

**PLANNING AND ZONING MEETING  
THURSDAY, SEPTEMBER 20, 2018  
CITY COUNCIL CHAMBERS**

These minutes are a summary of the meeting. For full details view online at [www.casperwy.gov](http://www.casperwy.gov) on the Meetings and Agendas web page. The Planning and Zoning Commission held a meeting at 6:00 p.m., on Thursday, September 20, 2018, in the Council Chambers, City Hall, 200 North David Street, Casper, Wyoming.

Members Present:            Don Redder  
                                      Bob King  
                                      Fred Feth  
                                      Ryan Waterbury  
                                      Susan Frank  
                                      Erik Aune

Absent Members:        Randy Hein

Others present:            Craig Collins, City Planner  
                                      Dee Hardy, Administrative Support Technician  
                                      Wallace Trembath, Assistant City Attorney  
                                      Bob Hopkins, Council Liaison  
                                      Brandon Daigle, 1616 East F Street  
                                      Michael Reid, 1615 Luker Drive  
                                      George Hartman, 7220 Elkhorn Valley Drive  
                                      James Chaput, 7950 Hat Six Road, Cheyenne, WY  
                                      Jim Kanelos, 1421 West 60<sup>th</sup> Street  
                                      Judy Studer, 141 South Center Street, Suite 500  
                                      Tim Postel, 2727 Hogan Drive  
                                      Ryan Ford, 159 North Wolcott Street, Suite 400

**I.        MINUTES OF THE PREVIOUS MEETING**

Chairman Redder asked if there were additions or corrections to the minutes of the August 16, 2018 Planning & Zoning Commission meeting.

Chairman Redder called for a motion to approve the minutes of the August 16, 2018 Planning & Zoning Commission meeting.

Mr. Feth made a motion to approve the minutes of the August 16, 2018 meeting. The motion was seconded by Mr. Waterbury. All those present voted aye. Minutes approved.

## II. PUBLIC HEARING

**The Chairman advised the applicants that it takes four (4) affirmative votes to carry any motion not just a majority of those commission members present. Anything less than four (4) votes is a denial. Applicants can postpone their Public Hearing until next month in anticipation of more Planning Commission members being present, if they so desire.**

PLN-18-018-RZ – Petition to vacate and replat Betty Luker Parkway Campus #2 and a portion of Elkhorn Valley No. 5, Lot 1, to create Elkhorn Village Addition, comprising 21.0 acres, more or less; and consideration of a request for rezoning of the proposed Elkhorn Village Addition from PUD (Planned Unit Development), AG (Urban Agriculture), and R-2 (One Unit Residential) to entirely R-2 (One Unit Residential). Said property is generally located northeast of the intersection of Newport and E. 12<sup>th</sup> Streets. Applicant: Blackmore Homes, Inc.

Craig Collins, City Planner, presented the staff report and recommended that if the Planning and Zoning Commission finds that the requested replat meets the minimum requirements of the Casper Municipal Code, staff recommends that the Planning and Zoning Commission approve the replat and forward it to the City Council with a “do pass” recommendation, with the following conditions:

1. On all double-frontage lots along Newport Drive, East 12<sup>th</sup> Street and Elkhorn Valley Drive/Gladstone, vehicular access shall be prohibited along said streets, and all vehicular access, curb cuts, driveways and garages shall access internal streets only.
2. The plat shall be amended to dedicate the southern portion of Lot 53, in direct alignment with a planned future extension of East 12<sup>th</sup> Street, as public right-of-way.
3. Prior to the recording of the plat, the applicant shall obtain approval of all street names within the subdivision from the City of Casper Emergency Services departments.
4. Prior to City Council review, the applicant shall obtain approval of a drainage study and traffic study by the Engineering Department.

If, after the required public hearing, the Planning and Zoning Commission finds that the requested rezone of the proposed Elkhorn Village Addition to R-2 (One Unit Residential) meets the minimum requirements of the Casper Municipal Code, and is in conformance

with the Comprehensive Land Use Plan; staff recommends that the Planning and Zoning Commission approve the zone change, and forward a “do-pass” recommendation to the City Council.

Mr. Collins entered nine (9) exhibits into the record for this case.

Chairman Redder asked if there were questions for staff.

Mr. King asked if the drainage and traffic studies should be completed and approved before council approval or just in the works.

Mr. Collins advised that those studies should be done and approved before going to council.

Ms. Frank inquired about vehicular access within the subdivision and noted lot number 34 doesn't appear to have internal access.

Mr. Collins advised that condition was worded for lots that have double frontage. He advised that she was correct lot 34 does not have double frontage.

Chairman Redder noted that Newport, and East 12<sup>th</sup> Street were listed in the staff report and dedication but Elkhorn Valley Drive was not listed in the dedication of the plat.

Mr. Collins stated that the wording on the dedication lists Newport and East 12<sup>th</sup> Streets, but does not list Elkhorn Valley Drive. He commended Chairman Redder on catching that.

Chairman Redder opened the public hearing and asked for the person representing the case to come forward and explain the application.

Brandon Daigle, River Valley Builders, 1616 East F Street, spoke in favor of this case, and advised the replat will include Elkhorn Valley Drive in the dedication.

Mr. King asked if the four (4) conditions listed in the staff report were acceptable.

Mr. Daigle stated the four (4) conditions listed in the staff report were acceptable.

Chairman Redder mentioned that there were several instances where the dedication is vague. He noted there were some tracts larger than others and indicated the following uses signage, drainage and walking.

Mr. Daigle advised those tracts will be owned and maintained by Black Hills Homes. He stated that their current budget includes sidewalks and sod in the development. He advised that the dedication will be corrected.

Ms. Frank asked the applicant if he had seen the public comments submitted to the Planning and Zoning Commission, if so, would the development include a fence around it.

Mr. Daigle replied that he had seen the public comments, and the lots along the back would have six foot fences. However, there would not be a fence all the way around the subdivision.

Chairman Redder asked for anyone wishing to comment in favor of or opposition to this case.

Michael Reid, 1615 Luker Drive spoke in favor of this case.

George Hartman, 1220 Elkhorn Valley Drive, advised he sent in the letter inquiring about a barrier/fence along East 12<sup>th</sup> Street.

Chairman Redder stated that there will be a fence, however, not a stone fence like the one across the street.

Mr. Daigle stated that type of fence may be entertained in the future, but at the present time the budget did not allow for stone type fence.

There being no others to speak, Chairman Redder closed the public hearing and advised that the replat and zone change will be voted on separately. He entertained a motion to approve, approve with conditions, deny, or table PLN-18-018-RZ a replat creating Elkhorn Village Addition.

Ms. Frank made a motion to approve PLN-18-018-RZ a replat creating Elkhorn Village Addition, with Conditions No. 1-4 listed in the staff report, and forward a “do pass” recommendation to Council. The motion was seconded by Mr. King.

There was discussion on:

- Adding a 5<sup>th</sup> Condition to require a fence around Newport.
- Does the plan require land owners to build fence, hence having a fence all the way around the subdivision.
- Developed in a prudent manner, no need for a 5<sup>th</sup> Condition.

Mr. Feth called for the question. All those present voted aye with the exception of Mr. Waterbury who voted nay. Motion passed.

Chairman Redder entertained a motion to approve, deny or table PLN-18-018-RZ a rezone to R-2 (One Unit Residential). Mr. King made a motion to approve PLN-18-018-RZ, rezoning to R-2 (One Unit Residential) and forward a “do pass” recommendation to Council. The motion was seconded by Ms. Frank All those present voted aye. Motion passed.

**The Chairman advised the applicants that it takes four (4) affirmative votes to carry any motion not just a majority of those commission members present. Anything less than four (4) votes is a denial. Applicants can postpone their Public Hearing until**

**next month in anticipation of more Planning Commission members being present, if they so desire.**

PLN-18-019-ARZ – Petition to annex and plat a portion of the S1/2NW1/4, Section 9, Township 33 North, Range 79 West, 6<sup>th</sup> P.M., Natrona County Wyoming, and a vacation and replat of Lot 2, Block 1 and Lot 1, Block 2, Bailey Addition No. 2 and Lot 1 Stoval Brothers Addition, to create State Office Building Addition, comprising 11.06 acres, more or less, located at 444 West Collins Drive, and consideration of a request to establish the zoning of the subdivision as City zoning classification OYDSPC (Old Yellowstone District and South Poplar Corridor). Applicant: State of Wyoming Department of Administration & Information.

Craig Collins, City Planner, presented the staff report and recommended that if the Planning and Zoning Commission finds that the requested annexation and plat meet the minimum requirements of the Casper Municipal Code, staff recommends that the Planning and Zoning Commission approve the requested annexation, plat and establish the requested zoning of OYDSPC (Old Yellowstone District and South Poplar Corridor), and forward it to the City Council with a “do pass” recommendation.

Mr. Collins entered eight (8) exhibits into the record for this case.

Chairman Redder asked if there were question for staff.

Ms. Frank, asked if the Commission was considering three (3) items with this application, and was annexation one of them.

Mr. Collins replied yes. He stated they would be annexing the pieces of railroad land that has not been annexed.

Chairman Redder opened the public hearing and asked for the person representing the case to come forward and explain the application.

Jim Chaput, 7950 Hat Six Road, spoke in favor of this case.

Chairman Redder asked for anyone wishing to comment in favor of or opposition to this case.

Jim Kanelos, stated that the railroad land behind the Office retains water, he asked the State to consider irrigation and drainage that would be beneficial to everyone. He stated aconcerns about retaining his parking.

Jim Chaput advised that there has been discussions about the drainage issue behind the Office. He stated that the landscaping plans are not final as of yet, but will take into consideration their neighbors regarding irrigation and drainage.

There being no one to speak, Chairman Redder closed the public hearing and entertained a motion to approve, approve with conditions, deny, or table PLN-18-019-ARZ, regarding the annexation.

Mr. Waterbury made a motion to approve case PLN-18-018-ARZ, regarding an annexation creating State Office Building Addition, for the five (5) reasons listed in the staff report, and forward a “do pass” recommendation to City Council. The motion was seconded by Ms. Frank. All those present voted aye. Motion carried.

Chairman Redder entertained a motion to approve, approve with conditions, deny, or table PLN-18-019-ARZ, regarding the plat.

Mr. King made a motion to approve case PLN-18-019-ARZ regarding the plat of the State Office Building Addition, and forward a “do pass” recommendation to City Council. The motion was seconded by Mr. Waterbury. All those present voted aye. Motion carried.

Chairman Redder entertained a motion to approve, deny or table PLN-18-019-ARZ, regarding the zoning.

Mr. Waterbury made a motion to approve case PLN-18-019-ARZ, regarding the zoning of the The State Office Building Addition to OYDSPC (Old Yellowstone District and South Poplar Corridor), and forward a “do pass” recommendation to City Council. The motion was seconded by Mr. Feth. All those present voted aye. Motion carried.

**The Chairman advised the applicants that it takes four (4) affirmative votes to carry any motion not just a majority of those commission members present. Anything less than four (4) votes is a denial. Applicants can postpone their Public Hearing until next month in anticipation of more Planning Commission members being present, if they so desire.**

**PLN-18-020-E** – Petition for an exception/variance to allow an additional 120.55 square feet of signage, in excess of the current 600 square foot signage limit in a C-2 (General Business) zoning district, located on Klassen (RPLT L 4-6) Lot 5 Commercial, located at 600 West F Street. Applicant: McDonalds Real Estate Company.

Craig Collins, City Planner, presented the staff report and recommended that absent information that may be presented during public testimony, staff recommends that the Commission deny the exception request, based on the following finding:

Under the circumstances presented, strict compliance with Title 17 of the Zoning Code would not create an undue hardship on the applicant because; there are no unique physical limitations or characteristics of the property that deny the applicant

the reasonable use of the property and which do not apply generally to all the other land or buildings in the neighborhood.

Mr. Collins entered seven (7) exhibits into the record for this case.

Chairman Redder asked if there were question for staff.

Chairman Redder asks Mr. Trembath about leeway in this case since it is in litigation.

Mr. Trembath, Assistant City Attorney, advised that he would let Ms. Studer speak to the litigation that is ongoing. Before the Planning and Zoning Commission this evening is the issue of land use. He advised that his view of the land use is stated very clearly in the staff report. He advised that Ms. Studer has a different view of how the Ordinances read, and if the Commission thinks it is rational there are three (3) options for this case 1) follow the recommendation in the staff report, 2) continue the case, or 3) consider what the applicants are presenting, and see if you find it reasonable, or not, in that case you will be able to follow a different recommendation. He could address that after the applicant presents their case.

Chairman Redder opened the public hearing and asked for the person representing the case to come forward and explain the application.

Ms. Judy Studer, 141 South Center Street, Suite 500, spoke on behalf of McDonald's, she advised that this is a unique hearing, you will never hear these conditions again. Initially, when McDonald's purchased this property there was a small signage easements. In an easements you can build in it or do whatever you want because they get the easement and you still have use of your property. The unusual circumstance of this case is a Federal Judge did not agree with that general law and granted an exclusive easement of 300 square feet of signage or 50 percent. They are only using thirty-two (32) square feet. This gave them an exclusive easement that McDonald's cannot touch, and now McDonald's has been restricted to 300 square feet. The Planning Department approved 420 square feet of signage. McDonald's is technically in compliance with City Code. However, the applicant is in contempt of court, McDonald's respectfully disagrees with the Judge's ruling, and doesn't understand why it cannot be left as is until the appeals court decides the matter. She advised that they are currently faced with a motion to show cause of why they are not in contempt or we would be required to tear down the sign that brings in business and money tomorrow; unless the Commission is willing to grant some relief. Ms. Studer was unaware of staff's recommendation, until she received the staff report. She then had some discussions with the City about conditions and then the concept of giving the client a temporary Exception which will allow them to do nothing, be in compliance with the Court Order, and await the outcome of the Appeals Court. Should they be successful they can put the sign back up. She advised that is the hardship in this case.

She believes the Planning and Zoning Commission, legally, has the authority to do this, in the Municipal Code there is a difference between the definition of an exception and a variance. A variance is specific because it requires a physical issue with the lot and that

would be a necessary hardship because the property's irregular, narrow, shallow, steep physical conditions. Looking at the definition of an exception, it's not tied to the physical conditions of the property all that needs to be shown is a unique characteristic and that is what they have applied for an exception/variance. The Planning and Zoning Commission has the authority to modify the request and that is why they are asking for a temporary variance.

She stated that, her interpretation of the code is as follows; looking at subsection F of City Code 220, and you read the first three lines/words the Commission may vary, remember variance, and under G the Commission shall have the authority to grant exceptions. There is a distinction, F applies to variances and G applies to exceptions. In law specific applies over general. Specifically looking at the sign ordinances of the Municipal Code in Section 17.96.100(E) exception procedure states that to grant an exception from the strict application of this Chapter will result in practical difficulties or a necessary hardship to the person owning, or having beneficial use of the property, or sign for which an exception is sought. She emphasized that point. She stated that the Commission has specific authority under the special sign ordinances that would allow them to grant a temporary exception. Again, they are asking for time to allow the Appellate Court to make a final decision about what is going to happen to the signage on this property. For the record she cited some case law Sanson v. District of Columbia Board of Zoning. The case was an exception for construction of a storage facility in a residential area nothing to do with the physical condition of the property. Another case dealt with changing a manufacturing/industrial building into multi-family housing, again, having nothing to do with the physical characteristics. They both had unique circumstances presented. With all due respect, lawyers can have a different analysis of what these regulations mean. Her belief is that the Commission may grant a temporary exception for a period of time of two years. The temporary exception will enable McDonald's not to violate the Municipal Code, the exception will expire by its own terms, and give them the time needed for a resolution. She provided a lists of conditions with explanations that all had been met. She thanked the Commission for their patience, and offered to answer questions.

Mr. Collins entered the material provided by Ms. Studer as "Exhibit H."

Chairman Redder asked if there were questions for Ms. Studer.

Mr. King asked Ms. Studer to shed some more light on the ramifications should the case be denied. He asked if that meant McDonald's would have to tear down signs tomorrow, and is the sign we are talking about the big golden arches?

Ms. Studer replied yes. She stated that they asked the Judge if the current signage could remain on premises until a decision had been reached. That request was denied. Should this case be denied this evening their choices would be to appeal this case or tear down the sign.

Chairman Redder asked for anyone wishing to comment in favor of or opposition to this case.



Tim Postel, 2727 Hogan Drive, spoke to the importance of the sign. He owns all three (3) McDonald's in Casper and has experience with losing a sign due to high winds. He noted that the sign in question guides tourists off the Interstate to his restaurant, and many take time to explore the City. He noted that the signs are expensive.

Ryan Ford, Williams, Porter, Day and Neville, 4445 East 23<sup>rd</sup> Street, spoke on behalf of Casco LLC. He stated that Casco was not there to speak for or against granting this exception. He note that there had been a declaration in place for quite some time and McDonald's was aware of it. One of the rights within it granted Casco to put up signs, it began with JB's restaurant and continues. He stated that Casco's dispute is with McDonald's Real Estate Co. and not McDonald's restaurant. In 2013 Casco spent money and time putting together a sign plan and it was ignored by McDonald's Real Estate Co. He stated that Casco's perspective is granting this exception may or may not help.

Mr. King asked Mr. Ford if the Planning and Zoning Commission were to grant a variance with a time limit on it did he or Ms. Studer have an idea of how much time litigation would take.

Mr. Ford advised that would be a hard question to specifically answer. His best guess would be anywhere from two (2) years to in excess of five (5) or more.

There being no others to speak Chairman Redder closed the public hearing and entertained a motion to approve, approve with conditions, deny, or table PLN-18-020-E.

Mr. King, for discussion purposes, made a motion to approve case PLN-18-020-E to allow an additional 120.55 square feet of signage, in excess of the current 600 square foot signage limit in a C-2 (General Business) zoning district, located at 600 West F Street for one (1) year. The motion was seconded by Mr. Waterbury.

Mr. King asks Mr. Trembath if the motion is legitimate.

Mr. Trembath provided an example to approve a temporary exception to the Commission.

There was discussion on:

- Unique case.
- Appreciation that all cases are vetted through staff and the Comprehensive Land Use Plan.
- Hardship could be the expense to tear down the sign.
- Common sense should be a factor.
- Time limit of one (1) year enough, should it be extended due to time frame of legal system.

Mr. King amended his motion to approve, with one (1) condition and five (5) findings,

1. This temporary exception will not substantially impair the land use of the neighborhood, or adversely affect the safety of the adjacent property because the signage, as it currently exists complies with the Casper Municipal Code. And, under this temporary exception (two years' time), long-term compliance with the Casper Municipal Code is safeguarded. The safety of the signage must meet the same code requirements as other signs in Casper, Wyoming.
2. This temporary exception will not conflict with the Comprehensive Land Use Plan as adopted by the Commission and confirmed by the Council, nor violate the purpose or intent of this ordinance because signs are allowed under the Casper Municipal Code and the Comprehensive Plan. This temporary exception contains a condition to safeguard compliance with the Casper Municipal Code on a long-term basis.
3. Under the particular circumstances presented as set forth in the findings of the Commission, strict compliance with the terms of the Casper Municipal Code will cause undue hardship upon the applicant because it causes the owner to expend substantial funds that may or may not be necessary, depending on the results of other proceedings, litigation and future contingencies. This temporary exception allows the proceedings to play out, while still protecting the City's long-term interest in limiting signage to the amounts allowable under the Casper Municipal Code.
4. The applicant, or predecessors in interest, have not, by affirmative act or acts, caused the condition or use to exist in violation of the terms of the Casper Municipal Code because the temporary exception is only necessary because of a valid Court order in on-going litigation.
5. The circumstances in this case are unique. For purposes of this temporary exception only, and specifically because the conditions of this temporary exception safeguard long-term compliance with the Casper Municipal Code, while also allowing litigation, other proceedings and contingencies to work themselves out over time, we find that the hardship on the applicant is a personal hardship that may not require unique physical limitations or characteristics of the property that deny McDonalds Real Estate Company the reasonable use of its property.

a temporary Exception of up to an additional 120.55 square feet of signage, because strict compliance with Title 17 of the Municipal Code, specific to the current applicant. The

condition is that this temporary Exception automatically terminates two years after its approval by the Planning and Zoning Commission.

Chairman Redder calls for the vote on the amended motion. All those present voted aye with the exception of Mr. Aune who voted nay.

Mr. King reads the five (5) findings for clarification of his motion. Chairman Redder calls for the vote on the motion. All those present voted aye with the exception of Mr. Aune who voted nay. Motion Carried.

**III. COUNCIL ACTIONS:**

None.

**IV. SPECIAL ISSUES:**

None.

**V. COMMUNICATIONS:**

A. Commission:

Chairman Redder asked the representative from the Old Yellowstone District Advisory Commission if there was a report. Mr. Feth advised that there was nothing to report at this time.

B. Community Development Director:

Liz Becher, Community Development Director, stated that on Friday, September 21, 2018, there will be a tour of the Plains properties. She advised that the properties have been put up for sale by Request for Proposal (RFP) which will be due in 160 days or mid-February. She invited any interested Planning and Zoning Commissioner to join them. She noted that an October training session had been put on the calendar.

C. Other Communications:

There were none.

D. Council Liaison:

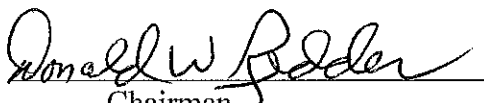
Bob Hopkins, Council Liaison, thanked the Commission for moving forward the State Office Building project. He advised that it will be a good addition to the City.

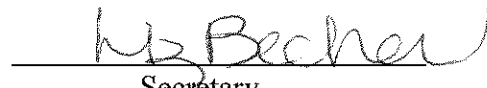
Mr. King asked for an update on the parking ordinance relating specifically to parkways. He advised that the Planning and Zoning Commission reviewed it at their regular June, 2018 monthly meeting and was unanimous that it not be allowed.

Mr. Hopkins advised that Council wanted to wait until the Parking Study had been completed, which was irrelevant to the issue, and Council has not addressed the matter to date. He invited any member of the Commission to address Council at one of their regular meetings.

## VI. ADJOURNMENT

Chairman Redder called for a motion for the adjournment of the meeting. A motion was made by Ms. Frank and seconded by Mr. Waterbury to adjourn the meeting. All present voted aye. Motion carried. The meeting was adjourned at 8:06 p.m.

  
Chairman

  
Secretary