

**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-21-900667: Introduce an ordinance to consider adoption of a Development Agreement with Rainbow Arby Apts, LLC for a multi-family residential project (Rainbow - Arby Apartments) on 9.4 acres, generally located south of Arby Avenue and west of Redwood Street within Enterprise. MN/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-21-0291 for a multi-family residential project (Rainbow - Arby Apartments) on 9.4 acres, generally located south of Arby Avenue and west of Redwood Street 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 set a public hearing for December 22, 2021.

**Cleared For Agenda**  
12/08/21

BILL NO. \_\_\_\_\_

SUMMARY - An ordinance to adopt the Development Agreement with Rainbow Arby Apts, LLC for a multi-family residential (Rainbow – Arby Apartments) on 9.4 acres, generally located south of Arby Avenue and west of Redwood Street within Enterprise.

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

AN ORDINANCE TO ADOPT THE DEVELOPMENT AGREEMENT WITH RAINBOW ARBY APTS, LLC FOR A MULTI-FAMILY RESIDENTIAL (RAINBOW – ARBY APARTMENTS) ON 9.4 ACRES, GENERALLY LOCATED SOUTH OF ARBY AVENUE AND WEST OF REDWOOD STREET 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 Rainbow Arby Apts, LLC for a multi-family residential (Rainbow – Arby Apartments) on 9.4 acres, generally located south of Arby Avenue and west of Redwood Street 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 \_\_\_\_\_, 2021

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

PASSED on the \_\_\_\_\_ day of \_\_\_\_\_, 2021

VOTE:

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

ABSTAINING:

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

ABSENT:

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

BOARD OF COUNTY COMMISSIONERS  
CLARK COUNTY, NEVADA

By: \_\_\_\_\_  
MARILYN K. KIRKPATRICK, Chair

ATTEST:

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

This ordinance shall be in force and effect from and after the \_\_\_\_\_ day  
of \_\_\_\_\_ 2021.

APN(s): 176-02-401-003, 004, 005, 006, 007<sup>✓</sup>  
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

**RAINBOW ARBY APTS, LLC**

FOR

**RAINBOW – ARBY APARTMENTS**

**ORD-21-900667**

## 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 **RAINBOW ARBY APTS, 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 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-21-0291**, 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 wavier 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: \_\_\_\_\_  
Marilyn K. Kirkpatrick, 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:

Reinier Santana

PRINT OWNER NAME

By:

Owner Signature

**ACKNOWLEDGMENT:**

STATE OF NEVADA       )  
                                  )ss:  
COUNTY OF CLARK     )

This instrument was acknowledged before me on the 4<sup>th</sup> day of November, 2021,

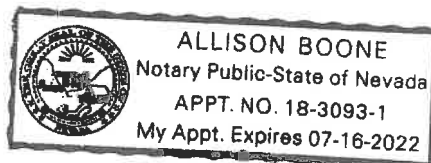
By Reinier Santana.

(Printed Name of Document Signer)

NOTARY PUBLIC

Signature

My Commission expires: 07-16-2022



**Exhibit “A”**  
**Legal Description**

**(see next page for attachment)**

**WALLACE MORRIS KLINE SURVEYING, LLC**  
**Land Survey Consulting**

**APN'S: 176-02-401-003, 004, 005, 006 AND 007**  
**ZONE CHANGE AREA**

**EXHIBIT "A"**

**EXPLANATION:** THIS DESCRIPTION REPRESENTS A ZONE CHANGE AREA IN SUPPORT OF THE "RAINBOW ARBY APARTMENTS" PROJECT. THIS DESCRIPTION IS PROVIDED AS A CONVENIENCE AND IS NOT INTENDED TO BE USED TO TRANSFER TITLE PRIOR TO FULL COMPLIANCE WITH THE PROVISIONS OF N.R.S. CHAPTER 278.

**DESCRIPTION**

A PORTION OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION 2, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE WEST HALF (W1/2) OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SAID SECTION 2;

**TOGETHER WITH** LOTS 1, 2, 3 AND 4 OF THAT CERTAIN PARCEL MAP ON FILE IN FILE 4, PAGE 51 OF PARCEL MAPS, OFFICIAL RECORDS, CLARK COUNTY, NEVADA;

**EXCEPTING THEREFROM** A PORTION OF "CAPOVILLA AVENUE" A PUBLIC STREET VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED AUGUST 03, 2004 IN BOOK 20040803, AS INSTRUMENT NO. 04806, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

CONTAINING 9.49 ACRES, MORE OR LESS.

TEX J. BROOKS, PLS  
NEVADA LICENSE NO. 13747

**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:**

<b>Owner</b>	<u>Rainbow Arby Apts, LLC</u> <u>6021 S. Fort Apache Road #100</u> <u>Las Vegas, NV 89148</u>
<b>Applicant/Correspondent</b>	<u>Ovation Contracting, Inc. -- Janet Goyer</u> <u>6021 S. Fort Apache Road #100</u> <u>Las Vegas, NV 89148</u>

**Exhibit “C”**

**Agenda Sheet, Notice of Final Action, and Agenda Map**

**(see next page for attachments)**

08/18/21 BCC AGENDA SHEET

MULTIPLE FAMILY DEVELOPMENT  
(TITLE 30)

**UPDATE**  
ARBY AVE/REDWOOD ST

PUBLIC HEARING

APP. NUMBER/OWNER/DESCRIPTION OF REQUEST

**NZC-21-0291-RAINBOW ARBY APTS, LLC:**

**ZONE CHANGE** to reclassify 9.4 acres from a C-2 (General Commercial) Zone and an M-1 (Light Manufacturing) Zone to an R-5 (Apartment Residential) Zone.

**WAIVERS OF DEVELOPMENT STANDARDS** for the following: 1) increase building height; and 2) allow an alternative security gate design and geometrics.

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

Generally located on the south side of Arby Avenue and the west side of Redwood Street within Enterprise (description on file). MN/md/jd (For possible action)

---

RELATED INFORMATION:

**APN:**

176-02-401-003 through 176-02-401-007

**WAIVERS OF DEVELOPMENT STANDARDS:**

1. Increase building height to 59 feet where 50 feet is the maximum permitted per Table 30.40-3 (an 18% increase).
2. Allow an alternative security gate design and geometrics where compliance with Uniform Standard Drawing 222.1 is required.

**DESIGN REVIEWS:**

1. Multiple family development.
2. Permit alternative parking lot landscaping where landscaping per Figure 30.64-14 is required.
3. Increased finished grade to 48 inches where a maximum of 18 inches is the standard per Section 30.32.040 (a 167% increase).

**LAND USE PLAN:**

ENTERPRISE – BUSINESS AND DESIGN/RESEARCH PARK

ENTERPRISE – COMMERCIAL GENERAL

**BACKGROUND:**

**Project Description**

General Summary

- Site Address: N/A



- Site Acreage: 9.4
- Number of Units: 302
- Density (du/ac): 34
- Project Type: Multiple family development
- Number of Stories: 4
- Building Height (feet): 59
- Open Space Required/Provided: 30,200/88,000
- Parking Required/Provided: 506/524

### **Neighborhood Meeting Summary**

This request is for a nonconforming zone change to reclassify approximately 9.4 acres from a C-2 zone and an M-1 zone to an R-5 zoning district for a multiple family residential development. The applicant conducted a neighborhood meeting on March 8, 2021, as required by the nonconforming zone boundary amendment process. No members of the public attended the meeting.

### **Site Plans**

The plans depict a multiple family residential development situated on a 9.4 acre project site consisting of 302 dwelling units with a density of 34 dwelling units per acre. The proposal consists of 2 multiple family buildings, which are centrally located within the project site. Building 1 is set back 160 feet from the north property line, adjacent to Arby Avenue, 140 feet from the east property line, adjacent to Redwood Street, and 110 feet from the west property line. Building 2 is set back 120 feet from the south property lines, 135 feet from the west property line, and 115 feet from the east property line, adjacent to Redwood Street. The development requires 30,200 square feet of open space where 88,000 square feet of open space is provided. Open space is centrally located between Building 1 and Building 2 consisting of a pool and courtyard. Additional open space areas within the buildings feature a fitness center and yoga studio, a social club and game room, a demonstration kitchen, lounge, creative studio, dog wash area, library and computer room, and various patio and balcony areas. Access to the site is granted by a proposed driveway located along Arby Avenue. Access to the site is controlled by security gates located at the northeast and northwest corners of Building 1. A waiver of development standards is required as the security gates do not feature a center island or turnaround area as set forth in the Uniform Standard Drawings. A 5 foot wide detached sidewalk is provided along Arby Avenue and Redwood Street. The multiple family development requires 506 parking spaces where 524 spaces are provided. An increase to finished grade is also part of this request, and will predominantly occur at the northeast corner of Building 1 and the project site.

### **Landscaping**

The plans depict a 15 foot wide landscape area along Arby Avenue and Redwood Street featuring a 5 foot wide detached sidewalk. Twenty-four inch box trees, in addition to shrubs and groundcover, are planted within the street landscape areas. In lieu of providing the required amount of landscape finger islands within the interior of the site, specifically where carports are proposed within the north, south, east, and west portions of the site, additional trees have been distributed throughout the interior of the project site. The development requires 246 trees within

the parking lot and street landscape areas. The plans depict a total of 292 trees equitably distributed throughout the interior and perimeter of the project site.

#### Elevations

The 4 story multiple family residential buildings extend up to 59 feet in height, necessitating a waiver of development standards. Exterior materials include a stucco exterior, decorative metal awnings, railings around balconies, and faux stone tiles. The mass of the buildings are reduced by off-set surface planes and parapet walls along the roofline at varying heights.

#### Floor Plans

The plans depict 183, one bedroom units and 119, two bedroom units. Open space areas within the buildings feature a fitness center and yoga studio, a social club and game room, a demonstration kitchen, lounge, creative studio, dog wash area, library and computer room, and various patio and balcony areas.

#### Signage

Signage is not a part of this request.

#### Applicant's Justification

Residents will gain access through the security gate with a transponder. Since the design of the security gate is without a call box, the applicant's design of the entry way does not include a center island or turnaround area. Because of this design, the site does not need the center island or turnaround area as set forth in Uniform Standard Drawing 222.1; therefore, the applicant is requesting to waive these requirements. However, the distance between the gate and the Redwood Street right-of-way is approximately 55 feet which will allow drivers without access to safely turn around on site and help reduce the potential for vehicles stacking into the right-of-way. In an R-5 development, the maximum allowed height is 50 feet. Here, the 4 story buildings are approximately 59 feet in height. As a result, the applicant is requesting a waiver to increase the height of the 4 story buildings by 9 feet. The reason for the 9 feet increase in height is as follows: 1) each floor is approximately 9 feet in height; 2) the top floor will have vaulted ceilings; 3) unlike many other apartment structures, the mechanical units are not placed on top of the roof but rather the mechanical units are cut into the roof and therefore provide an enhanced architectural feature; and 4) the slight increase in height is not for residential use but rather an architectural enhancement.

Because of the carports on site, the applicant is not able to provide parking lot landscape islands every 6 parking spaces as required by Code. The applicant is providing parking lot landscape islands every 12 parking spaces. In lieu of providing the parking lot landscape islands every 6 parking spaces, the site is providing an additional 60 trees that otherwise are not required by Code. Since the site is providing the additional landscaping and the carports are an additional amenity, a design review for alternative parking lot landscaping is appropriate. The applicant is requesting to increase the finished grade to 48 inches where 18 inches is allowed. The slight increase in grade of an additional 30 inches is required in order to comply with ADA requirements.

**Prior Land Use Requests**

Application Number	Request	Action	Date
VS-18-0775	Vacated and abandoned patent easements - expired	Approved by PC	November 2018
ZC-18-0555	Reclassified the project site from C-2 and M-1 to U-V zoning for a mixed-used development project	Approved by BCC	October 2018
NZC-0844-13	Reclassified 25.3 acres from R-E, C-2, and M-1 to R-2 zoning for a single family residential development	Denied by BCC	October 2014
VS-1559-03	Vacated and abandoned a portion of right-of-way being Capovilla Avenue - recorded	Approved by PC	December 2003
ZC-1126-03	Reclassified a 5 acre portion of the project site from R-E to C-2 zoning	Approved by BCC	August 2003
ZC-0548-99	Reclassified a 4.1 acre portion of the project site from R-E to M-1 zoning	Approved by BCC	May 1999

**Surrounding Land Use**

	Planned Land Use Category	Zoning District	Existing Land Use
North	Business and Design/Research Park	C-2	Undeveloped
South	Business and Design/Research Park & Commercial General	C-2	Undeveloped
East	Residential High (8 du/ac to 18 du/ac)	R-3	Multiple family residential
West	Commercial General	C-2	Undeveloped

**Related Applications**

Application Number	Request
VS-21-0292	A request to vacate patent easements and right-of-way 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.*

The applicant states there have been multiple changes within the last several years with the recent development of multiple family residential in the area. Additionally, most of this corridor is located within the CMA and provides limited options for residential development despite the demand for housing opportunities in the area has become more prevalent. With recent changes and current development of these parcels, the trends in the area support the proposed development.

Staff finds that since the 2014 adoption of the Enterprise Land Use Plan, substantial commercial and employment centers have been approved and developed within the surrounding area. For example, Rainbow Boulevard is an arterial street that is predominately planned for commercial uses. The commercial development within the surrounding area has increased the demand for additional housing. The demand for additional housing, in conjunction with the increase in commercial development, constitutes a change in trends since the previous adoption of the Enterprise Land Use Plan that makes the proposed R-5 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.*

According to the applicant, with the current development of multiple family residences in the area, the density and intensity of this proposed use is compatible with the surrounding area. There are numerous existing multiple family developments in the area including but not limited to the following: 1) developed R-3 zoned multiple family development located at the southeast corner of Redwood Street and Arby Avenue, 2) multiple family developments about a quarter of a mile to the east of the site, and 3) several other multiple family developments within the CC 215 corridor between Rainbow Boulevard and Russell Road: (i) Level 25 at Durango (Durango Drive & Post Road), (ii) The Wyatt (Buffalo Drive and Badura Avenue), (iii) South Beach (Russell Road and CC 215), (iv) Aspire (Tropicana Avenue and CC 215), and (v) Zone5 (Buffalo Drive and CC 215). Other compatible uses around the site include: 1) the site is located near the CC 215 and Rainbow Boulevard interchange which is conducive for multiple family development; 2) the site is near commercial uses along the Rainbow Boulevard corridor between the CC 215 and Warm Springs Road; and 3) most of the corridor along the CC 215 between Jones Boulevard and Durango Drive is located within the CMA and, as a result, provides limited options for residential development despite the demand for housing opportunities in the area becoming more prevalent with the commercial and retail development.

The area to the northwest of the project site, across Arby Avenue, is a C-2 zoned retail development with a planned land use of Commercial General. Immediately to the north of the project site, across Arby Avenue, are undeveloped parcels zoned R-E and C-2 with a planned land use of Business and Design/Research Park. However, a nonconforming zone change to an R-4 zoning district consisting of 336 multiple family units at 24 dwelling units per acre is proposed on these parcels. To the east of the project site, across Redwood Street, is an R-3

zoned multiple family residential development consisting of 360 units with a density of 17.7 dwelling units per acre. To the west of the project site is a 5 acre, undeveloped C-2 zoned parcel previously approved for a shopping center. Immediately to the south of the project site is a proposed nonconforming zone boundary amendment for a multiple family development consisting of 330 units with a density of 21.4 dwelling units per acre. To the southwest of the project site, across Capovilla Avenue, is an existing shopping center zoned C-2. Therefore, the proposed R-5 zoning is compatible with the density and intensity of the existing and planned land uses in the area, and should provide an appropriate transition from the R-3 zoned multiple family development to the east, the proposed R-4 multiple family development to the south, and the previously approved shopping center to the west.

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 proposed zone change will not result in any additional impacts on surrounding infrastructure not already contemplated in the area. The site will provide recreational amenities which will not burden Clark County recreation facilities. There are no 3 bedroom units proposed which limits the number of families with school aged children who might live at the development. Finally, the Applicant will mitigate any impacts the proposed development may have.

There has been no indication from service providers that this request will have an adverse or substantial effect on public facilities and services. The school district has indicated that this development would generate 40 additional elementary school, 19 middle school, and 21 high school students. The school district indicates Alamo Elementary School is under capacity by 220 students. Canarelli Middle School and Sierra Vista High School are over capacity by 10 and 136 students, respectively.

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

The applicant states pursuant to the general policies of the new Urban Land Use Policies, Policy 10 "encourages site design to be compatible with adjacent land use and off-site circulation patterns." Here, the site is located near the CC 215 and Rainbow Boulevard interchange. It is located near public facilities and mass transit stops necessary to support multiple family development and it is located near other multiple family developments, residential neighbors, and office/commercial complexes. Not only is the proposed development compatible with the general policy of the Urban Land Use Policies, but it is also compatible with the more specific Multiple Family Residential policies of the Urban Land Use Policies.

Staff finds the proposed nonconforming zone boundary amendment conforms to several goals and policies in the Comprehensive Master Plan. Goal 2 of the Plan encourages providing opportunities to mix uses such as commercial, office, and multiple family residential near one another. Furthermore, Goal 10 promotes higher intensity activity centers with multiple uses such

as business, commercial, and multiple family residential. Additionally, Growth Management, Community Design Policy 6 encourages the adjacency of living and employment opportunities. Therefore, the location of the proposed R-5 residential zoning district is an appropriate and compatible use with the existing and planned residential and commercial developments within the surrounding area.

## **Summary**

### **Zone Change**

A substantial increase in commercial development in the area since the last adoption of the Enterprise Land Use Plan has contributed to an increased demand for housing. In addition, the proposed R-5 zoning is compatible with the density and intensity of the surrounding development and planned uses. Utility purveyors have not indicated that the zoning would negatively impact public facilities and services, and the proposed zoning complies with goals and policies in the Comprehensive Master Plan; therefore, staff can support the nonconforming zone boundary amendment to R-5 zoning.

### **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 does not have an objection to the increased building height as it should have minimal to no impact on the surrounding land uses. The increased building height is necessary to accommodate the vaulted ceilings within the dwelling units, in addition to screening the mechanical units that are cut into the roof. The screening for the mechanical units provides an additional architectural enhancement to the building; therefore, staff recommends approval of this request.

#### **Design Review #1**

Staff finds the proposed multiple family residential development complies with several goals and policies within the Comprehensive Master Plan. Urban Specific Policy 51 encourages several amenities such as usable open space, swimming pools, and community centers; Policy 54 encourages multiple family buildings to be oriented in varying directions to avoid the monotony of a linear pattern; and Policy 55 encourages design alternatives to reduce the visual mass of buildings. With this development, the project provides several amenities including open space, a swimming pool, clubhouse, and fitness center. Furthermore, the buildings include off-set surface planes, an aesthetically pleasing color palette, and parapet walls along the roofline at various heights; therefore, staff can support the design review request.

### Design Review #2

Staff finds the proposed alternative parking lot landscaping, including the distribution of the trees and landscape finger islands complies with the Comprehensive Master Plan by encouraging screened parking areas and extensive landscaping. The multiple family development requires a total of 246 trees for the street landscape and interior parking lot areas. The site has been designed to include an additional 46 trees (292 trees overall) that will be distributed throughout the interior of the development. The proposed landscaping will reduce the "heat island" effect, and improve the aesthetics of the project site and the surrounding area. Staff finds that the request to permit alternative parking lot landscaping within the interior of the site is reasonable. Approximately 46 additional trees will be planted within the interior of the site, in lieu of the required landscape finger islands. The trees will provide additional shade and improve the overall aesthetics of the multiple family development; therefore, staff recommends approval.

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

#### Waiver of Development Standards #2

Staff cannot support the alternative security gate design. Only residents will be able to access the secondary entrance on Redwood Street. There is no turnaround area which will create multiple safety hazards if vehicles are not able to access the multiple family complex. There will be no safe movements to get back into the right-of-way and the potential stacking of vehicles may cause collisions.

### Design Review #3

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.

### **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**

Approval of the zone change, design reviews, and waiver of development standards #1; denial of waiver of development standards #2. This item has been forwarded to the Board of County Commissioners 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 Comprehensive Master Plan, Title 30, and/or the Nevada Revised Statutes.

**PLANNING COMMISSION ACTION: August 3, 2021 – APPROVED – Vote: Unanimous**

**Current Planning**

- Resolution of Intent to complete in 3 years with any extension of time to be a public hearing;
- 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 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**

- 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;
- Full off-site improvements;
- Right-of-way dedication to include 25 feet to the back of curb for Arby Avenue and a portion of a cul-de-sac for Capovilla Avenue;
- 30 days to submit a Separate Document to the Map Team for the required right-of-way dedications and any corresponding easements;
- 90 days to record required right-of-way dedications and any corresponding easements.
- Applicant is advised that the installation of detached sidewalks will require the vacation of excess right-of-way in some areas and the dedication to back of curb and granting necessary easements for utilities, pedestrian access, streetlights, and traffic control; 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.



**Building Department - Fire Prevention**

- Applicant is advised to submit plans for review and approval prior to installing any gates, speed humps (speed bumps not allowed), and any other fire apparatus access roadway obstructions.

**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 #0256-2021-2020 to obtain your POC exhibit; and that flow contributions exceeding CCWRD estimates may require a new POC analysis.

**TAB/CAC: Enterprise - approval of the zone change, waiver of development standards #1, and design reviews; denial of waiver of development standards #2 (add Current Planning condition: Terrace and landscape any combination of retaining and decorative walls over 9 feet in height along the public right-of-way).**

**APPROVALS: 5 cards**

**PROTESTS: 6 cards, 2 letters**

**APPLICANT: OVATION CONTRACTING, INC**

**CONTACT: KAEMPFER CROWELL, 1980 FESTIVAL PLAZA DR., STE 650, LAS VEGAS, NV 89135**



# 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

August 30, 2021

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

REFERENCE: NZC-21-0291

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 August 18, 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**

- Resolution of Intent to complete in 3 years with any extension of time to be a public hearing;
- 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 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**

- Drainage study and compliance;

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

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



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Nancy A. Amundsen, Director

- 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;
- Full off-site improvements;
- Right-of-way dedication to include 25 feet to the back of curb for Arby Avenue and a portion of a cul-de-sac for Capovilla Avenue;
- 30 days to submit a Separate Document to the Map Team for the required right-of-way dedications and any corresponding easements;
- 90 days to record required right-of-way dedications and any corresponding easements.
- Applicant is advised that the installation of detached sidewalks will require the vacation of excess right-of-way in some areas and the dedication to back of curb and granting necessary easements for utilities, pedestrian access, streetlights, and traffic control; 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.

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## BOARD OF COUNTY COMMISSIONERS

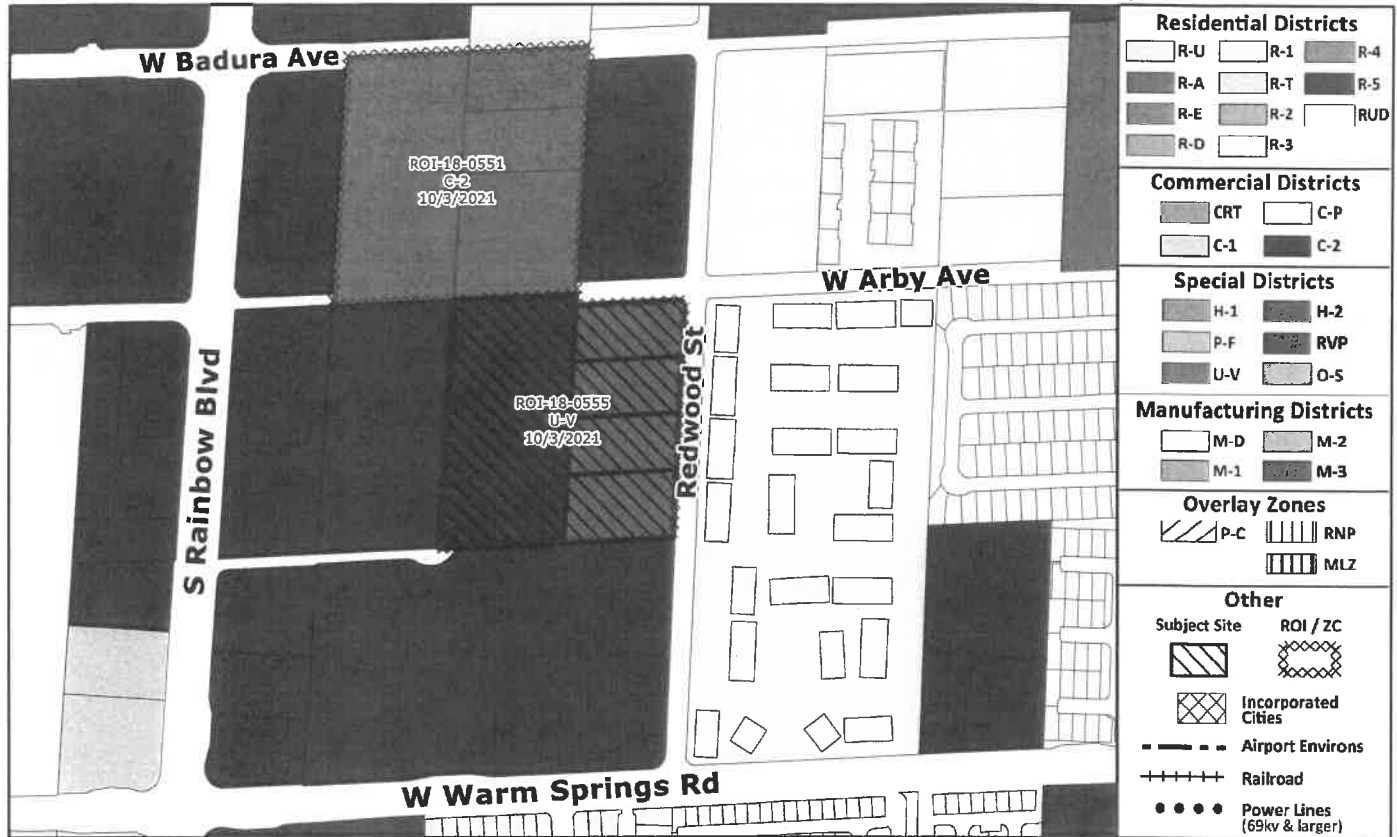
MARILYN KIRKPATRICK, Chair • JAMES B. GIBSON, Vice Chair  
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YOLANDA T. KING, County Manager

# Commission Agenda Map

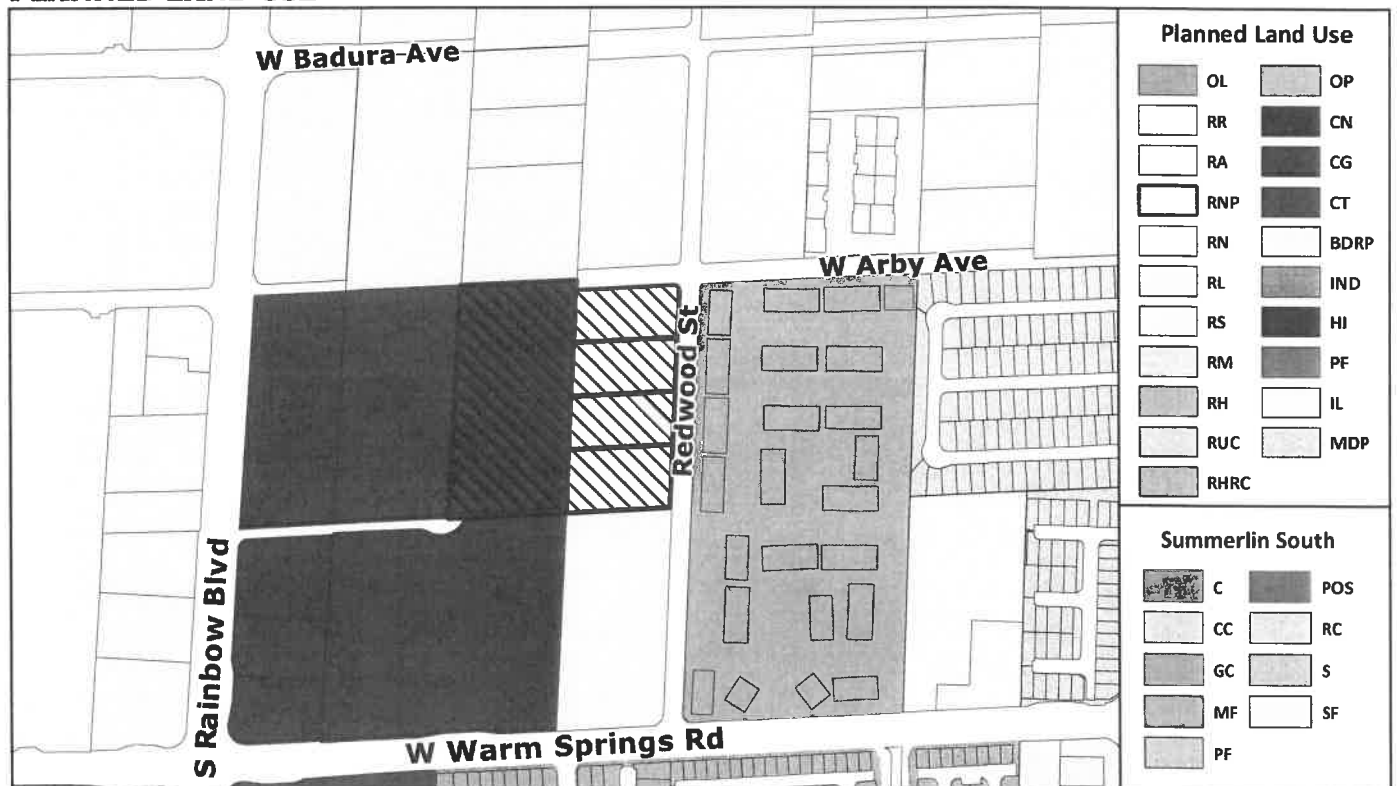
NZC-21-0291

## ZONING

Clark County Department of Comprehensive Planning, Clark County, Nevada



## 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)

17602401004

17602401005

17602401006

See complete list on file



0 125 250 500 Feet  
Map Created on 6/30/2021



ORD-21-900667

<b>ASSESSOR'S PARCELS - CLARK COUNTY, NV.</b> Briana Johnson - Assessor	
<b>MAP LEGEND</b>	
<input type="checkbox"/> PARCEL BOUNDARY <input type="checkbox"/> SUB BOUNDARY <input type="checkbox"/> PMLD BOUNDARY <input type="checkbox"/> ROAD BOUNDARY <input type="checkbox"/> MATCH/LEADER LINE <input type="checkbox"/> HISTORIC LOT LINE <input type="checkbox"/> HISTORIC SUB BOUNDARY <input type="checkbox"/> SECTION LINE	
<input type="checkbox"/> CONDOMINIUM UNIT <input type="checkbox"/> AIR SPACE PCL <input type="checkbox"/> RIGHT OF WAY PCL <input type="checkbox"/> SUB-SURFACE PCL <input type="checkbox"/> 202 PARCEL SUBSEID NUMBER <input type="checkbox"/> PB 34-48 PLAT RECORDING NUMBER <input type="checkbox"/> 5 BLOCK NUMBER <input type="checkbox"/> GLS GOV LOT NUMBER	
<b>NOTES</b> 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 SCALED MAP FOR RECORDING PURPOSES ONLY	
<b>Scale: 1" = 200'</b>	
<b>Rev: 1/8/2019</b>	
<b>T22S R80E</b>	
<b>2</b>	
<b>S 2 SW 4</b>	
<b>176-02-4</b>	
