owner as to the portion of the Planned Community 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 Planned Community.

(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 Planned Community 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 Planned Community.

(d) Financial Transactions. Owner has full discretion and authority to transfer, assign or encumber the Planned Community 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 there from, 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.

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 Planned Community. 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 Planned Community. 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, 1<sup>st</sup> Floor  
P.O. Box 551741  
Las Vegas, NV 89155-1741  
Attn: Joel McCulloch

With a Copy to: COUNTY OF CLARK  
OFFICE OF THE DISTRICT ATTORNEY-CIVIL DIVISION  
Clark County Government Center  
500 South Grand Central Parkway, 5<sup>th</sup> 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 residential lot 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 a building permit for the construction of a residence thereon.

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(p) 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 on the day and year first above written, as authorized by Ordinance No. 1579 of the Clark County Code, to be effective on the date shown in Section 2.01(c).

**COUNTY:**

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

Attest:

By: \_\_\_\_\_  
James B. Gibson, Chair

\_\_\_\_\_  
Lynn Marie Goya, County Clerk

**ACKNOWLEDGMENT:**

STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF CLARK     )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

By \_\_\_\_\_, Chair of the Board of County Commissioners, County of Clark, State of Nevada

NOTARY PUBLIC

\_\_\_\_\_  
Signature

My Commission expires: \_\_\_\_\_

OWNER:

Brian Kunez

PRINT OWNER NAME

By: [Signature]  
Owner Signature

ACKNOWLEDGMENT:

STATE OF NEVADA        )  
  )ss:  
COUNTY OF CLARK     )

This instrument was acknowledged before me on the 24<sup>th</sup> day of February, 2022,  
by Brian Kunez  
(Printed Name of Document Signer)

NOTARY PUBLIC

[Signature]  
Signature

My Commission expires: 02-18-2025



**Exhibit "A"**  
**Legal Description**

**(see next page for attachment)**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL 1:**

GOVERNMENT LOT 29 IN SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M.D.M., NEVADA.

**PARCEL 2:**

GOVERNMENT LOT 44, SITUATED IN THE EAST HALF (E1/2) OF THE SOUTHEAST QUARTER (SE1/4) OF THE NORTHWEST QUARTER (NW1/4) OF SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M.D.M., CLARK COUNTY, NEVADA.

**PARCEL 3:**

THAT PORTION OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M. D. M. & M., DESCRIBED AS FOLLOWS:

PARCEL FOUR (4) AS SHOWN BY MAP THEREOF ON FILE 24 OF PARCEL MAPS, PAGE 93, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA.

**PARCEL 4:**

THE NORTH HALF (N 1/2) OF THE WEST HALF (W 1/2) OF GOVERNMENT LOT 43 IN SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M.D.B.&M.

**PARCEL 5:**

EAST HALF (E 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M.D.M.

EXCEPTING THEREFROM THE NORTH THIRTY (30) FEET FOR ROAD PURPOSES AS CONVEYED TO THE COUNTY OF CLARK BY DEED RECORDED JUNE 07, 1991 IN BOOK 910607 AS DOCUMENT NO. 00632, OFFICIAL RECORDS.

**PARCEL 6:**

THE SOUTH HALF (S 1/2) OF THE EAST HALF (E 1/2) OF GOVERNMENT LOT FORTY-THREE (43) IN SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M.D.M.

TOGETHER WITH THAT PORTION RELINQUISHED BY THAT RESOLUTION RELINQUISHING PORTION OF HIGHWAY RIGHT OF WAY RECORDED JULY 10, 1973 IN BOOK 344 AS INSTRUMENT NO. 303839.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE COUNTY OF CLARK BY THAT CERTAIN GRANT DEED RECORDED DECEMBER 21, 1971 IN BOOK 192 AS INSTRUMENT NO. 153571 OF OFFICIAL RECORDS.

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

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GOVERNMENT LOT 29 IN SECTION 20, TOWNSHIP 22 SOUTH, RANGE 61 EAST, M.D.M., NEVADA.

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EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE COUNTY OF CLARK BY THAT CERTAIN GRANT DEED RECORDED DECEMBER 21, 1971 IN BOOK 192 AS INSTRUMENT NO. 153571 OF OFFICIAL RECORDS.

**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**

KB Home Las Vegas, Inc.  
\_\_\_\_\_  
5795 W. Badura Ave., Ste. 180  
\_\_\_\_\_  
Las Vegas, NV 89118  
\_\_\_\_\_

**Applicant/Correspondent**

KB Home Las Vegas, Inc.  
\_\_\_\_\_  
5795 W. Badura Ave., Ste. 180  
\_\_\_\_\_  
Las Vegas, NV 89118  
\_\_\_\_\_

**Exhibit "B"**  
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KB Home Las Vegas, Inc.  
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5795 W. Badura Ave., Ste. 180  
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Las Vegas, NV 89118  
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**Applicant/Correspondent**

KB Home Las Vegas, Inc.  
\_\_\_\_\_  
5795 W. Badura Ave., Ste. 180  
\_\_\_\_\_  
Las Vegas, NV 89118  
\_\_\_\_\_

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

**(see next page for attachments)**

**UPDATE**

SINGLE FAMILY RESIDENTIAL DEVELOPMENT      DEAN MARTIN DR/SERENE AVE  
(TITLE 30)

**PUBLIC HEARING**

APP. NUMBER/OWNER/DESCRIPTION OF REQUEST

**NZC-21-0522-GRAVES M B II & S M FAM TR-EXEMPTION TRUST ETAL:**

**ZONE CHANGE** to reclassify 14.6 acres from an R-E (Rural Estates Residential) Zone to an R-2 (Medium Density Residential) Zone.

**WAIVERS OF DEVELOPMENT STANDARDS** for the following: **1)** increase wall height; **2)** landscaping; and **3)** waive full off-site improvements (curb, gutter, sidewalk, streetlights, and partial paving).

**DESIGN REVIEWS** for the following: **1)** single family residential development; and **2)** finished grade.

Generally located on the east side of Dean Martin Drive and the north side of Serene Avenue within Enterprise (description on file). JJ/md/jd (For possible action)

---

**RELATED INFORMATION:**

**APN:**

177-20-204-003; 177-20-204-005 through 177-20-204-007; 177-20-204-010; 177-20-204-012

**WAIVERS OF DEVELOPMENT STANDARDS:**

1. Increase combined screen wall/retaining wall height up to 14 feet (8 foot retaining wall/6 foot screen wall) where a maximum wall height of 9 feet (3 foot retaining wall/6 foot screen wall) is permitted per Section 30.64.050 (a 56% increase).
2.
  - a. Permit alternative landscaping along street frontages with no sidewalks (Dean Martin Drive and Serene Avenue), where a 15 foot wide landscape area with a detached sidewalk is required along arterial and collector streets per Figures 30.64-17 and 30.64-18.
  - b. Eliminate landscaping adjacent to a less intensive use (rural residential use) where Figure 30.64-11 with 1 tree per 30 feet is required.
  - c. Eliminate the required landscaping adjacent to a freeway buffer wall where landscaping is required per Figure 30.64-4.
3. Waive full off-site improvements (curb, gutter, sidewalks, streetlights, and partial paving) along Dean Martin Drive and Serene Avenue where required per Chapter 30.52.

**DESIGN REVIEWS:**

1. Single family residential development.
2. Increased finished grade to 90 inches where a maximum of 18 inches is the standard per Section 30.32.040 (a 400% increase).

**LAND USE PLAN:**

ENTERPRISE - RESIDENTIAL LOW (UP TO 3.5 DU/AC)

**BACKGROUND:**

**Project Description**

General Summary

- Site Address: 9180 Dean Martin Drive, 3025 and 3175 Vicki Avenue, and 3130 W. Serene Avenue
- Site Acreage: 14.6
- Number of Lots: 96
- Density (du/ac): 6.6
- Minimum/Maximum Lot Size (square feet): 3,325 (gross and net)/7,681 (gross and net)
- Project Type: Single family residential development
- Number of Stories: 1 & 2
- Building Height (feet): Up to 18 (1 story models)/Up to 29.5 (2 story models)
- Square Feet: 1,550 to 1,908 (1 story models)/1,768 to 3,066 (2 story models)

**Neighborhood Meeting Summary**

This request is for a nonconforming zone change to reclassify 14.6 acres from R-E zoning district to an R-2 zoning district to allow a single family residential development. The applicant conducted a neighborhood meeting on July 21, 2021. The required meeting notices were mailed to the neighboring property owners within 1,500 feet of the project site. Eleven people attended the meeting expressing concerns with density, traffic, and the small size of the lots. One person stated that residential development is the best use for the project site.

Site Plans

The plans depict a single family residential development consisting of 96 lots on 14.6 acres with a density of 6.6 dwelling units per acre. The minimum and maximum lot sizes are 3,325 square feet and 7,681 square feet, respectively. The primary ingress and egress to the proposed development is granted from Dean Martin Drive via a 42 foot wide east/west private street, that connects to a 42 foot wide north/south private street. The interior of the development is serviced by a series of 42 foot wide private streets, 3 of which terminate in a cul-de-sac bulb. Four foot wide sidewalks are provided on 1 side of the private streets servicing the subdivision. However, a waiver of development standards is requested for off-site improvements, including the required sidewalks, along Dean Martin Drive and Serene Avenue. Due to the topography of the site, a combined screen wall/retaining wall height up to a maximum of 14 feet will be located along the east perimeter of the project site, adjacent to Lot 28 through Lot 62 along I-15. A combined screen wall/retaining wall height up to a maximum of 14 feet will also be located adjacent to Lot 3 and Lot 4, located within the west half of the site. The increased screen wall/retaining wall height requires a waiver of development standards. Furthermore, a design review is requested to increase finished grade beyond 18 inches within the interior of the site. The maximum grade difference occurs along the east boundary of the site adjacent to I-15.

Landscaping

The plans depict a 10 foot wide landscape area located immediately adjacent to Dean Martin Drive and Serene Avenue. Twenty-four inch box trees planted 35 feet on center, in addition to

shrubs and groundcover, are proposed within the street landscape area. A waiver of development standards is necessary for alternative street landscaping in lieu of the required 15 foot wide landscape area, including detached sidewalks, along Dean Martin Drive and Serene Avenue. Waivers of development standards are requested to eliminate landscaping adjacent to a less intensive use as 2 adjacent lots, located at the northwest portion of the project site, are undeveloped, zoned R-E, and have a planned land use of Residential Low. The third residential lot adjacent to the development, located at the southwest portion of the project site, contains a single family residence with R-E zoning and a planned land use of Residential Low. A waiver is also requested to eliminate the landscaping requirement adjacent to the freeway buffer along I-15.

#### Elevations

The plans depict 1 to 2 story model homes with multiple elevations. The 1 and 2 story homes have maximum heights of 18 feet and 29.5 feet, respectively. The proposed models consist of a pitched, concrete tile roof featuring stucco siding, faux shutters, and decorative stone veneer.

#### Floor Plans

The 1 story model homes feature 4 different floor plans ranging between 1,550 square feet to 1,908 square feet. The 2 story model homes feature 6 different floor plans ranging between 1,768 square feet to 3,066 square feet. The models feature multiple bedrooms, bathrooms, dining room, kitchen, and a great room. All models feature 2 car garages.

#### Applicant's Justification

The increase to the maximum screen wall/retaining wall height occurs along the eastern portion of the site adjacent to I-15. The 6 foot increase in retaining wall height is necessary due to the increase in grade within the site needed to allow the lots to access the public sewer main that is proposed to be extended under I-15 along the Serene Avenue alignment. Additionally, an 8 foot high sound wall is expected to be installed along the I-15 frontage to mitigate noise levels for the future subdivision residents. Requests to have the public roadways adjacent to the site remain 'rural' were made by the adjacent residents during the neighborhood meetings held for the project. The waiver request for off-site improvements is included to address the neighbors' concerns that 'full' street improvements are not in keeping with the adjacent neighborhood. Access road paving exists on Dean Martin Drive and Serene Avenue along the majority of the project frontage. Approximately 300 feet of access road paving will be constructed with this project on the east portion of Serene Avenue. The request to waive landscaping is made in conjunction with the request to construct Dean Martin Drive and Serene Avenue to 'rural' standards (which would eliminate curb, gutter, sidewalk, and streetlights). Alternative landscaping for the Dean Martin Drive and Serene Avenue frontages is proposed and would provide a mixture of 24 inch box and 15 gallon trees at approximately 35 feet spacing on-center along with shrubs and groundcover planted to cover more than 50 percent of the landscaped area. The applicant proposes to construct an 8 foot high sound wall along the project's I-15 frontage. This is consistent with the sound wall that is constructed directly across I-15 on the east side. With the proposed 8 foot high wall, landscaping installed within the project limits would not provide significant additional buffering.

The adjacent undeveloped property to the north (APN 177-20-104-013) is planned as Business and Design/Research Park (BDRP) and, although presently zoned R-E, is anticipated to develop in the future as a commercial use under BDRP or as Compact Residential with a non-conforming zone change. The properties located north of the Vicki Avenue alignment and east of Dean Martin Drive include the office building on APN 177-20-204-004 (zoned C-P) and 2 vacant parcels (APNs 177-20-204-001 & 002) which are expected to develop in the future as commercial or Compact Residential uses. The parcel at the northeast corner of Dean Martin Drive & Serene Avenue (APN 177-20-204-011) has an existing residential structure; however the property appears to be vacant as evidenced by the boarded windows and chained padlocked entry gates. It is anticipated that this property will be developed in the future as commercial. The proposed lots that are directly adjacent to this parcel (Lot 69, Lot 70, Lot 71, Lot 74, and Lot 75) average 6,480 square feet, which allows additional space between the existing home and proposed homes.

A maximum increase of 6 feet to the finished grade is requested and occurs along the east boundary of the site adjacent to I-15 and is necessary to provide sanitary sewer service to the site. The area does not presently have public sewer collection facilities and this project will construct a sewer main extension under I-15 along the Serene Avenue alignment from the existing sanitary sewer main located east of I-15. The on-site increase in grade allows the site to utilize the proposed sewer main extension.

**Prior Land Use Requests**

Application Number	Request	Action	Date
LUP-20-700038	Redesignate the land use category from RL (Residential Low) to CG (Commercial General)	Cancelled by BCC	July 2020

**Surrounding Land Use**

	Planned Land Use Category	Zoning District	Existing Land Use
North	Business and Design/Research Park	R-E	Undeveloped
South	Residential Low (up to 3.5 du/ac)	R-E	Single family residential & undeveloped
East	Commercial Tourist	H-2 & R-3	Freeway, single family & multiple family residential
West	Rural Neighborhood Preservation (up to 2 du/ac) & Residential Low (up to 3.5 du/ac)	C-P, R-E, & R-E (RNP-I)	Single family residential & undeveloped

The subject site and the surrounding area are in the Public Facilities Needs Assessment (PFNA) area.

### Related Applications

Application Number	Request
VS-21-0523	A request to vacate and abandon patent easements and right-of-way is a companion item on this agenda.
TM-21-500149	A tentative map for a 96 lot single family residential development 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

#### Current Planning

##### Zone Change

The applicant shall provide Compelling Justification that approval of the nonconforming zoning boundary amendment is appropriate. A Compelling Justification means the satisfaction of the following criteria as listed below:

- 1. A change in law, policies, trends, or facts after the adoption, readoption or amendment of the land use plan that have substantially changed the character or condition of the area, or the circumstances surrounding the property, which makes the proposed nonconforming zone boundary amendment appropriate.*

According to the applicant, the current trend is the need for additional single family residential development in this area and in the Las Vegas valley in general. The demand for single family residential housing continues to remain high while the supply remains very limited as indicated by the continual increase in home values and cost, and the short time frames that homes remain available on the open market. This trend fuels the need for residential development at higher densities than previously planned to meet the demands. In this instance, the proposed project is located between Dean Martin Drive (80 foot wide right-of-way) and I-15. The proposed R-2 zoning to allow residential development is appropriate for the property.

Immediately to the north of the proposed subdivision is an undeveloped 2.6 acre parcel zoned R-E with a planned land use of Business and Design/Research Park. To the south of the project site, across Serene Avenue, are developed parcels with single family residences and undeveloped parcels zoned R-E with a planned land use of Residential Low. To the east of the proposed development is I-15. To the west of the project site are 2 undeveloped parcels zoned R-E, an office building zoned C-P, and an existing single family residence zoned R-E, with a planned land use of Residential Low. To the west, across Dean Martin Drive, are multiple single-family residences and 3 undeveloped lots zoned R-E (RNP-I) with a planned land use of Rural Neighborhood Preservation. The trend in this area is for low density single family residential development. The proposed zone change to R-2 for single family residential development is inconsistent and incompatible with the existing and approved development in this area. Staff finds there have been no changes to the law, policies, trends, or facts after the latest adoption of the Enterprise Land Use Plan which makes the proposed zoning appropriate.

- 2. The density and intensity of the uses allowed by the nonconforming zoning is compatible with the existing and planned land uses in the surrounding area.*

The applicant states the site is presently master planned as Residential Low with the parcels to the north planned as Business and Design/Research Park (BDRP), to the south as Residential Low and to the west, across Dean Martin Drive, as Rural Neighborhood Preservation. As this project is located between Dean Martin Drive (an 80 foot wide roadway) and I-15, it serves as a buffer between the Rural Neighborhood Preservation (RNP) properties to the west and I-15 (which carries approximately 140,000 vehicles per day). The proposed R-2 zoning is compatible with the BDRP land use to the north and will create the buffer for the RNP area west of Dean Martin Drive.

Immediately to the south are developed R-E zoned lots with single family residences. To the west, across Dean Martin Drive, are multiple single family residences and 3 undeveloped lots zoned R-E (RNP-I) with a planned land use of Rural Neighborhood Preservation. The density for the existing single family residential development in the surrounding area is 2 dwelling units per acre, while the proposed development features 6.6 dwelling units per acre. The request for a suburban medium density residential development in a neighborhood that is abutting existing single family residential development zoned R-E (RNP-I) to the west, is out of character with development in the immediate area.

- 3. There will not be a substantial adverse effect on public facilities and services, such as roads, access, schools, parks, fire and police facilities, and stormwater and drainage facilities, as a result of the uses allowed by the nonconforming zoning.*

The applicant indicates the site is bordered by Dean Martin Drive on the west (planned 80 foot wide right-of-way) and Serene Avenue on the south (planned 80 foot wide right-of-way) with access proposed on Dean Martin Drive. Adequate access and circulation is provided by the public streets. The proposed project will not have a substantial adverse effect to the area roadways, Fire and Police facilities, parks, area utilities, or schools. Stormwater management will be in accordance with Clark County Flood Control standards and will not adversely affect adjacent properties.

There has been no indication from service providers that this request will have a substantial adverse effect on public facilities and services. The school district has indicated this development would generate 16 additional elementary school students, 9 middle school students, and 13 high school students. Ortwein Elementary School would serve this development and is currently 154 students under capacity. Tarkanian Middle School and Desert Oasis High School are currently 447 and 595 students over capacity, respectively.

- 4. The proposed nonconforming zoning conforms to other applicable adopted plans, goals, and policies.*

According to the applicant, the development proposal complies with several goals and policies of the Clark County Comprehensive Master Plan. The development provides housing alternatives to meet a range of lifestyle choices, ages, and affordability levels, complying with Land Use

Goal 7 of the Comprehensive Master Plan. The Comprehensive Master Plan states site plan designs should be required to provide the maximum feasible protection to people and land uses sensitive to air pollution through the use of buffer zones such as barriers and/or distance from emissions sources. The proposed sound wall along I-15 to mitigate traffic noise complies with this policy.

Staff finds the intrusion of higher density residential in the surrounding area may create demands that were not planned for and potentially change the character of the planned area where undeveloped land exists. Furthermore, Urban Specific Policy 8 of the Clark County Comprehensive Plan discourages nonconforming zone changes.

## **Summary**

### Zone Change

Staff is concerned with the potential incompatibility between the proposed development and the existing single family residential development abutting the project site to the west and south, across Dean Martin Drive and Serene Avenue, respectively. Approval of this project will permit higher density zoning to intrude into an established R-E and R-E (RNP-I) area. The density and intensity of the residential development is not consistent with the existing and planned developments in this area. Staff finds the applicant has not provided a sufficient Compelling Justification for this nonconforming zone boundary amendment; therefore, staff recommends denial.

### 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 finds the topography of the project site warrants an increase to the retaining wall height proposed for the development. The greatest increase to the combined screen wall/retaining wall height is up to 14 feet, occurring along the east boundary of the project site adjacent to I-15. The increase to the wall height should have minimal impact on the surrounding residential development. However, since staff is not supporting the nonconforming zone change and the design review, staff cannot support this request.

### Waiver of Development Standards #2

The intent of the detached sidewalk requirement is to ensure a proper buffer exists between the sidewalk and the adjacent arterial (Dean Martin Drive) and collector (Serene Avenue) streets. The proposed single family residential development has approximately 500 and 450 linear feet of street frontage along Dean Martin Drive and Serene Avenue, respectively. Although there are not any detached sidewalks within the immediate area, staff finds eliminating the detached sidewalk requirement along the public right-of-way contradicts Urban Specific Policy 11, which states that all developments outside of rural areas should provide sidewalks on both sides of any

public street. Staff is also concerned that the lack of public sidewalks will create a vehicular/pedestrian conflict as pedestrians will have no choice but to walk within the right-of-way. The request for alternative landscaping, consisting of a 10 foot wide landscape area along Dean Martin Drive and Serene Avenue, is a self-imposed burden; therefore, staff cannot support this request.

Staff finds the request to eliminate landscape adjacent to a less intensive use is a self-imposed burden. Although there are 2 undeveloped R-E zoned properties immediately adjacent to the project site, the lots can potentially be constructed with single family residences in the future. Although the single family residence immediately adjacent to the west of the development may appear to be abandoned, a future property owner may want to replace the structure with a new residence; therefore, staff recommends denial.

The intent of landscaping adjacent to a freeway buffer wall is to break-up the monotony of the solid wall adjacent to a single family residential development. The waiver request should have minimal to no impact on the surrounding land uses, with the exception of the residential lots interior to the project site. However, since staff is not supporting the nonconforming zone change and the design review, staff cannot support this request.

#### Design Review #1

Establishing an isolated, stand alone medium density single family residential development in the immediate area through a nonconforming zone change, with surrounding low density residential development, may potentially have adverse impacts to the immediate neighborhood. Unexpected land use patterns and development may have significant impacts on traffic, noise, and lighting that may lead to significant changes to the existing area. The density and intensity proposed with the R-2 single family residential development, in conjunction with the waivers of development standards, are not consistent and compatible with the surrounding low density residential development. Furthermore, staff is concerned with only 1 point of access to the public streets to serve 96 lots. In addition, the lack of public sidewalks along Dean Martin Drive and Serene Avenue will create a safety hazard for pedestrians; therefore, staff cannot support this request.

#### **Public Works - Development Review**

##### Waiver of Development Standards #3

These parcels are located within the Special Flood Hazard Area (SFHA) as designated by the Federal Emergency Management Agency (FEMA). Installing off-site improvements would help provide drainage control in this area. Additionally, projects to the north of this site will be installing full improvements; therefore, staff cannot support this request.

##### Design Review #2

This design review represents the maximum grade difference within the boundary of this application. This information is based on preliminary data to set the worst case scenario. Staff will continue to evaluate the site through the technical studies required for this application. Approval of this application will not prevent staff from requiring an alternate design to meet Clark County Code, Title 30, or previous land use approval. However, since Planning is recommending denial of this application in its entirety, staff cannot support this design review.

### **Department of Aviation**

The property lies just outside the AE-60 (60-65 DNL) noise contour for the McCarran International Airport and is subject to continuing aircraft noise and over-flights. Future demand for air travel and airport operations is expected to increase significantly. Clark County intends to continue to upgrade the McCarran International Airport facilities to meet future air traffic demand.

### **Staff Recommendation**

Denial. This item has been forwarded to the Board of County Commissioners 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 Comprehensive Master Plan, Title 30, and/or the Nevada Revised Statutes.

### **STAFF CONDITIONS:**

#### **Southern Nevada Health District (SNHD) - Septic**

- **Applicant is advised that there are active septic permits on APNs 177-20-204-005, 177-20-204-006, 177-20-204-007, and 177-20-204-012; to connect to municipal sewer and remove the septic systems in accordance with Section 17 of the SNHD Regulations Governing Individual Sewage Disposal Systems and Liquid Waste Management; and to submit documentation to SNHD showing that the systems have been properly removed.**

**PLANNING COMMISSION ACTION:** November 2, 2021 – APPROVED – Vote: Unanimous

#### **Current Planning**

- Resolution of Intent to complete in 4 years;
- 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;
- Design review as a public hearing for significant changes;
- Only single story homes adjacent to existing single story homes.
- 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 new application for a nonconforming zone boundary amendment may be required in the event the building program and/or conditions of the subject application are proposed to be modified in the future; a substantial change in circumstances or regulations may warrant denial or added conditions to an extension of time; and that 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.

#### **Public Works - Development Review**

- Provide asphalt pedestrian pathways on Dean Martin Drive and Serene Avenue;
- Examine possibility of entry/exit on Serene Avenue;
- Drainage study and compliance;

- Drainage study must demonstrate that the proposed grade elevation differences outside that allowed by Section 30.32.040(a)(9) are needed to mitigate drainage through the site;
- Traffic study and compliance;
- Right-of-way dedication to include 40 feet for Dean Martin Drive and 40 feet for Serene Avenue;
- 30 days to submit a Separate Document to the Map Team for the required right-of-way dedications and any corresponding easements for any collector street or larger;
- 90 days to record required right-of-way dedications and any corresponding easements for any collector street or larger;
- All other right-of-way and easement dedications to record with the subdivision map;
- Applicant to coordinate a contribution for improvements for Dean Martin Drive and Serene Avenue.
- Applicant is advised that this site is located within a Special Flood Hazard Area (SFHA) as designated by the Federal Emergency Management Agency (FEMA); and that approval of this application will not prevent Public Works from requiring an alternate design to meet Clark County Code, Title 30, or previous land use approvals.

**Department of Aviation**

- Applicant is advised that issuing a stand-alone noise disclosure statement to the purchaser or renter of each residential unit in the proposed development and to forward the completed and recorded noise disclosure statements to the Department of Aviation's Noise Office is strongly encouraged; 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 #0358-2021 to obtain your POC exhibit; and that flow contributions exceeding CCWRD estimates may require another POC analysis.

**TAB/CAC:** Enterprise - approval (provide asphalt pedestrian pathways on Dean Martin Drive and Serene Avenue; design review as a public hearing for significant changes; only single story homes adjacent to existing single story homes; and examine possibility of entry/exit on Serene Avenue).

**APPROVALS: 2 cards**

**PROTESTS: 9 cards**

**APPLICANT:** KB HOME LAS VEGAS

**CONTACT:** THOMASON CONSULTING ENGINEERS, 7080 LA CIENEGA ST, STE 200, LAS VEGAS, NV 89119



# 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

December 20, 2021

THOMASON CONSULTING ENGINEERS  
7080 LA CIENEGA STREET, SUITE 200  
LAS VEGAS, NV 89119

REFERENCE: NZC-21-0522

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 **December 08, 2021** 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 -**

#### **Current Planning**

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#### **BOARD OF COUNTY COMMISSIONERS**

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



# Department of Comprehensive Planning

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Nancy A. Amundsen, Director

- **Traffic study and compliance;**
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#### BOARD OF COUNTY COMMISSIONERS

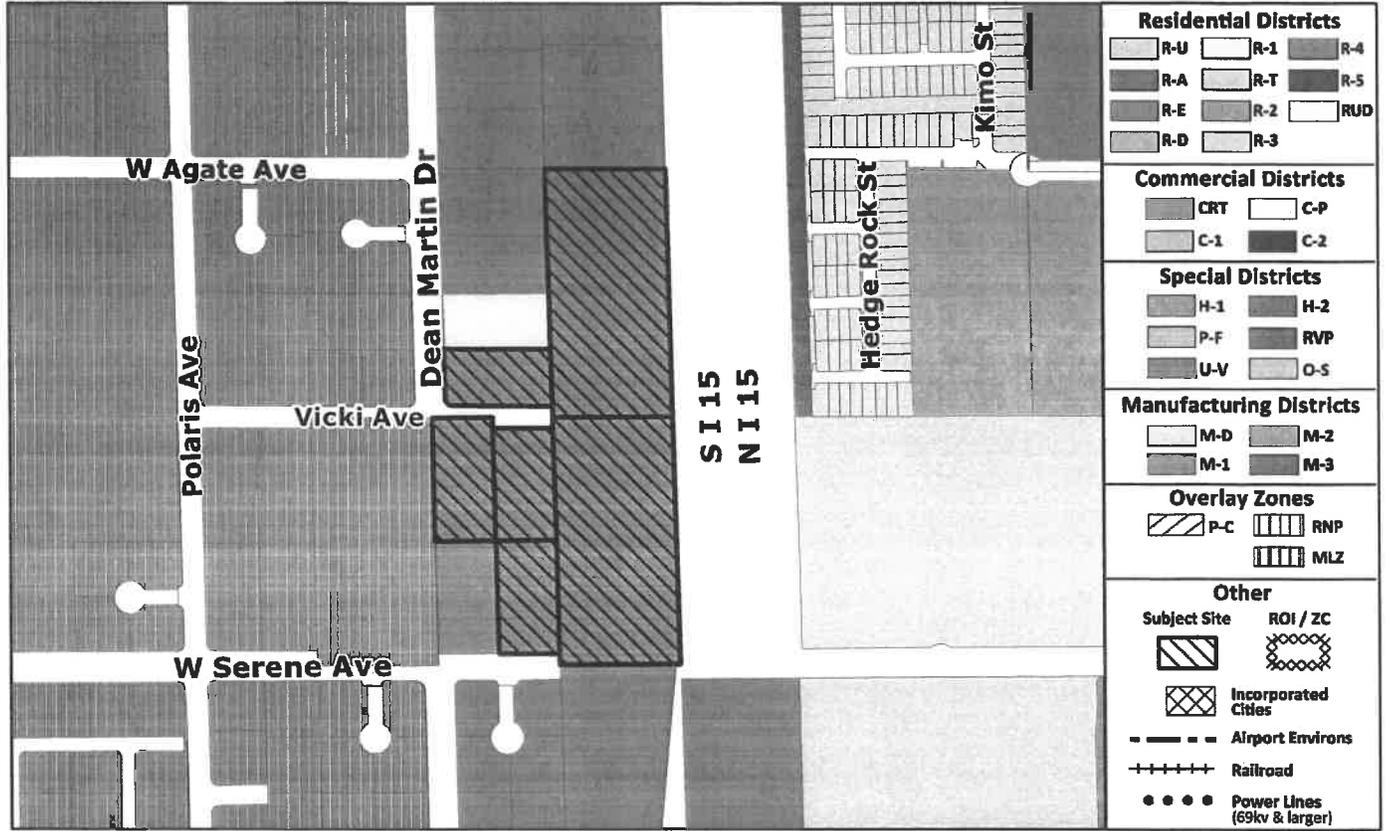
MARILYN KIRKPATRICK, Chair • JAMES B. GIBSON, Vice Chair  
MICHAEL NAFT • JUSTIN C. JONES • TICK SEGERBLOM • ROSS MILLER • WILLIAM MCCURDY II  
YOLANDA T. KING, County Manager

# Commission Agenda Map

NZC-21-0522

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)  
 17720204005  
 17720204003  
 17720204012

See complete list on file



Map Created on 9/16/2021



ORD - 22 - 900108

This map is for assessment use only and does NOT represent a survey.  
 No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office.  
 This map is compiled from official records, including surveys and deeds, but only contains the information required for assessment. See the recorded documents for more detailed legal information.  
 USE THIS SCALE (FEET) WHEN MAP REDUCED FROM 1" X 1" ORIGINAL

**ASSESSOR'S PARCELS - CLARK COUNTY, NV.**  
 Briana Johnson - Assessor

**MAP LEGEND**

—	PARCEL BOUNDARY	□	CONDOMINIUM UNIT	001	ROAD PARCEL NUMBER
- - -	SUB BOUNDARY	□	AIR SPACE PCL	002	PARCEL NUMBER
---	FIELD BOUNDARY	□	RIGHT OF WAY PCL	1.00	ACREAGE
- · - · -	ROAD EASEMENT	□	SUB-SURFACE PCL	202	PARCEL SUB/SEQ NUMBER
- · - · -	HATCH / LEADER LINE	□		FB 24-45	PLAT RECORDING NUMBER
- · - · -	HISTORIC LOT LINE	□		5	BLOCK NUMBER
- · - · -	HISTORIC SUB BOUNDARY	□		5	LOT NUMBER
- · - · -	HISTORIC PLAT BOUNDARY	□		GL 5	GOV. LOT NUMBER
- · - · -	SECTION LINE	□			

Scale: 1" = 200'

Rev: 1/8/2019



TAX DIST 635