

AGENDA
PLANNING AND ZONING MEETING
September 20, 2018
6:00 P.M.
COUNCIL CHAMBERS
CITY HALL, 200 NORTH DAVID

Meetings can be viewed online at www.casperwy.gov on the Planning Commission web page.

PLANNING AND ZONING POLICY
PUBLIC STATEMENTS

1. Use of Cellular telephones is not permitted, and such telephones shall be turned off or otherwise silenced during the Planning and Zoning Meeting.
2. Speaking to the Planning and Zoning Commission (These guidelines are also posted at the podium in the Council Chambers).
 - Clearly state your name and address.
 - Please keep your remarks pertinent to the issue being considered by the Planning and Zoning Commission.
 - Please do not repeat the same statements that were made by a previous speaker.
 - Please speak to the Planning and Zoning Commission as you would like to be spoken to.
 - Please do not address Applicants or other audience members directly.
 - Please make your comments at the podium and directed to the Planning and Zoning Commission.
3. The City of Casper Planning and Zoning Commission is a volunteer body composed of members of the Casper Community, and appointed by the Casper City Council. The Commission acts as a quasi-judicial panel, making final decisions on some specific items, and recommendations to the City Council on others as dictated by law. The Commission may only consider evidence about any case as it relates to existing law. The Commission cannot make or change planning or zoning laws, regulations, policies or guidelines.

AGENDA

- I. CALL TO ORDER**
- II. MINUTES: August 16, 2018 Meeting**
- III. PUBLIC HEARINGS:**

- A. **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. 12th Streets. Applicant: Blackmore Homes, Inc.
- B. **PLN-18-019-ARZ** – Petition to annex and plat a portion of the S1/2NW1/4, Section 9, Township 33 North, Range 79 West, 6th 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.
- C. **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.

VI. COUNCIL ACTIONS:

The following item(s) have been approved by the City Council since the last Planning and Zoning Commission meeting.

A vacation and replat creating Mesa Addition No. 11, Lots 4A and 5A.

V. SPECIAL ISSUES:

VI. COMMUNICATIONS:

- A. **Commission**
- B. **Community Development Director**
 - 1) **Old Business Items**
 - 2) **New Business Items**
- C. **Council Liaison**
- D. **Other Communications**

VII. ADJOURNMENT

**PLANNING AND ZONING MEETING
THURSDAY, AUGUST 16, 2018
CITY COUNCIL CHAMBERS**

These minutes are a summary of the meeting. For full details view online at 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, August 16, 2018, in the Council Chambers, City Hall, 200 North David Street, Casper, Wyoming.

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

Absent Members: None

Others present: Craig Collins, City Planner
 Dee Hardy, Administrative Support Technician
 Wallace Trembath, Assistant City Attorney
 Bob Hopkins, Council Liaison
 Jim Lorimer, 2727 North Central Avenue, Phoenix, AZ
 Kelly Winters, 19 Jonquil

I. MINUTES OF THE PREVIOUS MEETING

Chairman Redder asked if there were additions or corrections to the minutes of the July 19, 2018 Planning & Zoning Commission meeting.

Chairman Redder called for a motion to approve the minutes of the July 19, 2018 Planning & Zoning Commission meeting.

Mr. King made a motion to approve the minutes of the July 19, 2018 meeting. The motion was seconded by Mr. Hein. All those present voted aye. Minutes approved.

II. PUBLIC HEARING

The first case this evening.

PLN-18-015-S – Site plan review for the development of the U-Haul Moving and Storage of Casper facility, including the construction of self-storage units, warehousing, vehicle and trailer rental, and retail space, located on Block 1 of the Wyoming Concrete Pipe Company Addition, 725 Bryan Stock Trail. Applicant: Amerco Real Estate Company.

Craig Collins, City Planner, presented the staff report and recommended that if the Planning and Zoning Commission finds that the requested site plan meets the minimum requirements of the Casper Municipal Code, staff recommends that the Planning and Zoning Commission approve the site plan with the following conditions:

1. All on-site lighting shall be designed to reduce off-site glare and light pollution. All exterior lighting fixtures, including both building and parking lot lighting, shall be shielded (full-cutoff). Pursuant to the Casper Municipal Code, no light pole may be taller than thirty (30) feet in height.
2. The batch-plant structure on the east side of the existing large building shall be removed.
3. All drive aisles, and all areas in proximity to structures shall be paved to City standards, according to Fire Department access requirements. Gravel or rotomill may be utilized in areas of the site that don't receive customer traffic, or are not required to be paved for Fire access.
4. A minimum of two (2) points of access to the site shall be maintained, per Fire Department access requirements. Gates shall not block access unless approved by the Fire Department.
5. Fire hydrants shall be placed on the site in locations approved/required by the Fire Department to meet the International Fire Code. Utility easements shall be provided for all public water lines on the site, in a form acceptable to the City.
6. At such time as requested, and pursuant to State Statutes and the Municipal Code, Owner shall construct, or participate in the construction, of a standard City sidewalk along the Bryan Evansville Road frontage of the property.
7. Owner shall not permit the maintenance of vehicles within any of the structures without the installation of a sand and oil separator, per City standards.
8. Prior to the completion of any paving on the site, or any new structure, Owner shall receive final Engineering Department approval of the drainage study.

9. No outside storage of shipping containers, or other warehousing/storage-type structures or containers shall be permitted, unless specifically designated on the approved site plan, as may be amended in the future.

Mr. Collins entered six (6) exhibits into the record for this case.

Chairman Redder asked if there were question for staff.

Mr. King asked staff about conversations with the applicant regarding the silo tower that remains on the site.

Mr. Collins advised that the applicant was provided written comments requesting the removal of that structure. He spoke with Mr. Winters and is not certain why they are opposed to removing it other than they had not planned on it and it may be costly.

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

Jim Lorimer, 2727 North Central Avenue, spoke in favor of this case. The conditions listed in the staff report are acceptable, however, he would like the batch plant structure to remain.

Mr. King asked if there was a reasonable chance that the batch tower could fit in with their facility. He suspected that staff and the commission would not have it remain untouched. He noted that he would consider leaving it if you have some firm plans.

Mr. Lorimer stated that they were working on it, but did not have anything to show the commission this evening.

Mr. Redder inquired about the outside of storage of shipping containers. He asked if they would be moved inside.

Kelly Winter, 19 Jonquil, the items located outside were van boxes removed from trucks and they will be sold.

Mr. Hein inquired about the plans for the large gravel area.

Mr. Lorimer advised that the majority of the site would be paved.

Mr. Aune advised that he understands wanting to keep the silo for historical and architectural value. Do you want to maintain that portion of the structure, or is it a cost savings issue, and would the lower portion of the conveyor be removed.

Mr. Lorimer stated that a portion of the conveyor would be removed, but they would like the opportunity to incorporate the structure with the site.

Mr. Hein advised that he likes the architectural value of the silo, and there are possibilities to incorporate it in the site plan, but he would like to have seen renderings this evening.

Mr. Collins stated the commission could approve the application this evening with the condition to remove the tower. Prior to the applicant obtaining a certificate of occupancy they can come back before the commission to amend the condition.

Wallace Trembath, Assistant City Attorney, stated another option would be to postpone to a date definite and certain or table the case. This would enable the applicant to provide complete plans with renderings.

Ms. Frank advised that she is in favor of approving the application with the condition to tear down the structure and require the applicant to return with renderings before a certificate of occupancy is issued.

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

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-18-015-S a site plan for a U-Haul Moving and Storage of Casper facility, including the construction of self-storage units, warehousing, vehicle and trailer rental, and retail space,

Mr. King made a motion to approve PLN-18-015-S a site plan for a U-Haul Moving and Storage of Casper facility, including the construction of self-storage units, warehousing, vehicle and trailer rental, and retail space, with Conditions #1-9 listed in the staff report. The motion was seconded by Mr. Hein.

There was discussion:

- Allows the applicant to present renderings.
- Enables the applicant to move forward.
- Importance of aesthetics due to close proximity to I-25.

All those present voted aye. Motion passed.

III. COUNCIL ACTIONS:

None.

IV. SPECIAL ISSUES:

None.

V. COMMUNICATIONS:

- A. Commission:
Mr. Hein advised there would be an OYD (Old Yellowstone District) meeting Monday, August 20, 2018.
- B. Community Development Director:
There were none.
- C. Other Communications:
There were none.
- D. Council Liaison:
Bob Hopkins, Council Liaison, stated that the Planning and Zoning Commission made a good decision this evening. He noted that being flexible with the applicant was a good idea. He advised that the RFP (Request for Proposal) for the Plains properties would be issued in the near future by Council and he asked the Commission to read the RFP and provide input.

Mr. King asked staff to keep the Commission informed about when the RFP is issued.

Mr. Collins stated that staff will keep them informed and could schedule a training session to discuss input from the commission.

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 6:40 p.m.

Chairman

Secretary

September 14, 2018

MEMO TO: Don Redder, Chairman
Members, Planning and Zoning Commission

FROM: Liz Becher, Community Development Director
Craig Collins, AICP, City Planner

SUBJECT: **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. 12th Streets. Applicant: Blackmore Homes, Inc.

Recommendation on the replat:

If, after the required public hearing, 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 12th 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 12th 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.

Recommendation on the zone change:

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.

Code Compliance:

Staff has complied with all requirements of Section 16.24 and Section 17.12.170 of the Casper Municipal Code pertaining to plats and zone changes, including notification of property owners within three hundred (300) feet by first class mail, posting of the property, and publishing legal notice in the Casper Star-Tribune. At the time the staff report was prepared, staff had received two (2) letter of concern regarding this development.

Summary:

Blackmore Homes, Inc. is the applicant for the requested replat and zone change for the proposed Elkhorn Village Addition. The property encompasses 21-acres, more or less, and is located directly north of the intersection of East 12th Street and Elkhorn Valley Drive. The subject property currently consists of multiple parcels, with multiple zoning classifications. A zone change to R-2 (One Unit Residential), as requested, is proposed to consolidate the zoning of the new subdivision.

Staff has included several recommended conditions of approval, in conjunction with the replat. As has been the case with other subdivisions that have proposed double-frontage lots (streets on front and rear), it is necessary to restrict vehicular access to only one of the streets. All vehicular access, curb cuts, driveways and garages, should be accessed via internal, local streets only, and no access will be permitted off of the higher-volume collectors, Newport Drive, East 12th Street, and Elkhorn Valley Drive/Gladstone.

In order to accommodate future growth to the east, staff has requested that the southern portion of Lot 53, which aligns with East 12th Street, be dedicated as right-of-way. This request is supported by the Major Streets Plan (Page 4-12) in the Generation Casper Comprehensive Plan, which illustrates that East 12th Street will be extended as a minor arterial street, east, from its current terminus, at some point in the future. The dedication was requested of the applicant, and the applicant has stated that they do not wish to provide the necessary right-of-way.

Engineering has requested a traffic study for the project, which has not yet been initiated. A drainage study has been provided, but has not yet been approved by Engineering. The Planning and Zoning Commission can forward the proposal to the City Council with the condition that the drainage and traffic studies be completed and approved prior to City Council review; or in the alternative, may wish to consider tabling the proposal.

Section 17.12.170 of the Casper Municipal Code requires that staff review all zoning requests in context with the approved Comprehensive Land Use Plan, and staff is required to provide a recommendation to the Planning and Zoning Commission and City Council as to how the zone change is either supported, or not supported. As was the case with the 2000 Comprehensive Land Use Plan, the Generation Casper Comprehensive Plan provides a Future Land Use Plan (FLU), which is found in Chapter Four (4), on Page 4-26. The FLU is an illustrative map that identifies the physical distribution of land uses, and forms the basis for future zoning and land use regulations. The property in question is in an area designated by the FLU as “Neighborhood 2.”

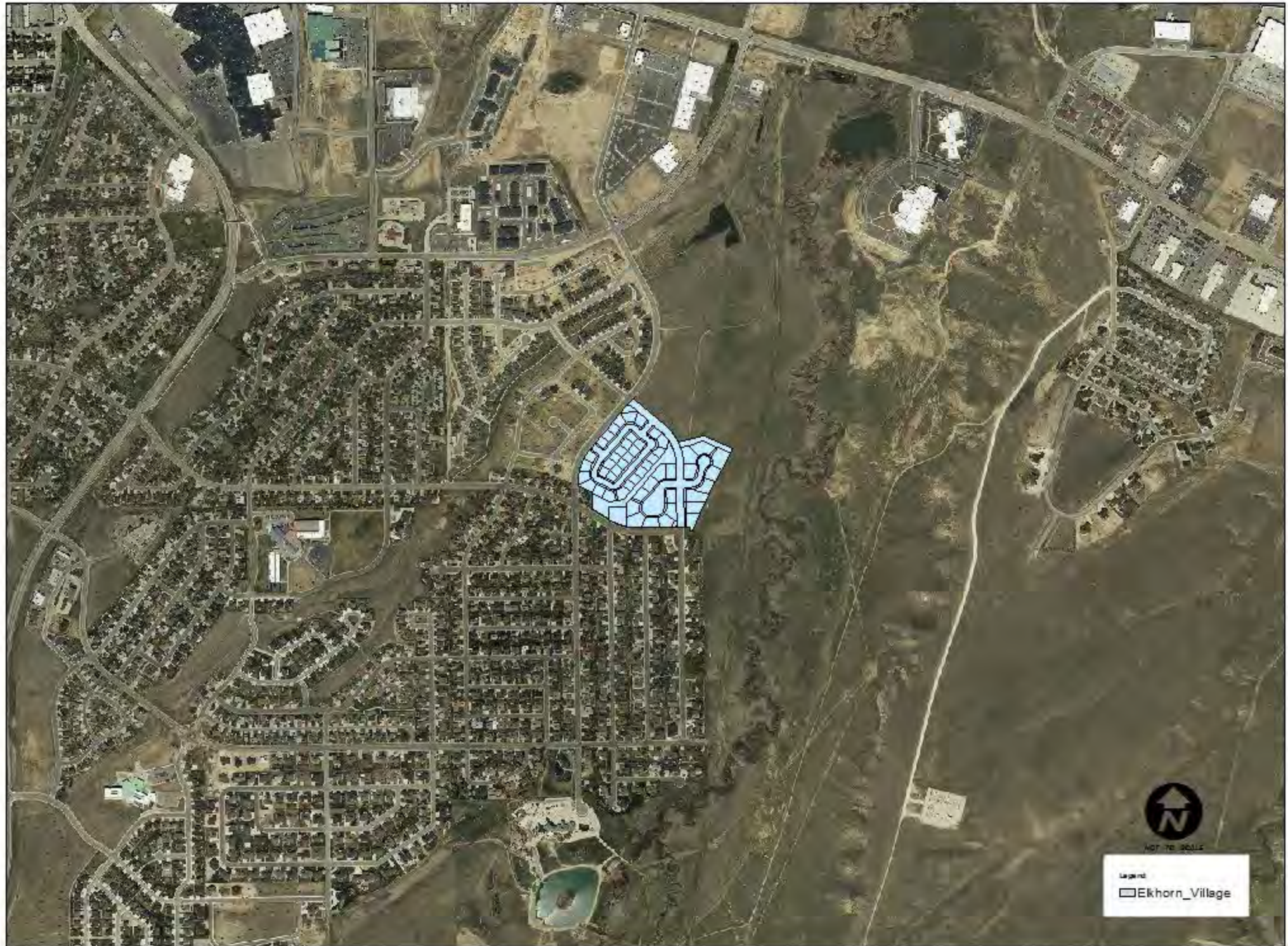
The Plan indicates that development areas designated as “Neighborhood 2” are characterized as “built on a traditional development pattern, served by a highly connected street pattern, and interspersed with schools, public facilities, walkable neighborhood amenities, parks and trails.” This designation is prevalent throughout much of the City, and the primary types of land uses associated with the Neighborhood 2 designation are conventional, detached, single-family units, twin homes, and multi-family up to 10 dwelling units per acre.

The proposed R-2 (One Unit Residential) zoning district allows, as permitted uses, by right, any and all of the following:

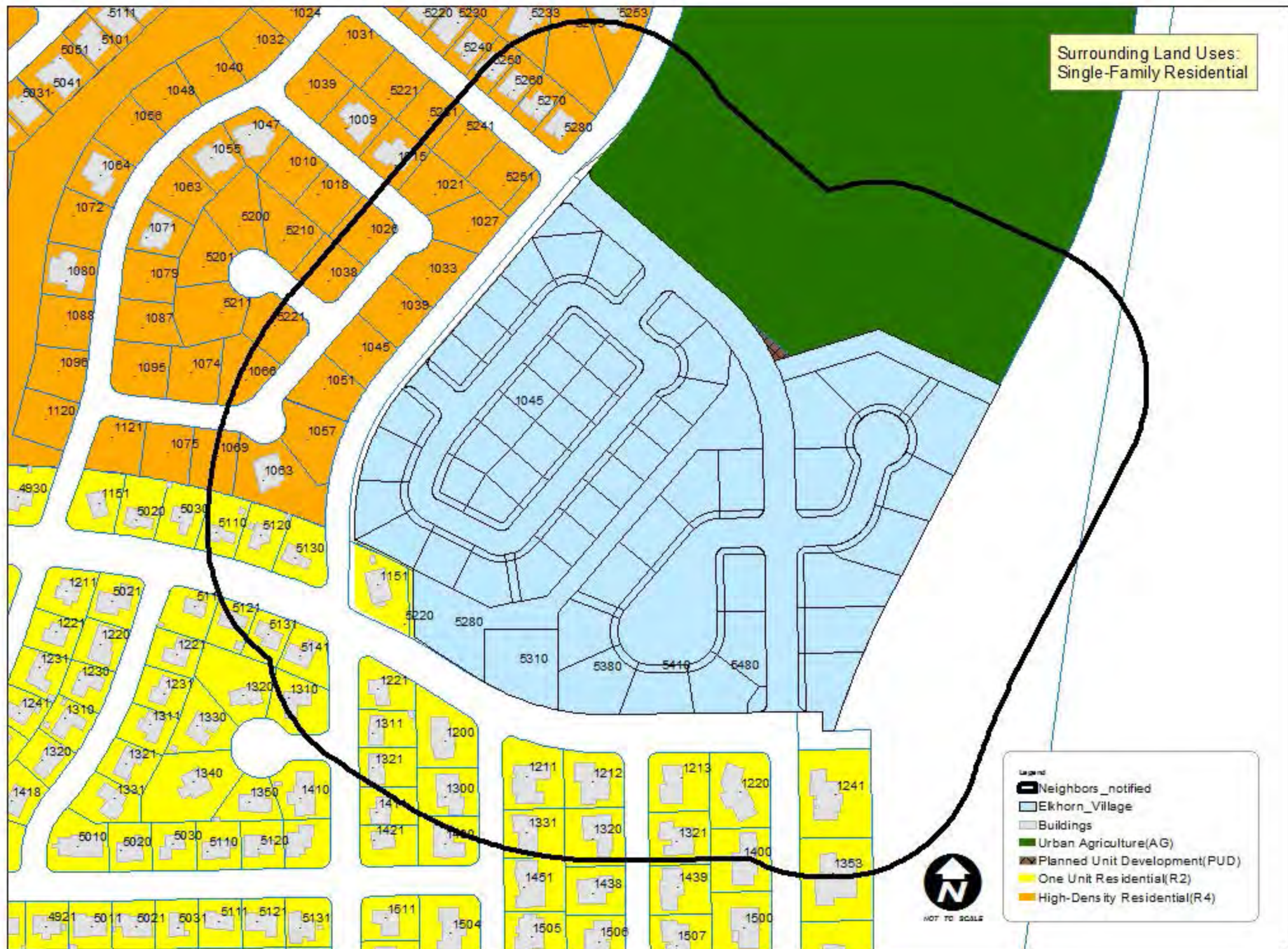
- A. Conventional site-built single-family dwellings and manufactured homes with siding material consisting of wood or wood products, stucco, brick, rock, or horizontal lap wood, steel or vinyl siding;
- B. Day-care, adult;
- C. Family child care home;
- D. Parks, playgrounds, historical sites, golf courses, and other similar recreational facilities used during daylight hours;
- E. Schools, public, parochial, and private elementary, junior and senior high;
- F. Neighborhood assembly uses;
- G. Neighborhood grocery;
- H. Group home;
- I. Church.

[illegible]

Elkhorn Village Subdivision

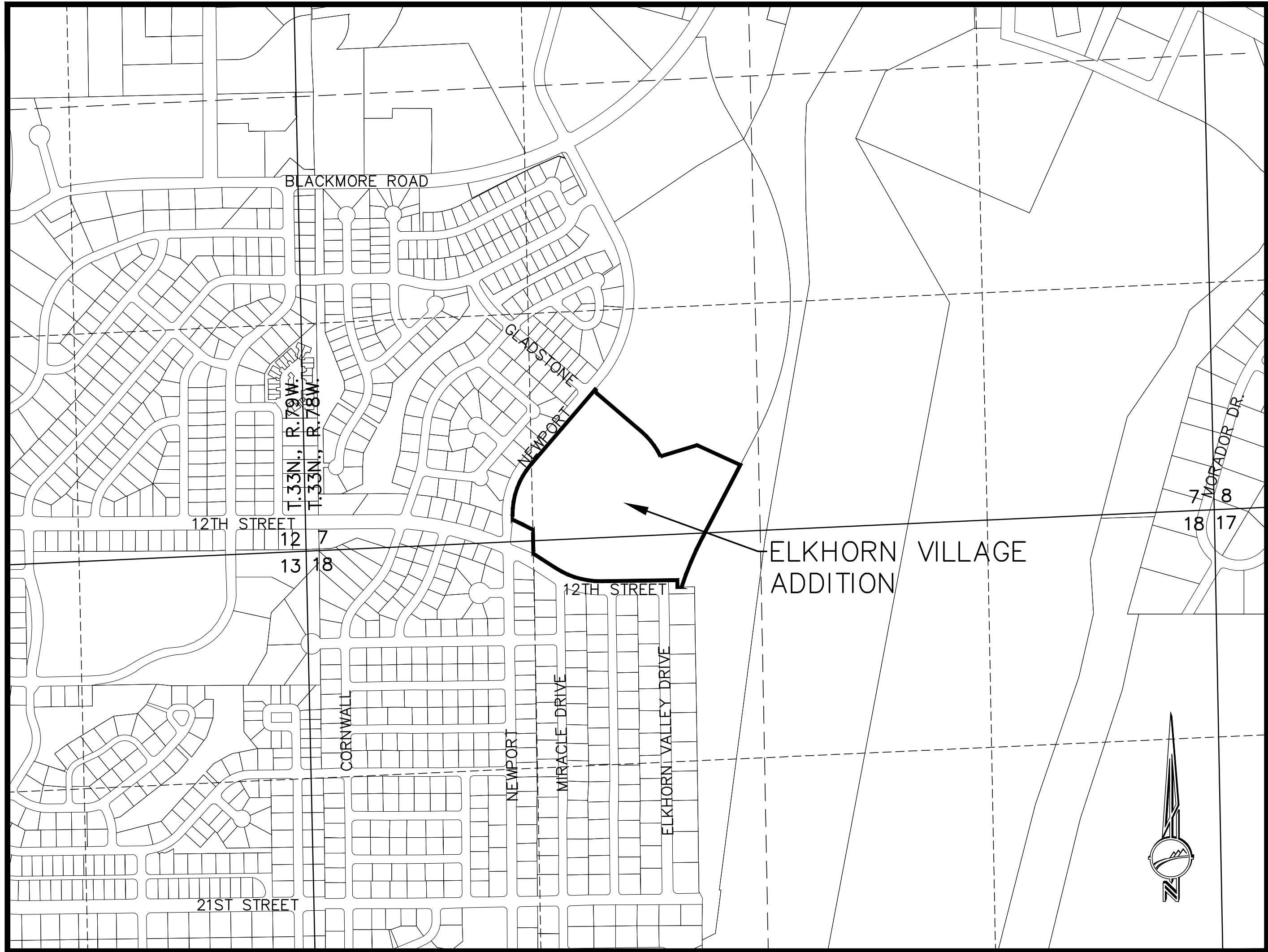


Elkhorn Village Subdivision



X:\CLIENT\ELKHORN VILLAGE\15026-ELKHORN HOMES-ELKHORN COLLECTIVE PHASE 1\DWG\ELKHORN VILLAGE PLAT.DWG

PLAT OF
“ELKHORN VILLAGE ADDITION”
AN ADDITION TO THE CITY OF CASPER, WYOMING
A VACATION AND REPLAT OF ALL OF BETTY LUKER
PARKWAY CAMPUS NO. 2 AND A PORTION
OF LOT 1, ELKHORN VALLEY ADDITION NO. 5
ADDITIONS TO THE CITY OF CASPER, WYOMING
A SUBDIVISION OF PORTIONS OF THE
SW1/4SW1/4 & SE1/4SW1/4, SECTION 7 AND
NE1/4NW1/4, SECTION 18
TOWNSHIP 33 NORTH, RANGE 78 WEST
SIXTH PRINCIPAL MERIDIAN
NATRONA COUNTY, WYOMING
SHEET 1 OF 2



VICINITY MAP
SCALE: 1"=500'

CERTIFICATE OF DEDICATION

Blackmore Homes LLC, hereby certify that they are the owners and proprietors of the foregoing vacation and replat of all of Betty Luker Parkway Campus No. 2 and a portion of Lot 1, Elkhorn Valley Addition No. 5, Additions to the City of Casper, Wyoming, and being a subdivision of portions of the SW1/4SW1/4 and SE1/4SW1/4, Section 7 and NE1/4NW1/4, Section 18, Township 33 North, Range 78 West of the Sixth Principal Meridian, Natrona County, Wyoming and being more particularly described by metes and bounds as follows:

Beginning at the southeasterly corner of the SW1/4SW1/4, Section 7 and W1/16 corner common to said Sections 7 and 18 and also a point in the easterly line of Lot 1, Block 3, Eastgate III, an Addition to the City of Casper, Wyoming and the westerly line of the Parcel being described; thence from said Point of Beginning and along the westerly line of said Parcel and the easterly line of said Lot 1, Block 3, Eastgate III and SW1/4SW1/4, Section 7, N.1°16'19"W., 63.61 feet to a point and northeasterly corner of said Lot 1, Block 3, Eastgate III; thence along the southerly line of said Parcel and the northerly line of said Lot 1, Block 3, Eastgate III and into said SW1/4SW1/4, Section 7 and along the arc of a true curve to the left, having a radius of 1747.50 feet and through a central angle of 4°19'14", northwesterly 131.77 feet and the chord of which bears N.63°18'11"W., 131.74 feet to the northwesterly corner of said Lot 1, Block 3, Eastgate III and a point in and intersection with the easterly line of Newport Drive; thence along the westerly line of said Parcel and the easterly line of said Newport Drive, N.0°47'54"W., 26.34 feet to the beginning of a curve; thence along the arc of a true curve to the right, having a radius of 437.67 feet and through a central angle of 41°35'05", northeasterly, 317.66 feet and the chord of which bears, N.19°46'52"E., 310.73 feet to the end of said curve; thence along the northwesterly line of said Parcel and the southeasterly line of said Newport Drive and into said SE1/4SW1/4, Section 7, N.40°35'51"E., 590.24 feet to the northwesterly corner of said Parcel; thence along the northeasterly line of said Parcel and into said Lot 1, Elkhorn Valley Addition No. 5 and along the arc of a true curve to the left, having a radius of 25.00 feet and through a central angle of 89°57'29", southeasterly, 39.25 feet and the chord of which bears S.4°22'54"E., 35.34 feet to a point of tangency; thence continuing along the northerly line of said Parcel and across said Lot 1, Elkhorn Valley Addition No. 5, S.49°21'38"E., 340.92 feet to a point of curve; thence continuing along the northerly line of said Parcel and across said Lot 1, Elkhorn Valley Addition No. 5 and along the arc of a true curve to the right, having a radius of 432.50 feet and through a central angle of 23°47'47", Southeastery, 179.63 feet and the chord of which bears S.37°27'45"E., 178.34 feet to a point and end of said curve; thence continuing along the northerly line of said Parcel and across said Lot 1, Elkhorn Valley Addition No. 5, N.73°07'13"E., 222.55 feet to a point; thence continuing along the northerly line of said Parcel and across said Lot 1, Elkhorn Valley Addition No. 5, S.65°21'19"E., 275.49 feet to the northeasterly corner of said Parcel and a point in and intersection with the easterly line of said Lot 1, Elkhorn Valley Addition No. 5; thence along the easterly line of said Parcel and across said SE1/4SW1/4, Section 7 and into said NE1/4NW1/4, Section 18, S.27°33'24"W., 473.97 feet to the beginning of a curve; thence continuing along the easterly line of said Parcel and along the arc of a true curve to the left, having a radius of 1893.05 feet and through a central angle of 9°29'27", southwesterly 313.57 feet and the chord of which bears S.22°48'52"W., 313.22 feet to the southeasterly corner of said Parcel and a point in and intersection with the northerly line of Tract A, Lots 1-7, Block 8, Elkhorn Valley Addition No. 3; thence along the southerly line of said Parcel and the northerly line of said Tract A, Lots 1-7, Block 8, Elkhorn Valley Addition No. 3, S.89°45'43"W., 24.30 feet to a point; thence along the westerly line of said Parcel and the easterly line of said Tract A, Lots 1-7, Block 8, Elkhorn Valley Addition No. 3, N.0°39'28"W., 39.91 feet to a point; thence along the southerly line of said Parcel and the northerly line of said Tract A, Lots 1-7, Block 8, Elkhorn Valley Addition No. 3 and the northerly line of East 12th Street, S.89°10'59"W., 439.39 feet to the beginning of a curve; thence continuing along the southerly line of said Parcel and the northerly line of said East 12th Street and along the arc of a true curve to the right, having a radius of 485.00 feet and through a central angle of 33°32'59", northwesterly, 283.99 feet and the chord of which bears N.73°58'53"W., 279.95 feet to the end of said curve; thence along the southwesterly line of said Parcel and the northeasterly line of said East 12th Street, N.57°13'00"W., 99.93 feet to the beginning of a curve; thence continuing along the southwesterly line of said Parcel and the northeasterly line of said East 12th Street and along the arc of a true curve to the left, having a radius of 1629.63 feet and through a central angle of 1°50'13", northwesterly, 52.25 feet and the chord of which bears N.58°05'42"W., 52.24 feet to a point and southeasterly corner of said Lot 1, Block 3, Eastgate III; thence along the westerly line of said Parcel and the easterly line of said Lot 1, Block 3, Eastgate III, N.0°33'20"W., 75.8 feet to the Point of Beginning and containing 21.06 acres, more or less.

The subdivision of the foregoing described lands is with the free consent and in accordance with the desires of the above named owners and proprietors. The name of said subdivision shall be known as "ELKHORN VILLAGE ADDITION" to the City of Casper, Wyoming. All streets as shown hereon are hereby or have been previously dedicated to the use of the public and easements as shown hereon are hereby dedicated to the use of public and private utility companies for the purposes of construction, operation and maintenance of utility lines, conduits, ditches, drainage and access. Tracts A and C are to be reserved for subdivision signs only. Tract B is to be reserved for drainage and public pedestrian access. Tract D is to be reserved for drainage, public pedestrian access and sanitary sewer. Lots with double frontage shall be not be accessed along Newport Drive or East 12th Street with exception to Lot 34.

Blackmore Homes, LLC
441 Landmark, Ste. 100
Casper, Wyoming 82609

CARY E. BRUS, SECRETARY/TREASURER
BLACKMORE HOMES, LLC

ACKNOWLEDGMENT

State of Wyoming)
County of Natrona) ss

The foregoing instrument was acknowledged before me by Cary E. Brus, Secretary/Treasurer of Blackmore Homes, LLC this _____ day of _____, 2018.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

APPROVALS

APPROVED: City of Casper Planning and Zoning Commission this _____ day of _____, 2018 and forwarded to the City Council of Casper, Wyoming with recommendation that said plat be approved.

Secretary _____

Commission Chairman _____

APPROVED: City Council of the City of Casper, Wyoming by Ordinance No. _____ duly passed, adopted and approved on the _____ day of _____, 2018.

Attest: _____
City Clerk

Mayor _____

INSPECTED AND APPROVED on the _____ day of _____, 2018.

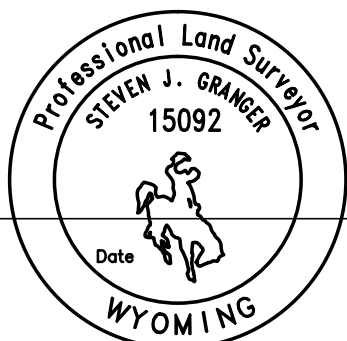
City Engineer _____

INSPECTED AND APPROVED on the _____ day of _____, 2018.

City Surveyor _____

CERTIFICATE OF SURVEYOR

I, Steven J. Granger, a registered professional land surveyor, License No. 15092, do hereby certify that this plat was made from notes taken during an actual survey made by me or others under my direct supervision during the months of June through September, 2018 and that this plat, to the best of my knowledge and belief, correctly and accurately represents said survey. The perimeter boundary is monumented by brass caps as of the date of this survey and all lots corners shall be monumented with 5/8" rebars with aluminum caps upon completion of construction.



State of Wyoming)
County of Natrona) ss

The foregoing instrument was acknowledged before me by Steven J. Granger this _____ day of _____, 2018.

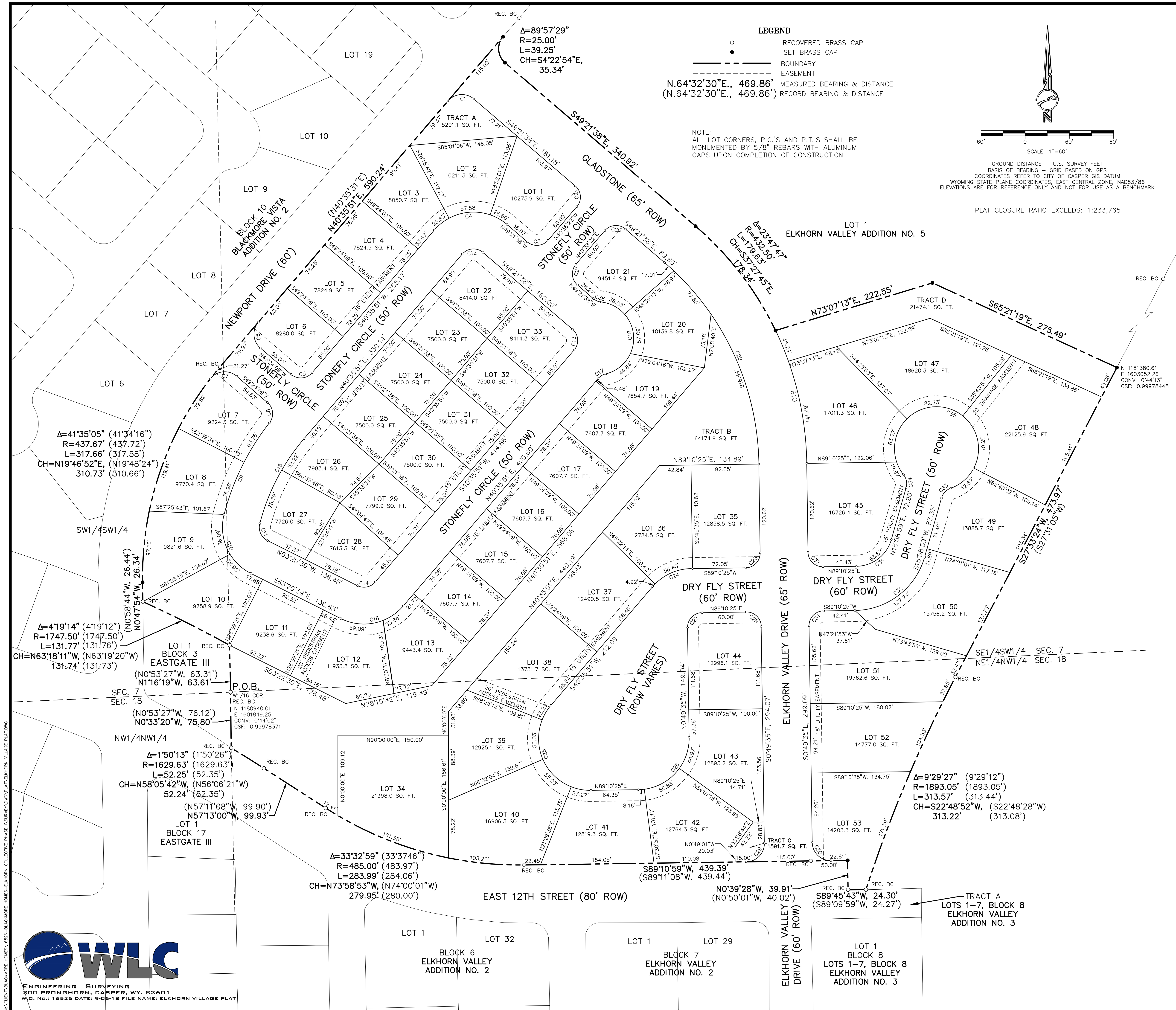
Witness my hand and official seal.

My Commission Expires: _____

Notary Public



ENGINEERING SURVEYING
200 PRONGHORN, CASPER, WY. 82601
W.D. NO. 16526 DATE: 9-06-18 FILE NAME: ELKHORN VILLAGE PLAT.DWG



Curve Table				
Curve #	Delta	Radius	Length	Chord
C1	90°02'31"	25.00'	39.29'	N85°37'06"E, 35.37'
C2	90°00'00"	20.00'	31.42'	S4°21'38"E, 28.28'
C3	90°00'00"	20.00'	31.42'	S85°38'22"W, 28.28'
C4	90°02'31"	70.00'	110.01'	S85°37'06"W, 99.03'
C5	90°00'00"	20.00'	31.42'	S85°35'51"W, 28.28'
C6	89°59'59"	25.00'	39.27'	N4°24'09"W, 35.36'
C7	92°48'28"	25.00'	40.50'	N84°11'36"E, 36.21'
C8	87°33'54"	20.00'	30.57'	S5°37'13"E, 27.68'
C9	23°42'56"	337.62'	139.74'	S26°18'16"W, 138.75'
C10	77°47'28"	70.00'	95.04'	S24°26'56"E, 87.91'
C11	78°17'27"	20.00'	27.33'	N24°42'01"W, 25.25'
C12	90°02'31"	20.00'	31.43'	N85°37'06"E, 28.29'
C13	89°57'29"	20.00'	31.40'	S4°22'54"E, 28.27'
C14	76°03'30"	20.00'	26.55'	S78°37'36"W, 24.64'
C15	26°07'24"	287.56'	131.11'	N27°30'22"E, 129.98'
C16	76°03'30"	70.00'	92.92'	N78°37'36"E, 86.25'
C17	35°35'41"	20.00'	12.42'	N58°23'41"E, 12.23'
C18	159°49'30"	49.64'	138.46'	N3°36'16"W, 97.74'
C19	24°44'16"	432.50'	186.73'	S13°11'43"E, 185.29'
C20	90°00'00"	20.00'	31.42'	N85°38'22"E, 28.28'
C21	90°00'00"	20.00'	31.42'	N4°21'38"W, 28.28'
C22	48°32'03"	367.50'	311.30'	S25°05'37"E, 302.08'
C23	90°00'00"	20.00'	31.42'	S44°10'25"W, 28.28'
C24	50°05'29"	70.14'	61.32'	S65°40'06"W, 59.39'
C25	131°25'26"	70.00'	160.56'	S25°06'52"E, 127.61'
C26	90°00'00"	70.00'	109.96'	N44°10'25"E, 98.99'
C27	90°00'00"	20.00'	31.42'	N44°10'25"E, 28.28'
C28	90°00'00"	20.00'	31.42'	S45°49'35"E, 28.28'
C29	90°00'33"	25.00'	39.27'	S44°10'42"W, 35.36'
C30	89°59'25"	25.00'	39.27'	S45°49'18"E, 35.35'
C31	90°00'00"	20.00'	31.42'	S44°10'25"W, 28.28'
C32	73°11'26"	100.00'	127.74'	S52°34'42"W, 119.23'
C33	54°14'18"	20.00'	18.93'	S43°06'08"W, 18.23'
C34	54°14'18"	20.00'	18.93'	N11°08'10"W, 18.23'
C35	288°28'36"	57.00'	286.99'	S74°01'01"E, 66.62'
C36	73°11'26"	50.00'	63.87'	N52°34'42"E, 59.62'
C37	90°00'00"	20.00'	31.42'	S45°49'35"E, 28.28'
C38	34°02'25"	20.00'	11.88'	N66°22'51"W, 11.71'

PLAT OF
"ELKHORN VILLAGE ADDITION"
AN ADDITION TO THE CITY OF CASPER, WYOMING
A VACATION AND REPLAT OF ALL OF BETTY LUKER
PARKWAY CAMPUS NO. 2 AND A PORTION
OF LOT 1, ELKHORN VALLEY ADDITION NO. 5
ADDITIONS TO THE CITY OF CASPER, WYOMING
A SUBDIVISION OF PORTIONS OF THE
SW1/4SW1/4 & SE1/4SW1/4, SECTION 7 AND
NE1/4NW1/4, SECTION 18
TOWNSHIP 33 NORTH, RANGE 78 WEST
SIXTH PRINCIPAL MERIDIAN
NATRONA COUNTY, WYOMING
SHEET 2 OF 2

915749

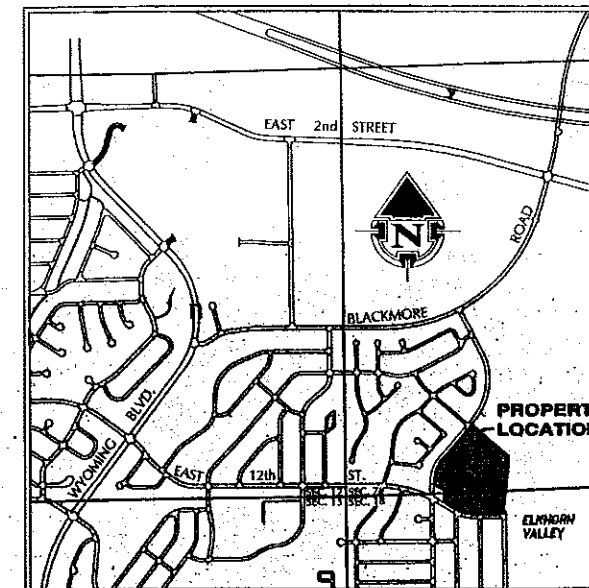
NATRONA COUNTY CLERK, WY
Renee Vitto
Sep 30, 2011 01:58:38 PM
Pages: 1
City of Casper
Fee: \$50.00

PLAT OF "BETTY LUKER PARKWAY CAMPUS NO. 2"

A VACATION AND REPLAT OF A PORTION OF
LOT 1, ELKHORN VALLEY ADDITION NO. 5

AN ADDITION TO THE CITY OF CASPER, WYOMING
LOCATED IN THE S1/2SW1/4, SECTION 7, AND THE NE1/4NW1/4,
SECTION 18, TOWNSHIP 33 NORTH, RANGE 78 WEST
OF THE 6TH PRINCIPAL MERIDIAN
NATRONA COUNTY, WYOMING

SCALE: 1"=100'



VICINITY MAP
1" = 1200'

CERTIFICATE OF DEDICATION

Wyoming Dementia Care hereby certifies that they are the owner and proprietor of the following described portion of Lot 1, Elkhorn Valley Addition No. 5 to the City of Casper and they hereby vacate and replat the same into "Betty Luker Parkway Campus No. 2" an addition to City of Casper, located in and being a portion of the S1/2SW1/4, Section 7, and the NE1/4NW1/4, Section 18, Township 33 North, Range 78 West of the Sixth Principal Meridian, Natrona County, Wyoming being more particularly described by metes and bounds as follows:

Beginning at the southeasterly corner of the Parcel being described and the point of intersection of the northerly right-of-way line of East 12th Street and the easterly right-of-way line of Elkhorn Valley Drive; thence along the southerly line of said Parcel and said northerly line of East 12th Street, S.89°11'08"W., 389.44 feet to a point of curvature; thence northwesterly 284.06 feet along the arc of a true curve to the right, having a radius of 483.97 feet, a central angle of 33°37'46", a chord bearing of N.74°00'01"W., and a chord length of 280.00 feet to a point of tangency; thence N.57°11'08"W., 99.90 feet to a point of curvature; thence 52.35 feet along the arc of a true curve to the left being concave to the southwest, having a radius of 1629.63 feet, a central angle of 1°50'26", a chord bearing of N.58°06'21"W., and a chord length of 52.35 feet to the southeasterly corner of Block 3, Eastgate III, an addition to the City of Casper; thence leaving said north line of East 12th Street, along the easterly line of said Block 3, Eastgate III, N.0°53'27"W., 139.43 feet to the northeasterly corner thereof; thence northwesterly 131.76 feet along the arc of a true curve to the left being concave to the southwest, having a radius of 1747.50 feet, a central angle of 4°19'12", a chord bearing of N.63°19'20"W., and a chord length of 131.73 feet to the northwesterly corner of said Block 3, Eastgate III; and a point in the easterly right-of-way line of Newport; thence along the westerly line of said Parcel and said easterly line of Newport, N.0°58'44"W., 26.44 feet to a point of curvature; thence northeasterly 317.58 feet along the arc of a true curve to the right being concave to the southeast, having a radius of 437.72 feet, a central angle of 41°34'16", a chord length of N.19°48'24"E., 310.66 feet to a point of tangency; thence N.40°35'31"E., 558.18 feet thence along the northerly line of said Parcel and into said Lot 1, Elkhorn Valley Addition No. 5, S.49°24'40"E., 672.50 feet; thence along the easterly line of said Parcel, S.6°14'34"W., 660.95 feet to the Point of Beginning.

The above described Parcel contains 17.177 acres, more or less, and is subject to any and all rights-of-way, easements, reservations, and encumbrances which have been legally acquired.

The subdivision of the foregoing described land as it appears on this plat is with the free consent and in accordance with the desire of the above named owner and proprietor. The name of said subdivision shall be known as "Betty Luker Parkway Campus No. 2" an addition to the City of Casper, Wyoming. The above named owner and proprietor does hereby grant to the public and private utility companies an easement and license to locate, construct, use and maintain conduits, lines, wires and pipes, any or all of them, under, along or across the strips of land marked as utility easements as shown on this plat.

OWNER

Wyoming Dementia Care
846 South Lincoln Street
Casper, Wyoming - 82601

Mary E. Hein
Mary E. Hein, President

STATE OF WYOMING)
NATRONA COUNTY) ss

The foregoing instrument was acknowledged before me this

21 day of JANUARY, 2011, by:
MARY E. HEIN, President, Wyoming Dementia Care,

as a free and voluntary act and deed. Witness my hand and official seal. My commission expires:

Tress R. Cellan
NOTARY PUBLIC



CERTIFICATE OF SURVEYOR

I, Chris Asbury do hereby certify that I am a registered land surveyor licensed under the laws of the State of Wyoming, that this plat is a true, correct, and complete plat of "BETTY LUKER PARKWAY CAMPUS NO. 2" as laid out, platted, dedicated, and shown hereon, that such plat was made from an accurate survey of said property by me or under my supervision and correctly shows the location and dimensions of the lots, easements, and streets of said subdivision as the same are staked upon the ground in compliance with the City of Casper regulations governing the subdivision of land.

STATE OF WYOMING)
NATRONA COUNTY) ss

The foregoing instrument was acknowledged before me this

16 day of January, 2011, by:
Chris Asbury, L.S.

as a free and voluntary act and deed. Witness my hand and official seal. My commission expires:

Chris Asbury
NOTARY PUBLIC



LEGEND

- RECOVERED BRASS CAP
- SET BRASS CAP
- SET ALUMINUM CAP
- PLAT BOUNDARY
- PROPERTY LINES
- EASEMENT LINES
- MEASURED
- RECORD

NOTES

1. ERROR OF CLOSURE = 1.661,191
2. BASIS OF BEARING: WYOMING STATE PLANE
- COORDINATE SYSTEM, EAST CENTRAL ZONE, NAD 1983/86
3. DISTANCES: U.S. SURVEY FOOT (GROUND)
- COMBINED FACTOR: 0.999787249
4. THE ORIGINAL RECORD LENGTH OF THE EAST LINE OF BLOCK 3 AS SHOWN ON THE PLAT OF EASTGATE III IS 139.27'

APPROVALS

APPROVED BY THE CITY OF CASPER PLANNING AND ZONING COMMISSION OF CASPER, WYOMING
THIS 27th DAY OF July, 2012

ATTEST: *Ann O'Leary*
SECRETARY

APPROVED BY THE CITY COUNCIL OF CASPER, WYOMING BY RESOLUTION NO. 20-10, DULY PASSED, ADOPTED AND APPROVED THIS 5th DAY OF October, 2012

ATTEST: *V.A. McDowell*
CITY CLERK

INSPECTED AND APPROVED THIS 15th DAY OF February, 2011

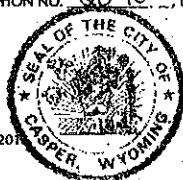
INSPECTED AND APPROVED THIS 15th DAY OF February, 2011

RECORDED

FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF NATRONA COUNTY, WYOMING THIS 30th DAY OF September, 2011.

INSTRUMENT NO. 915749

COUNTY CLERK

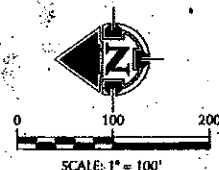


Paul C. Bristow
MAYOR

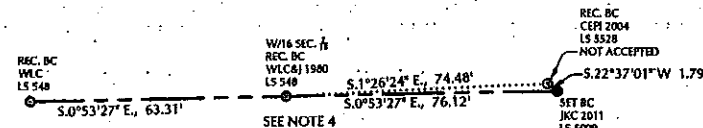
William P. Fehring
CITY ENGINEER

William P. Fehring
CITY SURVEYOR

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING
C1	127.32'	335.00'	21°46'37"	S.72°03'03"E.
C2	46.05'	335.00'	7°52'31"	S.86°52'36"E.
C3	102.55'	483.97'	12°08'26"	S.84°44'41"E.
C4	181.51'	483.97'	21°29'20"	S.67°55'48"E.



SCALE: 1" = 100'



DETAILS
NTS

PLAT OF "BETTY LUKER PARKWAY CAMPUS NO. 2"

A VACATION AND REPLAT OF A PORTION OF
LOT 1, ELKHORN VALLEY ADDITION NO. 5
AN ADDITION TO THE CITY OF CASPER, WYOMING, LOCATED IN THE S1/2SW1/4,
SECTION 7, AND THE NE1/4NW1/4, SECTION 18, TOWNSHIP 33 NORTH, RANGE 78 WEST
OF THE 6TH PRINCIPAL MERIDIAN, NATRONA COUNTY, WYOMING

DATE:
JANUARY 6, 2011

DRAWN BY:
J. BRYSON

SHEET TITLE:
RECORD OF SURVEY

SHEET NUMBER

SHEET 1 OF 1

5830 East 2nd Street
Casper, Wyoming 82609
Phone: 307-265-4601
Fax #: 307-265-4672
J.K.C.
ENGINEERING

Dee Ann Hardy

SEP - 6 2018

From: hart20@juno.com
Sent: Wednesday, September 05, 2018 1:35 PM
To: Dee Ann Hardy
Subject: Rezoning Elkhorn Village Addition, PLN-18-018-RZ

Dear Mr. Hardy,

Herein are our comments:

COMMUNITY DEVELOPMENT DEPARTMENT

ELKHORN VILLAGE SUBDIVISION

PLANNING AND ZONING COMMISSION

Thank you for allowing these comments pertaining to the possible PLN-18-018-RZ petition to vacate and replat Betty Luker Parkway Campus #2.

We (George and June Hartman) reside at 1220 Elkhorn Valley Drive. We have lived here since constructing the house in 2004.

We respectfully ask the commission to consider requiring as a condition of approval of this action, an attractive barrier /fence of at least six feet tall be installed between the backyards of the houses along the sidewalk of 12th street.

if you have any questions please either write or call 307-265-6773

Most respectfully submitted:

George and June Hartman

9/12/18

Community Development Department
200 N David, Room 205
Casper, WY 82601

RE: Comments on PLN-18-018-RZ

Good Morning,

Blackmore Homes' request for the vacate and replat in the referenced matter should be denied.

Elkhorn Valley #3(Replat BLK 8 L1-7) Lot Tract A is not owned by Blackmore homes. This lot contains the storm drainage exit for half of the proposed area. There is no easement for this storm drain and it is in contention. Blackmore Homes may be counting on a drainage system that may be denied them and will have to engineer a new system. This lot also contains the lines to the electrical equipment that is to power part of this proposed area. There are no easements for the electrical (or cable) across Tract A and they are in contention. This infrastructure may be denied to Blackmore Homes. Also, any future growth east of this area will require the extension of 12th Street to the east. Blackmore Homes cannot provide for that since they do not own this lot.

Also, it appears there is a green space/walking path through the middle of the plat. There is no provision for the payment of property taxes on that land. Ultimately Blackmore Homes will not pay the property tax and the land will default to the county as abandoned. This is a burden on the county. A walking path/open space should be created by an easement through taxed property.

I have to ask if the Fire Department has looked at this. It is hard to tell from the postcard drawing, but the inner circle on the northwest half looks to be a hazard for both residents and fire trucks.

Please contact me at any of the below if you should have any questions.

Thank you,
Ken Carpenter
1836 Willow Creek Road
Casper, WY 82604
307-265-0184
kenpegcarpenter@bresnan.net

September 14, 2018

MEMO TO: Don Redder, Chairman
Members, Planning and Zoning Commission

FROM: Liz Becher, Community Development Director
Craig Collins, AICP, City Planner

SUBJECT: **PLN-18-019-ARZ** – Petition to annex and plat a portion of the S1/2NW1/4, Section 9, Township 33 North, Range 79 West, 6th 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.

Recommendation on the Annexation:

If, after the required public hearing, the Planning and Zoning Commission finds that the requested annexation meets the requirements of the Casper Municipal Code, staff recommends that the Planning and Zoning Commission approve the request to annex the subject property and forward a “do pass” recommendation to the City Council for the following reasons:

1. The annexation of the area will serve to protect the health, safety, and welfare of the persons residing in the area and in the City.
2. The urban development of the area to be annexed constitutes a natural, geographical, economical, and social part of the City because the subject property is adjacent to the corporate limits of the City of Casper.
3. The area sought to be annexed is a logical and feasible addition to the City of Casper, and the extension of basic and other services customarily available to the residents of the City shall be made available to the area proposed to be annexed.
4. The proposed annexation is contiguous with and adjacent to the City of Casper.
5. The proposed annexation is compatible with the zoning, and existing/proposed land uses in the surrounding area.

Recommendation on the Plat:

If, after the required public hearing, the Planning and Zoning Commission finds that the requested plat meets the minimum requirements of the Casper Municipal Code, staff recommends that the Planning and Zoning Commission approve the requested plat to create the State Office Building Addition, and forward a “do pass” recommendation to the City Council.

Recommendation on Zoning:

If, after the required public hearing, the Planning and Zoning Commission finds that the requested zoning of the State Office Building addition as OYDSPC (Old Yellowstone District and South Poplar Street Corridor Form-Based Code) meets the minimum requirements of the Casper Municipal Code, and is in conformance with the Generation Casper Comprehensive Land Use Plan, staff recommends that the Planning and Zoning Commission approve the zoning, and forward it to the City Council with a “do pass” recommendation.

Code Compliance:

Staff has complied with all requirements of Section 16.24, 16.36, and 17.12.170 of the Casper Municipal Code pertaining to annexations, plats, and zone changes, including notification of property owners within three hundred (300) feet by first class mail, posting of the property, and publishing legal notice in the Casper Star-Tribune. At the time the staff report was prepared, staff had not received any public comments on this case. The Commission is responsible for reviewing annexations, plats, and zone changes, and making a recommendation to the City Council on each.

Summary:

The State of Wyoming is preparing for the construction of a new State office building to be located on 11-acres, more or less, generally north of the Natrona County High School along the north side of Collins Drive. The property consists of multiple parcels, some of which are developed, and some are unplatted, un-annexed, and vacant. The State plans to demolish all the existing buildings this fall, and is preparing the site to begin construction of a \$40-million dollar campus, which will house various State agencies that are presently spread around the community. The State is in the process of developing a site plan for the project, which will be reviewed and approved by the Old Yellowstone District Architectural Review Committee. The proposed zoning of the property is in keeping with the zoning of the surrounding properties, as well as the Old Yellowstone District Redevelopment Plan and the Generation Casper Comprehensive Land Use Plan.

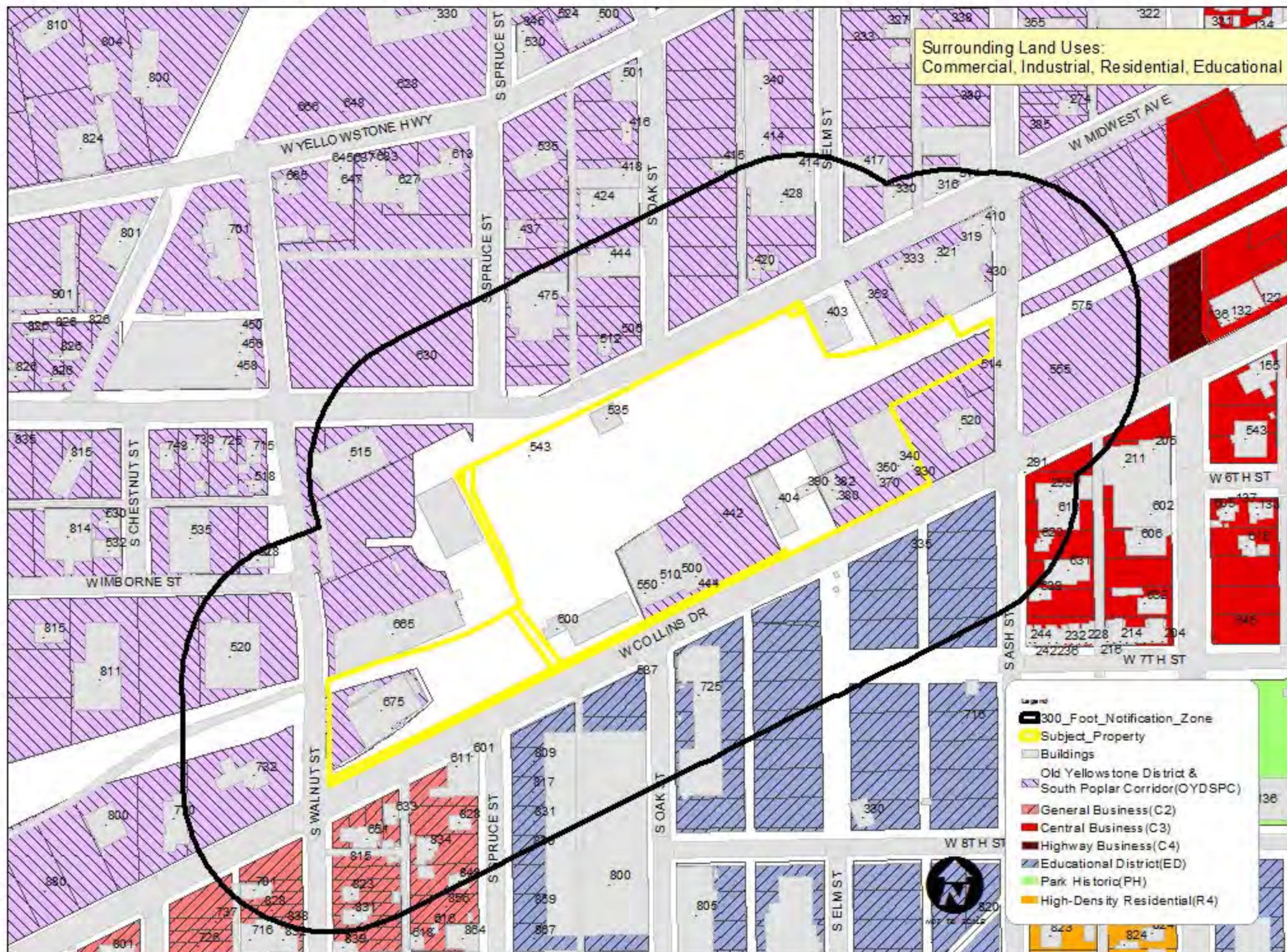
State Office Building Addition



State Office Building Addition



State Office Building Addition



PLAT OF
STATE OFFICE BUILDING ADDITION
TO THE CITY OF CASPER, WYOMING
A VACATION AND REPLAT OF
LOTS 1 AND 2, BAILEY ADDITION NO. 2 AND
LOT 1, STOVAL BROTHERS ADDITION AND
AN ANNEXATION OF PORTIONS OF THE
S1/2NW1/4, SECTION 9
TOWNSHIP 33 NORTH, RANGE 79 WEST
SIXTH PRINCIPAL MERIDIAN
NATRONA COUNTY, WYOMING
PAGE 2 OF 2

CERTIFICATE OF DEDICATION

Dean Fausset, acting as Director of Department of Administration and Information for the State of Wyoming, Owners, hereby certify that they are the owners and proprietors of the foregoing vacation, replat and annexation of Lots 1 and 2, Bailey Addition No. 2 and Lot 1, Stoval Brothers Addition, City of Casper, Wyoming, subdivisions in and also a portion of the S1/2NW1/4, Section 9, Township 33 North, Range 79 West of the Sixth Principal Meridian, Natrona County, Wyoming and being more particularly described as follows:

Beginning at the southwestern corner of the Parcel being described and also a point of intersection of the northwesterly line of West Collins Drive with the easterly line of South Walnut Street as now exists in the City of Casper, Wyoming; thence from said Point of Beginning and along the westerly line of said Parcel and the easterly line of said South Walnut Street, N.0°37'22"W., 31.65 feet to a point and southwestern corner of Stoval Brothers Addition to the City of Casper, Wyoming; thence continuing along the westerly line of said Parcel and Stoval Brothers Addition and the easterly line of said South Walnut Street, N.0°37'24"W., 158.58 feet to a point and northwesterly corner of said Stoval Brothers Addition; thence continuing along the westerly line of said Parcel and the easterly line of said South Walnut Street, N.0°54'43"W., 24.44 feet to a point and southwestern corner of Lot 2, Builders Mart Addition to the City of Casper, Wyoming; thence along the northwesterly line of said Parcel and the southerly line of said Lot 2, Builders Mart Addition, N.70°38'21"E., 80.45 feet to a point; thence continuing along the northwesterly line of said Parcel and the southerly line of said Lot 2, Builders Mart Addition, N.65°04'42"E., 19.77 feet to a point; thence continuing along the northwesterly line of said Parcel and leaving the southerly line of said Lot 2, Builders Mart Addition, N.73°41'52"E., 128.14 feet to a point of curve; thence continuing along the northwesterly line of said Parcel and the arc of a non-tangent curve to the left, having a radius of 556.65 feet and through a central angle of 201°50", northeasterly, 197.20 feet and the chord of which bears N.63°51'46"E., 196.17 feet to a point; thence along the westerly line of said Parcel, N.26°42'14"W., 295.37 feet to the northwesterly corner of said Parcel; thence along the northwesterly line of said Parcel, N.63°21'23"E., 60.02 feet to a point in and intersection with the southerly line of West Midwest Avenue; thence continuing along the northwesterly line of said Parcel and the southeasterly line of said West Midwest Avenue, N.63°20'32"E., 229.84 feet to a point; thence continuing along the northwesterly line of said Parcel and the southeasterly line of said West Midwest Avenue, N.63°15'09"E., 262.90 feet to a point; thence along the northwesterly line of said Parcel and leaving the southeasterly line of said West Midwest Avenue, S.26°51'19"E., 125.40 feet to a point; thence along the northwesterly line of said Parcel, N.83°54'27"E., 39.02 feet to a point; thence continuing along the northwesterly line of said Parcel, N.75°56'48"E., 49.87 feet to a point; thence continuing along the northwesterly line of said Parcel, N.74°54'43"E., 16.86 feet to a point and southwestern corner of Great Northern Tool & Supply Subdivision, City of Casper, Wyoming; thence continuing along the northwesterly line of said Parcel and the southeasterly line of said Great Northern Tool & Supply Subdivision, N.69°08'03"E., 80.05 feet to a point and southeasterly corner of said Great Northern Tool & Supply Subdivision; thence continuing along the northwesterly line of said Parcel, N.65°22'35"E., 77.52 feet to a point; thence along the northwesterly line of said Parcel, S.27°12'20"E., 43.99 feet to a point; thence along the northwesterly line of said Parcel; N.64°01'36"E., 76.38 feet to the northeasterly corner of said Parcel and a point in and intersection with the westerly line of South Ash Street; thence along the easterly line of said Parcel and westerly line of said South Ash Street, S.1°00'05"E., 17.39 feet to a point and northeasterly corner of Lot 1, Bailey Addition to the City of Casper, Wyoming; thence continuing along the easterly line of said Parcel and said Lot 1, Block 2, Bailey Addition No. 2 and the westerly line of said South Ash Street, S.0°35'39"E., 53.53 feet to a point and southeasterly corner of said Lot 1, Bailey Addition No. 2 and the northeasterly corner of Lot 1, Ash-Col Addition to the City of Casper, Wyoming; thence along the southeasterly line of said Parcel and Lot 1, Bailey Addition No. 2 and the northwesterly line of said Lot 1 and Lot 2, Ash-Col Addition, S.63°22'17"W., 234.01 feet to a point and northwesterly corner of said Lot 2, Ash-Col Addition; thence along the northeasterly line of said Lot 1, Bailey Addition No. 2 and the southwesterly line of said Lot 2, Ash-Col Addition, S.26°38'03"E., 179.25 feet to the southeasterly corner of said Parcel and Lot 1, Bailey Addition No. 2 and the southwesterly corner of said Lot 2, Ash-Col Addition and a point in and intersection with the northwesterly line of West Collins Drive; thence along the southeasterly line of said Parcel and Lot 1, Bailey Addition No. 2 and the northwesterly line of said West Collins Drive, S.63°19'48"W., 311.13 feet to a point and southwesterly corner of said Lot 2, Bailey Addition No. 2; thence continuing along the southeasterly line of said Parcel and northwesterly line of said West Collins Street, S.63°32'32"W., 125.36 feet to a point and southeasterly corner of Lot 2, Bailey Addition No. 2; thence continuing along the southeasterly line of said Parcel and Lot 2, Bailey Addition No. 2 and the northwesterly line of said West Collins Street, S.63°19'48"W., 311.13 feet to a point and southwesterly corner of said Lot 2, Bailey Addition No. 2; thence continuing along the southeasterly line of said Parcel and northwesterly line of said West Collins Street, S.63°19'46"W., 392.26 feet to a point; thence continuing along the southeasterly line of said Parcel and northwesterly line of said West Collins Street, S.63°20'13"W., 333.78 feet to the Point of Beginning and containing 11.06 acres, more or less.

The vacation, replat and annexation of the foregoing described lands as appears on this plat is with the free consent and in accordance with the desires of the above named owners and proprietors of said lands; the name of said vacation, replat and annexation shall be known as "STATE OFFICE BUILDING ADDITION", to the City of Casper, Wyoming. All streets as shown hereon have previously been dedicated to the use of the public and sanitary sewer and utility easements as shown hereon are hereby dedicated to the use of public and private utility companies for the purposes of construction, operation and maintenance of utility lines, conduits, ditches, drainage and access.

State of Wyoming
Department of Administration and Information
2001 Capitol Avenue
Cheyenne, WY 82002

Dean Fausset, Director of Department
of Administration and Information for
the State of Wyoming

ACKNOWLEDGMENT

State of Wyoming)
County of Natrona) ss

The foregoing instrument was acknowledged before me by Dean Fausset, Director of Department of Administration and Information for the State of Wyoming this _____ day of _____, 2018.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

APPROVALS

APPROVED: City of Casper Planning and Zoning Commission this ____ day of _____, 2018 and forwarded to the City Council of Casper, Wyoming with recommendation that said plat be approved.

Secretary

Commission Chairman

APPROVED: City Council of the City of Casper, Wyoming by Ordinance No. _____, 2018.

Attest:

City Clerk

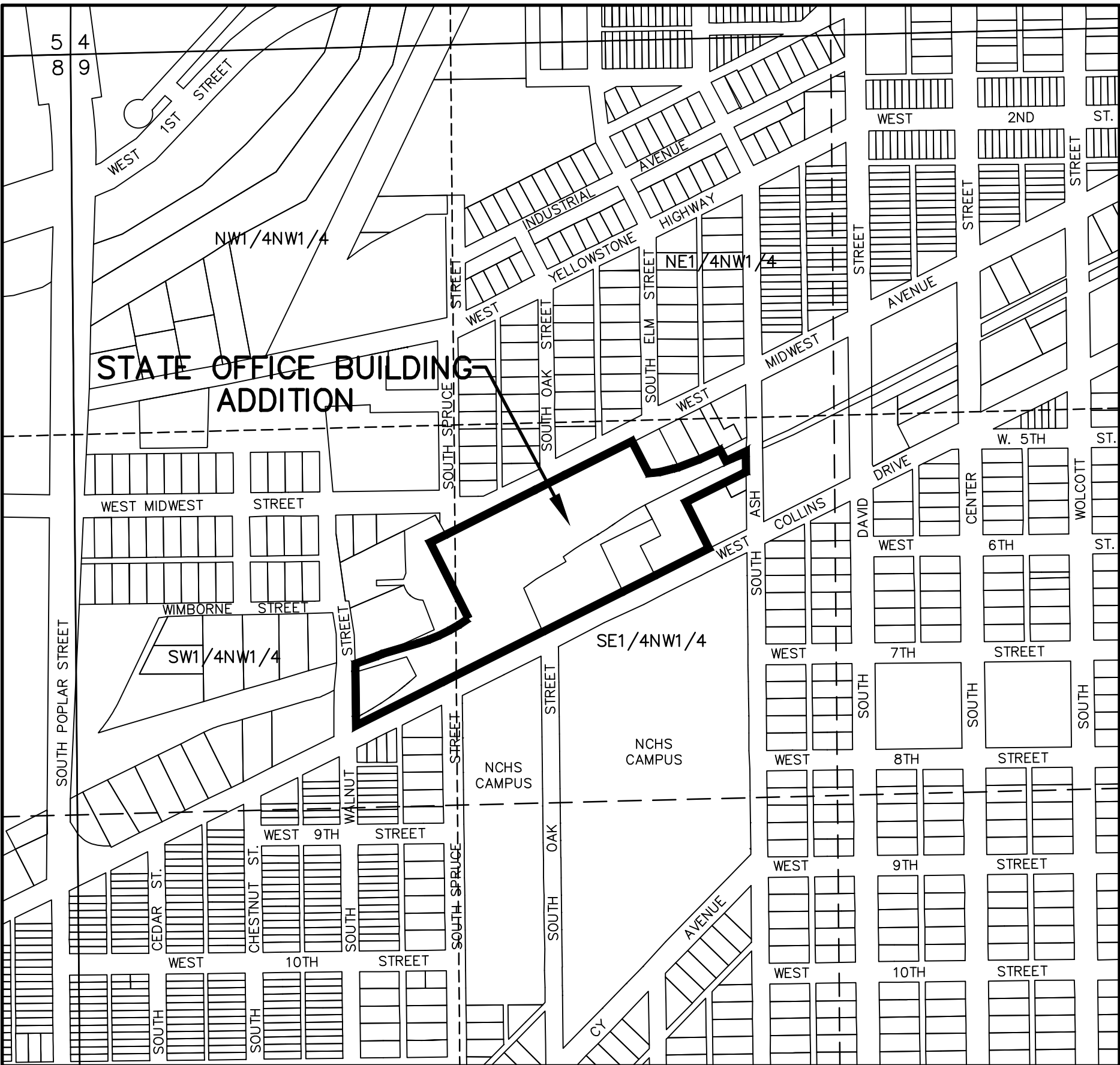
Mayor

INSPECTED AND APPROVED on the _____ day of _____, 2018

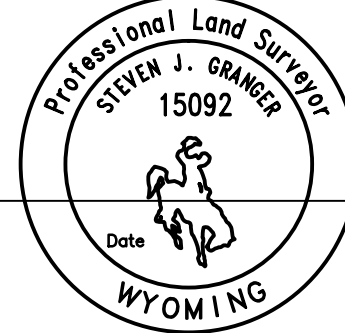
City Engineer

INSPECTED AND APPROVED on the _____ day of _____, 2018

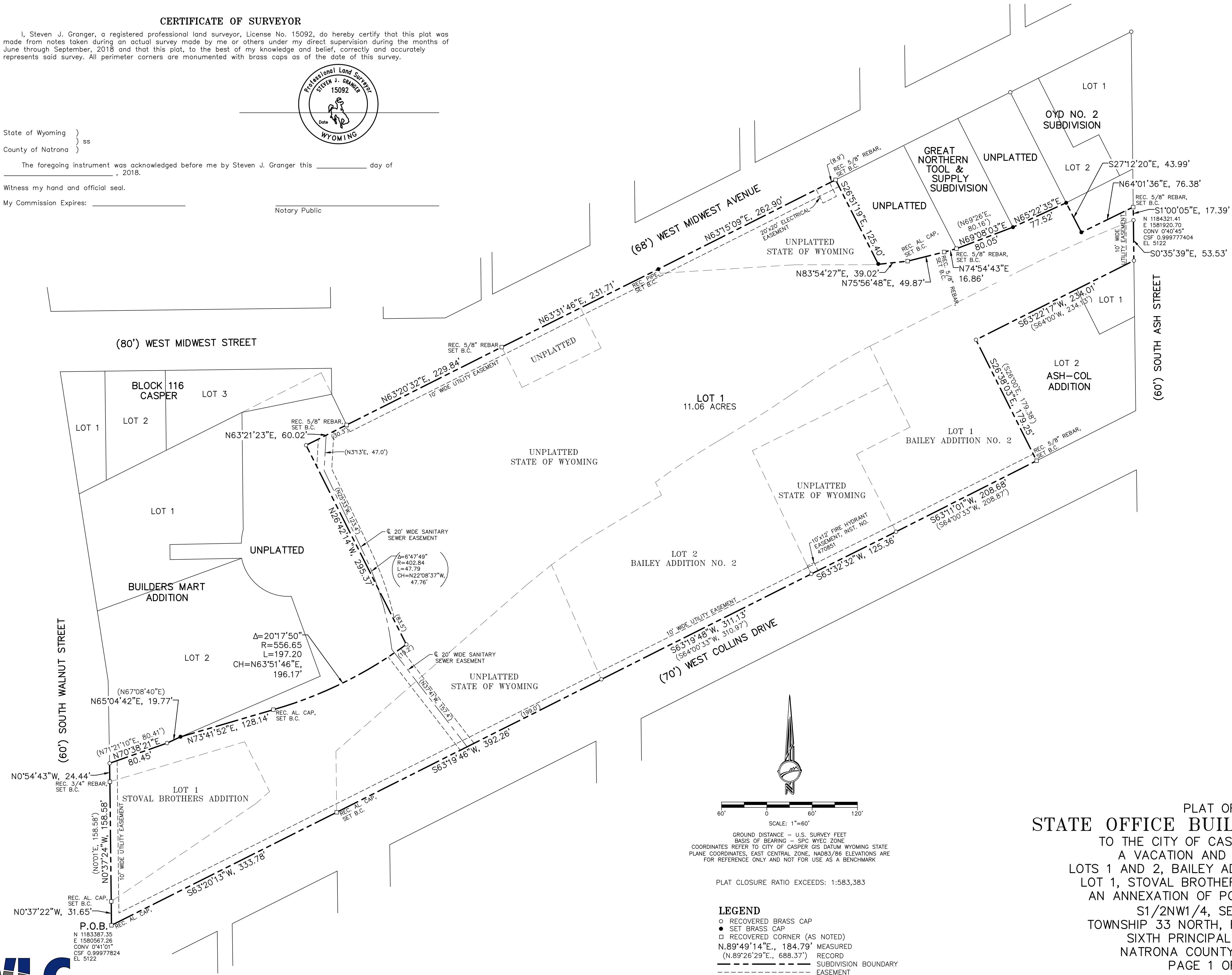
City Surveyor



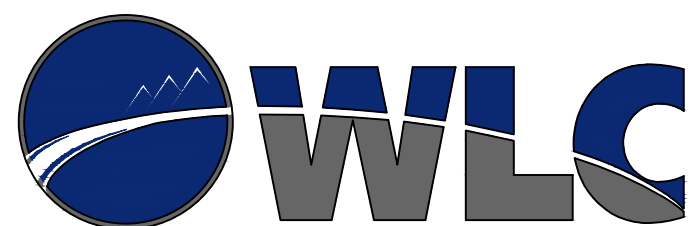
I, Steven J. Granger, a registered professional land surveyor, License No. 15092, do hereby certify that this plat was made from notes taken during an actual survey made by me or others under my direct supervision during the months of June through September, 2018 and that this plat, to the best of my knowledge and belief, correctly and accurately represents said survey. All perimeter corners are monumented with brass caps as of the date of this survey.



Notary Public



PLAT OF
STATE OFFICE BUILDING ADDITION
TO THE CITY OF CASPER, WYOMING
A VACATION AND REPLAT OF
LOTS 1 AND 2, BAILEY ADDITION NO. 2 AND
LOT 1, STOVAL BROTHERS ADDITION AND
AN ANNEXATION OF PORTIONS OF THE
S1/2NW1/4, SECTION 9
TOWNSHIP 33 NORTH, RANGE 79 WEST
SIXTH PRINCIPAL MERIDIAN
NATRONA COUNTY, WYOMING
PAGE 1 OF 2



ENGINEERING • SURVEYING • PLANNING
200 PRONGHORN, CASPER, WY. 82601
W.O. No.: 16493-07 DATE: 9-06-18 FILE NAME: STATE BUILDING PLAT 16493-07

September 14, 2018

MEMO TO: Don Redder, Chairman
Members, Planning and Zoning Commission

FROM: Liz Becher, Community Development Director
Craig Collins, AICP, Associate Planner

SUBJECT: **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.

Recommendation:

Absent information that may 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.

Code Compliance:

Staff has complied with all requirements of Section 17.12.220 of the Casper Municipal Code pertaining to exceptions, including notification of property owners within three hundred (300) feet by first class mail, posting of the property, and publishing legal notice in the Casper Star-Tribune. When the staff report was prepared, staff had received no public comments on this case.

Section 17.12.220(F) presents the conditions in which the Commission may grant an exception and states that the Commission may vary or adjust the strict application of any requirement of the Zoning Ordinance involving any physical restriction applying to a lot or building, if the strict application would deprive the owner of the reasonable use of the land or building involved. No adjustment in the strict application of any provision of the zoning code may be granted unless:

- a. There are special circumstances or conditions, fully described in the Commission's findings, which are peculiar to the land or building for which the adjustment is sought, and which do not apply generally to land or buildings in the neighborhood, and which have not resulted from action of the applicant, subsequent to the adoption of this Ordinance;

- b. For reasons fully set forth in the Commission's findings, the circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of the land or building, the granting of the adjustment is necessary for the reasonable use thereof, and the adjustment, as granted, is the minimum adjustment possible to allow the owner the reasonable use of the land or building involved;
- c. The granting of the adjustment is consistent with the general purpose and intent of this title, and will not be injurious to the neighborhood or detrimental to the public health or welfare.

Section 17.12.220(G)(8) outlines the four (4) findings that the Commission must make in the granting of an exception. It states that Commission can only grant exceptions if they articulate the reasons for *all* findings below:

- a. The exception will not substantially impair the land use of the neighborhood, or adversely affect the safety of the adjacent property.
- b. The 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.
- c. Under the particular circumstances presented as set forth in the findings of the Commission, strict compliance with the terms of this ordinance will cause undue hardship upon the applicant.
- d. 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 ordinance for which the exception is requested, provided however, that this requirement shall not apply to exceptions sought pursuant to Section 17.12.220(H) of the Casper Municipal Code.

Summary:

McDonalds Real Estate Company is asking for an exception to allow additional signage, in excess of the 600-foot maximum sign area allowed in the C-2 (General Business) zoning district. The property is located at 600 West F Street, and is fully developed as a McDonald's fast food restaurant. McDonald's currently has 420 square feet of signage on the site, more or less. In

addition to McDonald's on-premises signage, the Planning and Zoning Commission approved a Conditional Use Permit in 2009, to allow an off-premises sign (billboard) on the property, up to a maximum permitted size of 32 square feet. Therefore, the site contains approximately 452 square feet of signage, which is less than the 600 square foot maximum permitted. The applicant and the owner of the off-premises sign are involved in ongoing litigation over signage on this site. As such, the Planning and Zoning Commission may decide that the timing on this case is not ripe, so it she be delayed until litigation is complete.

The Planning and Zoning Commission rarely sees exception requests because of the strict legal findings required for approval, particularly the finding of an undue hardship. An undue hardship is shown where the proposed use of the land for a permitted purpose is so impractical that the lawful use of the land will be destroyed unless an exception is granted. In this regard, undue hardship exists only if the problem is unique to the property of the applicant, and is not shared by other landowners in the district. The granting of an exception should only be used to relieve a property owner of following a land use law when following it would deprive a property owner of all reasonable use of their property, based solely on a unique physical characteristic or limitation associated with the property. There is no undue hardship in this case that warrants the approval of an exception. The applicant has full use of its property, and no physical characteristic of the land would deprive it of the reasonable use of its property.

The applicant is afforded the same amount of signage as all other similarly zoned and located businesses enjoy. When any property owner in the district allows an off-premises sign to locate on their property, the size of the off-premises sign counts toward the total amount of signage allowed on the site. To treat off-premises signage as a burden to the property owner is unfounded. Allowing off-premises signage to be considered a burden to a property owner and used as justification for granting an exception to the maximum sign area allowance could encourage a proliferation of requests for signage exceptions.

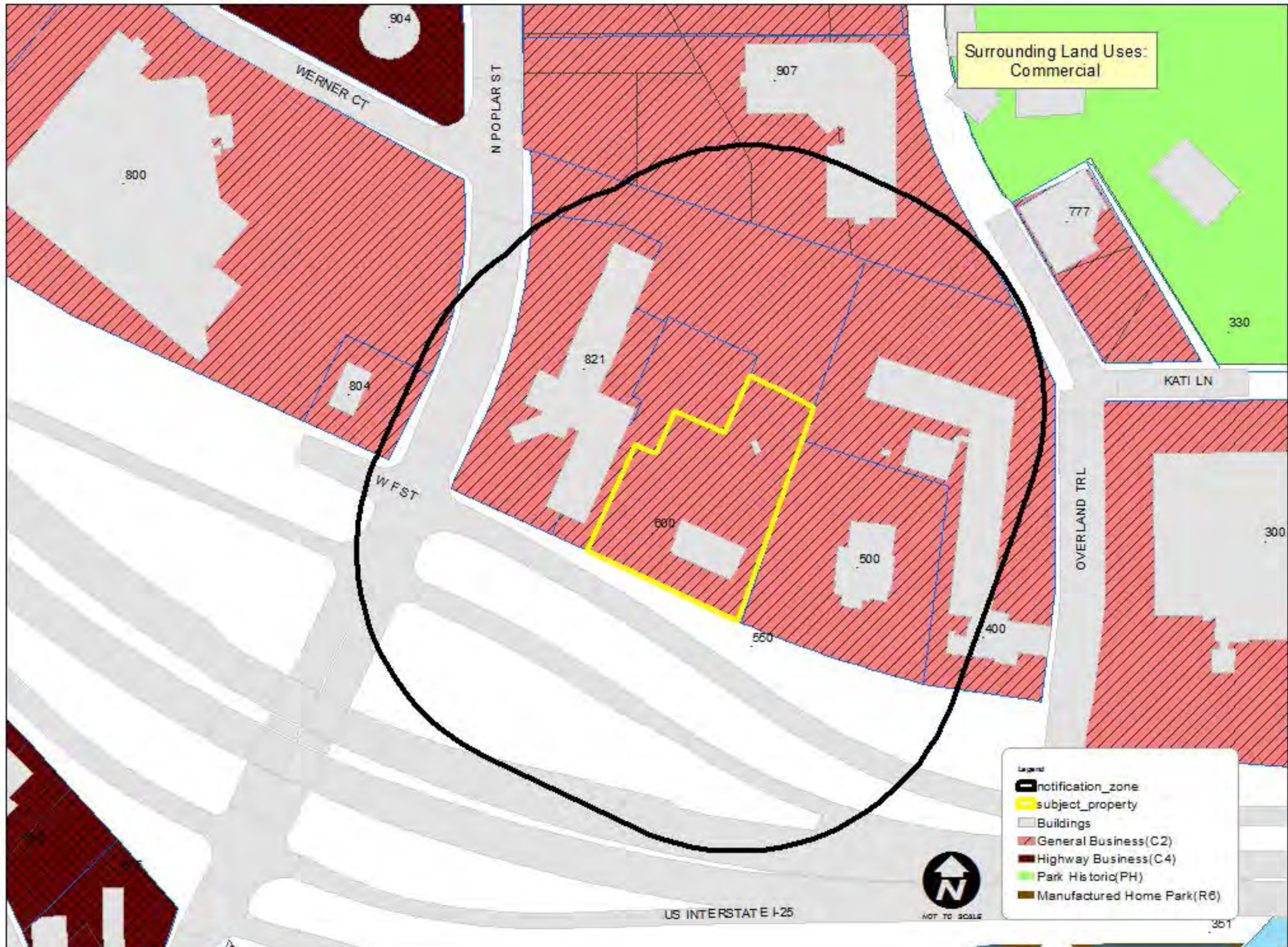
McDonalds Signage Request



McDonalds Signage Request



McDonalds Signage Request





City of Casper Planning Division

Exception/Variance Application

PETITIONER'S INFORMATION:

NAME: McDonalds Real Estate Company c/o Judith Studer, Schwartz, Bon, Walker & Studer, LLC, 141 South Center Street, Suite 500, Casper, WY 82601
ADDRESS: 600 West F Street, Casper, WY 82601
TELEPHONE: (307) 235-6681
EMAIL: jstuder@schwartzbon.com

HEREBY PETITION THE PLANNING AND ZONING COMMISSION FOR THE FOLLOWING:

A potential additional 120.55 sq. ft. variance to the current 600 sq. ft. signage limit to property zoned C-2 at the above address due to unique circumstances (compliance with a Court Order).

FOR:

ADDRESS:

LEGAL DESCRIPTION:

See Attachment 1 – legal description for 600 West F Street, Casper, WY 82601. The property is burdened by a sign easement. Attachment 2 contains the legal description for the sign easement that the Court determined gives 300 sq. ft. or 50% of the total signage allowed to the property owner to Casco, LLC ("Casco").

BASIS AND JUSTIFICATION FOR THIS PETITION IS:

Variance is requested to allow McDonalds to comply with a Court Order (under appeal). The Court's Orders are provided as Attachment 3 (controlling language is highlighted.) The variance is needed to avoid unnecessary destruction of the current signage for 420.55 sq. ft approved by the City of Casper (Attachment 4) and installed by McDonalds. McDonalds requested information as to Casco's desired signage. Casco advised that Casco "is not interested in discussing variances at this time." (Attachment 5). Although violation of the Municipal Code is based on a contingent future event that Casco will construct a sign that will cause the property to exceed the allowable signage, the Court's Orders put McDonalds out of compliance by limiting McDonalds' signage to 300 sq. ft. Under the unique circumstances presented, a variance should be allowed.



City of Casper Planning Division

Exception/Variance Application

The Planning and Zoning Commission is required to determine Findings of Fact and Conclusions of Law, Section 17.12.220(G). Pursuant to Section 17.12.220 (G), no exceptions to the Ordinance shall be granted by the Commission unless it finds that:

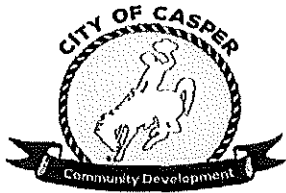
STATEMENTS OF FACT:

The exception will not substantially impair the land use of the neighborhood or adversely effect the safety of adjoining property because:

The McDonalds' signs currently exist and are part of the plan already approved. The variance is required due to the Court's interpretation of the easements as an exclusive grant of the lesser of 300 sq. ft. or 50% of signage allowed on Lot 5. If and when Casco constructs a sign(s), the sign(s) must be on the easements located on the edge of the property. Numerous commercial signs already exist. The easements and therefore any future signage by Casco, are not located in any travel portion of the property and cannot restrict ingress or egress to the adjoining landowner or Lot 5.

The exception will not conflict with the Comprehensive Land Use Plan adopted by the Commission and confirmed by the City Council, nor violate the purpose or intent of this ordinance because:

The McDonalds' signage already exists and was previously approved. It is only in the event Casco constructs sign(s) that a violation occurs. The sign(s), if and when installed by Casco, would be located in a commercial corridor along I-25. (Other property along the I-25 corridor is zoned C-4 that allows 650 sq. ft. of signage.) Under current Municipal Code 17.96.050, Casco is limited to one unlit sign not to exceed 250 sq. ft. Despite the Court's Orders, Casco is still required to seek a conditional use permit under 17.24.240(G) pursuant to criteria stated in 17.12.240(H) in the event it exceeds 250 sq. ft.



City of Casper Planning Division

Exception/Variance Application

STATEMENTS OF FACT (continued):

Under the particular circumstances presented as set forth in the findings of the Commission, strict compliance with the terms of this title will cause an undue hardship on the applicant because:

The prior signage plan was approved and constructed as permitted. The signage (national branding) entices interstate travelers to stop in Casper. Based on the current ruling, McDonalds has to either reduce 120 sq. ft. of signage at great expense to accommodate an unknown future contingency or obtain a variance. As McDonalds is advised that Casco "is not interested in discussing variances at this time" (Attachment 5), a variance is appropriate due to the unique circumstances presented that impacts only Lot 5 in this community. (See Attachment 6). Other commercial property zoned C-2 are not subject to the same conditions that make this variance appropriate.

The applicant, or predecessors, in interest, have not by an affirmative act or acts, caused the condition or use to exist in violation of the terms of the title for which the exception is requested, provided, however, that the requirements shall not apply to exceptions sought pursuant to Section 17.12.220(H) of the Casper Municipal Code regarding illegal construction or a nonconforming building or use in existence for more than five (5) years because:

As Attachment 1 shows, McDonalds obtained the property April 26, 2013. The Court Orders awarded in effect an exclusive easement that McDonalds was not aware existed. (Attachment 3). McDonalds' interpretation of the declaration was that it was a grant of a non-exclusive sign easement. Casco is demanding enforcement of the judgment, although the Court orders are on appeal. (Attachment 7). The variance is now required due to the Court's determination that McDonalds signage plan (Attachment 4) is a non-conforming use as McDonalds exceeded its 300 sq. ft. allotment of the current 600 sq. ft. total allowed under the Municipal Code.



City of Casper Planning Division

Exception/Variance Application

A PLOT PLAN IS REQUIRED SHOWING:

(WHERE APPROPRIATE)

lot size and dimensions	size and location of buildings	off-street parking spaces
routes for ingress and egress	internal traffic control	fencing, screening, and landscaping
signs and lighting	setback distances	

The following owner's signature signifies that all information on the application is accurate and correct to the best of the owner's knowledge, and that the owner has thoroughly read and understands all application information and requirements.

SIGNATURE OF PROPERTY OWNER:

*McDonalds Real Estate Company by its counsel
Justith Stuber*

DATE: 8-9-18

SUBMIT TO:

Community Development Department

COMPLETE SUBMITTAL NEEDS TO INCLUDE:

*Discussion with City Planner Recommended Before Applying

FOR OFFICE USE ONLY:

WARRANTY DEED

COPY

ERC PROPERTIES, LLC, AN OREGON LIMITED LIABILITY COMPANY,

of Natrona County, State of Wyoming, for and in consideration of Ten Dollars and Other Good and Valuable Consideration, in hand paid, receipt whereof is hereby acknowledged, Convey and Warrant To

MCDONALD'S REAL ESTATE COMPANY, A DELAWARE CORPORATION,

whose address is:

P.O. BOX 182571
COLUMBUS, OH 43218-2571

the following described real estate, situate in Natrona County and State of WYOMING, together with all improvements thereon, and all of Grantor's right, title and interest in public roads and street adjoining the property, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this state, to wit:

SEE EXHIBIT "A" ATTACHED HERETO.

Subject to those easements, reservations and restrictions, more specifically described in Exhibit "B" attached hereto.

Witness my/our hand(s) this 26 day of April, 2013.

ERC PROPERTIES, LLC, AN OREGON LIMITED LIABILITY COMPANY

BY:

MICHAEL L. MARLITT, MANAGER

State of OREGON)
County of MULTNOMAH) ss.

This instrument was acknowledged before me on 26th day of April, 2013 by MICHAEL L. MARLITT as MANAGER of ERC PROPERTIES, LLC, AN OREGON LIMITED LIABILITY COMPANY

Given under my hand and notarial seal this day of April, 2013.

My commission expires: 12/19/2016

Notary Officer

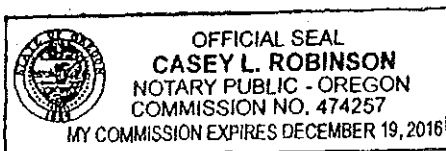


EXHIBIT "A"

ALL OF LOT 5, "KLASSEN ADDITION, LOTS 4, 5 AND 6", LYING WITHIN THE SOUTH HALF (S½) OF THE NORTHWEST QUARTER (NW¼) OF SECTION 4, TOWNSHIP 33 NORTH, RANGE 79 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF CASPER, COUNTY OF NATRONA, STATE OF WYOMING

EXHIBIT "C"
LEGAL DESCRIPTION
SIGN EASEMENTS

A two parcels of land situate within portions of the S½NW¼ of Section 4, T.33N., R.79W., 6th P.M., Natrona County, Wyoming, in Lot 5, Klassen Addition, Lots 4, 5 and 6 Replat, City of Casper, Wyoming as shown on Exhibit "D", attached hereto and by this reference made a part hereof, said parcel being more particularly described as follows:

EASEMENT #1:

Commencing at the southeast corner of said Lot 5, Klassen Addition;

Thence N19°34'17"E, along the easterly line of said Lot 5, a distance of 6.00 feet to the Point of Beginning #1;

Thence N70°25'43"W, a distance of 4.00 feet to a point;

Thence N19°34'17"E, a distance of 10.00 feet to a point;

Thence S70°25'43"E, a distance of 4.00 feet to a point located on the easterly line of said Lot 5;

Thence S19°34'17"W, a distance of 10.00 feet to the Point of Beginning.

The above described access easement contains 0.001 acres, more or less, and is subject to all rights-of-way and/or easements, reservations and encroachments which have been legally acquired.

EASEMENT #2:

Commencing at the southeast corner of said Lot 5, Klassen Addition;

Thence N19°34'17"E, along the easterly line of said Lot 5, a distance of 32.00 feet to the Point of Beginning #2;

Thence N70°25'43"W, a distance of 7.00 feet to a point;

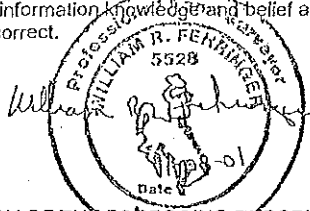
Thence N19°34'17"E, a distance of 25.00 feet to a point;

Thence S70°25'43"E, a distance of 7.00 feet to a point located on the easterly line of said Lot 5;

Thence S19°34'17"W, a distance of 25.00 feet to the Point of Beginning.

The above described access easement contains 0.004 acres, more or less, and is subject to all rights-of-way and/or easements, reservations and encroachments which have been legally acquired.

I hereby certify that this description was prepared from notes taken during an actual survey made under my direct supervision, during August, 2004 and from maps provided to me by the Owner, and that on the basis of my information, knowledge and belief as a Professional Land Surveyor this description is true and correct.



MODIFICATION IN ANY WAY OF THE FOREGOING DESCRIPTION IS STRICTLY PROHIBITED. I HAVE CAREFULLY REVIEWED THIS INFORMATION AND CERTIFY IT TO BE ACCURATE ON THE BASIS OF MY KNOWLEDGE AND BELIEF. ANY CHANGE, ADDITION OR DELETION OF ANY PART OF THIS DESCRIPTION WILL ACT TO VOID ANY WARRANTY OR RESPONSIBILITY, EXPRESSED OR IMPLIED, THAT I HAVE TOWARD THE SUBJECT PROPERTY.

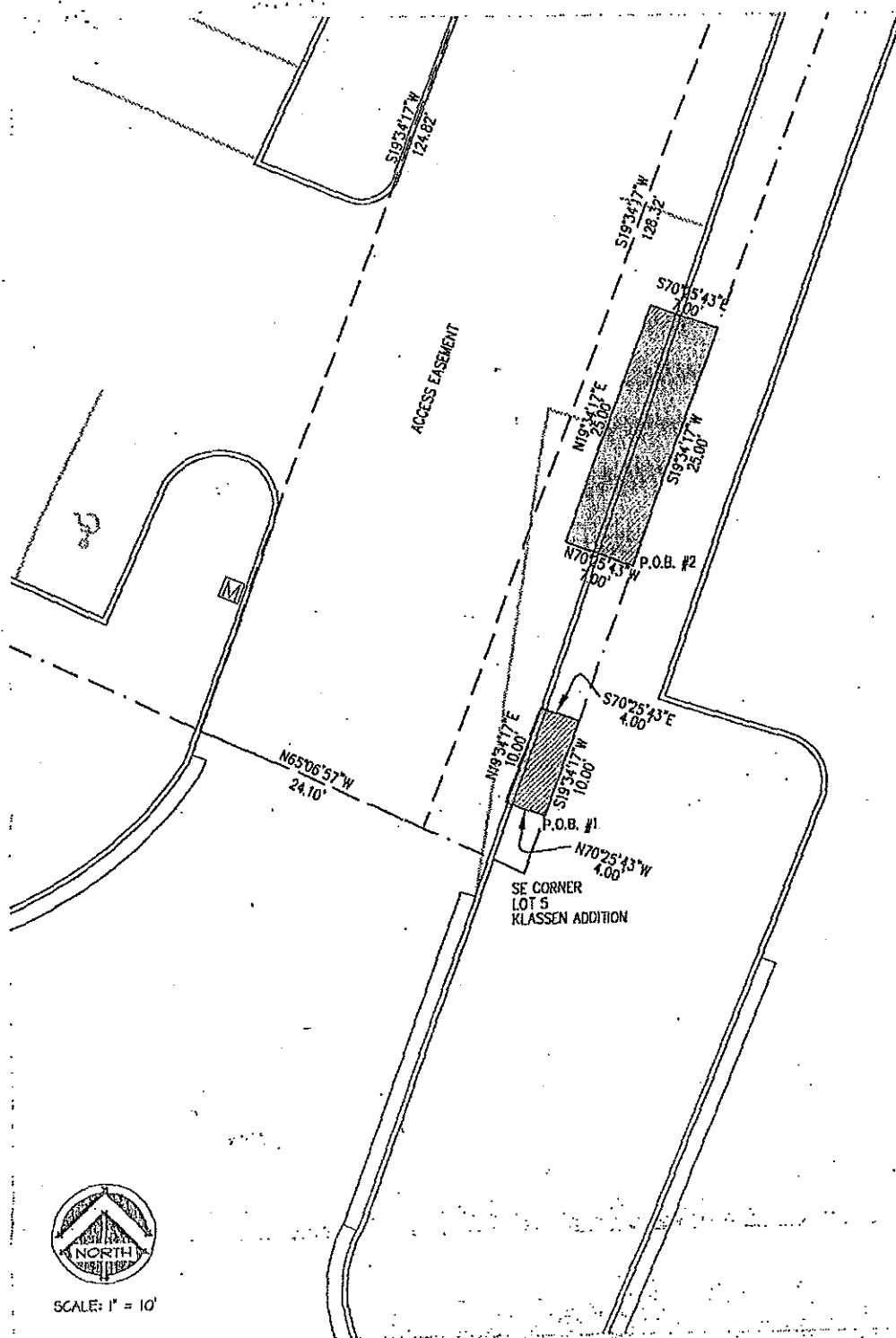


EXHIBIT "D"
SIGN EASEMENTS
LOT 5, KLASSEN ADDITION REPLAT
NOVEMBER 8, 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

FILED
U.S. DISTRICT COURT
DISTRICT OF WYOMING
2017 OCT 24 AM 8:58
STEPHAN HARRIS, CLERK
CHEYENNE

CASCO, LLC, a Wyoming Limited Liability
Company doing business as Quality Inn &
Suites,

Plaintiff,

VS.

Case No: 13-CV-148-ABJ

MCDONALD'S REAL ESTATE COMPANY,
a Delaware Corporation,

Defendant.

**ORDER ON DEFENDANT McDONALD'S REAL ESTATE COMPANY'S SECOND
MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant McDonald's Real Estate Company's (McDonald's) *Second Motion for Summary Judgment* (Motion). Doc. 109. The Motion follows a partial remand from the Tenth Circuit Court of Appeals (Doc. 103) and a status conference by the parties which took place on February 21, 2017.

Background

Casco entered a contract, *Declaration of Reciprocal Easements, Covenants, and Restrictions* (Declaration), with JB's Restaraunt (JB's), creating certain rights and obligations between Casco and JB's related to JB's property. Doc. 48-1, Exhibit 2. JB's subsequently conveyed its real property to McDonald's Real Estate Company (McDonald's). When McDonald's began redeveloping its property, Casco filed the Complaint in this case to enforce its rights under the Declaration. Doc. 2. Some time later, this Court granted McDonald's motion for summary judgment and denied Casco's motion for summary judgment. Doc. 87. Casco appealed.

The 10th Circuit Court of Appeals affirmed in part, reversed in part, and remanded. Doc. 103-1, p. 1–2. In its decision, the 10th Circuit came to several conclusions relevant to this motion. *Id.* The most noteworthy are as follows. The Declaration “is sufficiently definitive and enforceable.” Doc. 103-1, p. 12. Three of the Declarations provisions created contract rights and obligations: New Parking Lot, Garbage Receptacle, and Parking Spaces. Doc. 103-1, p. 13. The other three provisions created property rights: Access Easement, Sign, and Fences. *Id.* And finally, “Casco breached its obligation under the New Parking Lot and Garbage Receptacle provisions and can no longer enforce its rights, if any, under those provisions.” Doc. 103-1, p. 10. This statement seems to conflict slightly with a later portion of the opinion which gives the impression Casco has no contract rights at all under the Declaration. *Id.* p. 18. Thankfully, the remaining contract provision, Parking Spaces, is not in dispute. As a result, the Court need not focus on this possible inconsistency. The 10th Circuit did not address the property rights created by the Declaration, and directed the Court to resolve any property rights issues that remain between the parties. Doc. 103-1, p. 21–22.

The Court held a status conference on February 21, 2017 and the parties agreed the remaining issues fell under the Access Easement provision, which describes the east-west and north-south easements, and the Sign provision. Doc. 108. The parties addressed each of the issues in their filings for the Motion. Doc. 110; Doc. 115; Doc. 118.

Discussion

1. Standard of Review

Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute of fact is genuine if a reasonable juror could resolve the disputed fact in favor of either side. *See*

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute of fact is material if under the substantive law it is essential to the proper disposition of the claim. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). When the Court considers the evidence presented by the parties, “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in the non-movant’s favor.” *Anderson*, 477 U.S. at 255.

The party moving for summary judgment has the burden of establishing the nonexistence of a genuine dispute of material fact. *Lynch v. Barrett*, 703 F.3d 1153, 1158 (10th Cir. 2013). The moving party can satisfy this burden by either (1) offering affirmative evidence that negates an essential element of the nonmoving party’s claim, or (2) demonstrating that the nonmoving party’s evidence is insufficient to establish an essential element of the nonmoving party’s claim. *See* Fed. R. Civ. P. 56(c)(1)(A)–(B).

Once the moving party satisfies this initial burden, the nonmoving party must support its contention that a genuine dispute of material fact exists either by (1) citing to particular materials in the record, or (2) showing that the materials cited by the moving party do not establish the absence of a genuine dispute. *See id.* The nonmoving party must “do more than simply show that there is some metaphysical doubt as to material facts.” *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, to survive a summary judgment motion, the nonmoving party must “make a showing sufficient to establish the existence of [every] element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Further, when opposing summary judgment, the nonmoving party cannot rest on allegations or denials in the pleadings but must set forth specific facts showing that there is a genuine dispute of material fact for trial. *See Travis v. Park City Mun. Corp.*, 565 F.3d 1252, 1258 (10th Cir. 2009).

When considering a motion for summary judgment, the court's role is not to weigh the evidence and decide the truth of the matter, but rather to determine whether a genuine dispute of material fact exists for trial. *Anderson*, 477 U.S. at 249. Credibility determinations are the province of the fact-finder, not the court. *Id.* at 255.

2. East-West Easement

A. McDonald's Argument

McDonald's asserts that Casco never sought the ability to "open up" the east-west easement to vehicular traffic in the First Amended Complaint (Doc. 48) and therefore cannot request such relief of the Court now. Doc. 110, p. 4. This assertion aside, the more substantive part of McDonald's argument can be summarized as follows. First, the Declaration never granted Casco any right to alter, or "open up" McDonald's parking lot. Second, even if the Declaration had granted Casco such a right, it was a contract right. Third, the 10th Circuit held that Casco no longer holds any contract rights under the Declaration. Therefore, as a matter of law Casco cannot "open up" the McDonald's parking lot and the law of the case doctrine prevents re-litigation of this issue.

Regarding the assertion that the Declaration never contained a right to "open up" McDonald's parking lot to vehicular traffic, McDonald's directs the Court to the 10th Circuit's opinion and to Wyoming's law related to easements. First, the 10th Circuit found that the Declaration was unambiguous. Doc. 103-1, p. 15. And second, "[a]n owner of land who grants a right of way over it conveys nothing but the right of passage and reserves all incidents of ownership not granted." *Bard Ranch Co. v. Weber*, 557 P.2d 722, 730 (Wyo. 1976) (quoting *Edwards v. Julian*, 192 Pa. Super. 121, 159 A.2d 547, 549 (1960)).

Turning to the record, "Casco's easement rights are defined in Exhibit "A" Legal Description Access Easement and paragraph 2 of the Declaration, neither of which mentions vehicular traffic

or altering JB's/McDonald's property to accommodate vehicular traffic." Doc. 110, p. 8 (citing Doc. 48-1, p. 6, 9). Both documents are silent on whether Casco could "open up" the east-west easement to vehicular traffic. Doc. 48-1, p. 6, 9. Under *Bard Ranch Co.*, Casco has no greater rights than those specifically defined. 557 P.2d at 730. Therefore, Casco cannot now assert rights not present in the original agreement between the parties.

McDonald's also offers an alternate argument that even if the Declaration created such a right Casco's failure to redevelop the lots for 11 years caused it to lose its contractual rights. Doc. 110, p. 7, and Casco may not now re-litigate a claimed right to alter McDonald's parking lot. Doc. 110, p. 8. To this end, McDonald's provides a law of the case analysis. In relevant part, "the law of the case 'doctrine posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" *United States v. Monsisvais*, 946 F.2d 114, 115 (10th Cir. 1991) (quoting *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 5 L.Ed.2d 318 (1983)). In situations such as the one presented here, involving an appeal and remand, "the appellate court establishes the law of the case and ordinarily will be followed by both the trial court on remand and the appellate court in any subsequent appeal." *Rohrbaugh v. Celotex Corp.*, 53 F.3d 1181, 1183 (10th Cir. 1995). The doctrine is "based on sound public policy that litigation should come to an end and is designed to bring about a quick resolution of disputes by preventing continued re-argument of issues already decided." *Gage v. General Motors Corp.*, 796 F.2d 345, 349 (10th Cir. 1986) (citations omitted).

Turning to the record again, McDonald's argues proper application of the law of the case to the 10th Circuit's opinion precludes Casco from altering McDonald's parking lot. Doc. 103-1, p. 22. This is so, they allege, even though Casco maintains easements. However, McDonald's does concede Casco can use the easement, but just can't change McDonald's parking lot in anyway.

Id. pp. 18, 21. To that end, Casco is, and always has been, free to alter its own property to permit vehicular traffic to travel through the access easement. Doc. 110, p. 9.

B. Casco's Argument

Casco's presents two arguments as to why it can alter the east-west easement to allow vehicular traffic. First, the Declaration clearly shows the parties intended the easement to carry vehicular traffic. Second, and in the alternate, easements are not limited solely to those uses by the easement holder at the time the easement was created or as expressed in the document which creates the easement.

Casco begins by arguing that McDonald's misinterprets the 10th Circuit's decision in this manner when it asserts Casco no longer has any rights under the Declaration. Doc. 115, p. 8–9. Casco points out it only lost its rights under the Declaration provisions related to constructing a new parking lot or changing the location of the garbage receptacle. Doc. 103-1, p. 10. Under this line of reasoning, the provisions relating to the easements remain valid and this Court must interpret them. From here, Casco asserts that Wyoming law allows courts to consider the circumstances surrounding execution of an agreement to determine the parties' intent even in unambiguous contracts. *Mullinnix LLC v. HKB Royalty Trust*, 2006 WY 14, ¶ 6, 126 P.3d 909, 915 (Wyo. 2006). Additionally Casco argues that the intention of the parties and purpose of a servitude should be considered when interpreting a servitude. *Hasvold v. Park County School Dist. No. 6*, 2002 WY 65, ¶ 14, 45 P.3d 635, 638 (Wyo. 2002).

Casco then turns to the record to demonstrate that Declaration did permit vehicle access. Casco points out the east-west easement is wider than the north-south easement (*See* Doc. 71-2, Exhibit A, p. 6) and McDonald's does not assert the latter to be limited to pedestrian traffic. Casco also asserts the creating language for both easements is found in the same part of the

Declaration. Doc. 71-2, Exhibit A, p. 2. Furthermore, the east-west easement includes a separate pedestrian access. *Id.* Finally, the reciprocal parking arrangement is a clear indication vehicles would move back and forth between both parking lots. Doc. 115-6, ¶¶ 44–45. Therefore, Casco concludes that the Court need only rely on the Declaration to plainly see that it can alter the parking lot to allow vehicular traffic.

Turning to the alternate argument, Casco offers the Court a more complete picture of *Bard Ranch Co. v. Weber*. 557 P.2d 722, 730 (Wyo. 1976). Specifically:

[t]hough the rights of the easement owner are paramount...to those of the landowner, the rights of the easement owner and of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both the easement and the servient tenement. The owner of the easement is said to have all rights incident or necessary to its proper enjoyment, but nothing more...

Id. (quoting 25AmJur2d Easements and Licenses 72, pg. 478). Casco further relies on *Bard Ranch Co* to support the argument that the use of an easement is not forever confined to the use at the time of the grant. *Id.* at 731. Casco then directs the Court to *White v. Allen* to support the argument that an easement holder can make alterations to the servient estate in order to reasonably use the dominant estate so long as those alterations do not unreasonably inconvenience the servient estate. 2003 WY 39, ¶ 16, 65 P.3d 395, 400. As a final point, Casco notes that whether and to what extent an alteration of property for the purposes of using an easement is reasonable is a question of fact. *White v. Allen*, 2003 WY 39, ¶ 16, 65 P.3d 395, 400.

To demonstrate the reasonableness of its proposed alteration, Casco hired a qualified Professional Land Surveyor (Doc. 115-3, ¶¶ 67) who prepared a proposal which Casco asserts is the only feasible way to open the east-west easement to vehicular traffic. *Id.*, ¶¶ 17–20. This proposal would require regrading of McDonald’s parking lot and the addition of a retaining wall. *Id.*, ¶9–10. The entirety of the alteration would take place within the confines of the easement

(*Id.*, ¶15) and would not substantially interfere with McDonald's use of their parking area or drive through. *Id.*, ¶ 16. McDonald's has rejected this proposal. Doc. 115-4. Casco asserts that the alteration will not be burdensome, and to the extent that it may be burdensome, McDonald's made it worse through its own construction activity which increased the height differences between the two relevant lots. Doc. 115, p. 15.

C. Analysis

i. Improper Pleading

The Court can quickly dispatch McDonald's assertion that Casco cannot alter the easement due to improper pleading. Simply put, the Court finds this assertion to be incorrect. *See* Doc. 48 ¶ 22. Furthermore, the 10th Circuit clearly directed this Court to "address any remaining issues related to the easements." Doc. 103-1, p. 21.

ii. Law of the Case

McDonald's law of the case analysis goes as follows. The 10th Circuit held Casco has no contract right under the Declaration to alter the parking lot. Therefore, law of the case doctrine prohibits this Court from reexamining whether Casco can alter the parking lot. Admittedly, the law of the case doctrine applies to decided rules of law in a case. *See Been v. O.K. Industries, Inc.*, 495 F.3d 1217, at 1224–25 (10th Cir. 2007). In this case, whether Casco has contract rights presents the rule of law issue which would be subject to the law of the case doctrine. Whether Casco can alter the parking lot, on the other hand, is the conclusion. The flaw in McDonald's reasoning is in extending the law of the case doctrine beyond the resolution of a rule of law to any conclusion that flows from a resolution of a rule of law. McDonald's case law doesn't support this and the Court can find none. Beyond a law of the case analysis, the Court can find no authority to support the proposition that a conclusion flowing from a contract law analysis

would, by itself, bar a court from even considering whether a separate property law analysis could ultimately lead to a different conclusion.

Furthermore, McDonald's law of the case analysis would require the Court to disregard a clear directive from the 10th Circuit to "address any remaining issues related to the easements." Doc. 103-1, p. 21. Even more compelling, the 10th Circuit explicitly stated "[b]ecause the district court did not address the scope of the parties' property interests, we do not address the issue on appeal." *Id.* It is hard to imagine a clearer statement that there is no law of the case related to the issue of the parties' property rights under the easements. McDonald's law of the case analysis is not on point and the Court will not consider it.

iii. Wyoming's Law of Easements

Both parties present legal standards from both contract law and property law. Examples of the contract law cited include *Collins v. Finnell*, 29 P.3d 93, 100 (Wyo. 2001) (stating courts construe an ambiguity in the contract against the drafting party) and *Roussalis v. Wyoming Medical Center, Inc.*, 4 P.3d 209, 231 (Wyo. 2003) (recognizing courts determine the intent of the parties when interpreting a contract). The contract law analysis is not on point since this easement must be examined under property law principles.

Thankfully, Wyoming's law of easements has analogous principles. McDonald's orients the Court in the right direction by pointing to *Hasvold v. Park County Sch. Dist. No. 6*, for the definition of an easement as "'an interest in land which entitles the easement holder to a limited use or enjoyment over another person's property.'" 45 P.3d 635, 638 (Wyo.2002) (quoting *Mueller v. Hoblyn*, 887 P.2d 500, 504 (Wyo. 1994)). Furthermore, the rights of an easement holder "are measured and defined by the purpose and character of the easement." *Bard Ranch Co., v. Weber*, 557 P.2d 722, 731 (quoting 25 Am.Jur.2d Easements and Licenses § 72, p. 478). *Hasvold* describes the process for construing an easement in language very similar that used in

construing a contract. 45 P.3d at 638. A court must determine the intent of the parties, first by looking at the language of the easement. *Id.* If clear and unambiguous, the easement is interpreted as a matter of law; if not, a court will consider extrinsic evidence regarding intent. *Id.*

With the intent of the parties determined, a court will then perform the balancing test to determine whether each party's use is reasonable or whether the use substantially interferes with another party's use. *Jackson Hole Mountain Resort Corp.*, 2005 WY 46, ¶¶ 10–11, 109 P.3d 555, 559–60 (Wyo. 2005). In evaluating what is reasonable courts must be aware that easements are not restricted to the “use that was being made at the time of the grant.” *Bard Ranch Co.*, 557 P.2d at 731. Typically, the factual inquiry surrounding whether the use of an easement is reasonable or whether a use of an easement substantially interferes with another parties' use is not suitable for summary judgment. *White v. Allen*, 2003 WY 39, ¶ 13, 65 P.3d 395, 399–400 (Wyo. 2003).

Turning to the record, the Court must first look at the Declaration to determine the intent of the parties and the purpose and character of the easement. *Hasvold*, 45 P.3d at 638; *Bard Ranch Co.*, 557 P.2d at 731. The relevant provision of the Declaration is titled Access Easement and reads as follows:

Attached hereto as Exhibits “A” and “B”, and by reference made a part hereof, is the legal description of an access easement which JB's do hereby grant, bargain, sell, and convey to Casco across JB's property, which shall be a perpetual access easement until such time as the parties hereto, their successors and assigns, and predecessors in title mutually agree to terminate such access easement. The parties agree that the obligation for snow removal and maintenance and repair of such access easement shall be JB's.

Doc. 48-1 p. 6. McDonald's readily concedes this provision and the accompanying Exhibit A are the source of any easement rights Casco may have. Doc. 110, p. 8. Curiously, McDonald's doesn't include Exhibit B and gives no indication why. The Declaration uses the same language to incorporate both Exhibits and does not prioritize them. Furthermore, the 10th Circuit

concluded “the Declaration is sufficiently definite and enforceable.” Doc. 103-1, p. 10. This Court agrees and will consider the Access Easement Provision and Exhibits A and B referenced in that provision in determining the intent of the parties and the purpose and character of the easement.

As a preliminary matter, the Court concludes from the plain language of the Access Easement provision that there is only one access easement. Doc. 48-1, p. 6. The references to the east-west and north-south easements are terms of convenience for the sake of the present litigation and there is no indication that the parties contemplated they would be treated separately. As further proof, Exhibit A does not describe the east-west and north-south easements separately. Doc. 48-1, p. 9. Rather, Exhibit A describes the general T shape of the total easement as drawn in Exhibit B. Doc. 48-1, pp. 9–10. Finally, several of the designated parking spaces on Exhibit B do not make sense if the east-west portion of the easement was not intended to carry vehicular traffic.

The Court finds the east-west portion of the easement is wide enough to carry vehicular traffic. Also, the east-west portion of the easement is an inseparable part of the north-south portion of the easement which undisputedly was intended to carry vehicular traffic. Finally, the Declaration along with Exhibits A and B do not make sense when viewed under the presumption that the easements were only meant for foot traffic. Therefore, the Court concludes that the parties did intend for the entire access easement, including the east-west portion, to carry vehicular traffic. Furthermore, the east-west easement is a perpetual access easement that cannot be terminated without an affirmative act by the parties. Doc. 48-1. P. 6. Therefore, the Court has no reason to think the east-west portion of the easement cannot be altered to accommodate vehicular traffic.

Unfortunately this conclusion does not end the inquiry. The Court must next consider whether Casco's proposed alteration to the parking lot is reasonable and whether it would substantially interfere with McDonald's right to use its parking lot. *Jackson Hole Mountain Resort Corp*, 2005 WY 46, ¶¶ 10–11, 109 P.3d 555, 559–60 (Wyo. 2005). Casco asserts its plan is the only feasible alternative. Doc. 115-3, ¶¶ 17–20. This presents a fact question which McDonald's disputes and a reasonable juror could resolve in favor of either party. The Court notes additional disputes of material facts as well. One is whether the length of time in which Casco did not assert its rights to alter McDonald's parking lot makes its attempt to do so now unreasonable. Another is whether McDonald's alterations to its parking lot have increased the work required for any future alterations to the easement and are in some way responsible for the extent of the work to be done. The resolution of these questions is essential to the proper disposition of the case. Reasonable jurors could resolve each of these in favor of either party. Therefore summary judgment is improper and is denied.

3. North-South Easement

A. McDonald's Argument

McDonald's presents two arguments regarding the north-south easement. First, Casco's First Amended Complaint fails to seek specific monetary damages and, therefore, it is not entitled to the relief. Second, there is no interference with Casco's use of the easement. However, if the interference alleged by Casco were true, it is so minor it does not rise to the level that could permit nominal damages.

As a legal basis, McDonald's presents the following. The servient owner has the right to use its property as long as it does not substantially interfere with the easement owner's. See *Owsley v. Robinson*, 65 P.3d 374, 377 (Wyo. 2003) (citations omitted); see also *Hasvold*, 2002 WY at ¶ 13; see also *Mueller*, 887 P.2d at 504; see also *Bard Ranch* 557 P.2d at 730. Turning to the

record, McDonald's asserts Casco's access easements are not exclusive easements. Additionally, it takes the trash truck no more than five (5) minutes early each morning to service the trash receptacle. Doc. 110-5, p. 13. Such use does not rise to the level of a substantial interference.

As an additional argument, McDonald's states once again "Casco has no rights under the Declaration to alter the parking lot, dumpster, or storage shed," (Doc. # 103-1, p. 13) and that "the doctrine of laches bars Casco from asserting its contractual rights, if any, derived from the Declaration's exhibits ... [or] that [otherwise] remain under the Declaration and its exhibits" (Id. at p. 18).

B. Casco's Argument

Casco does not direct the Court to any additional law related to the use of the north-south portion of the access easement. As far as facts, Casco confirms the time it takes for the trash and grease trucks to do their work as described by McDonald's. Doc. 115-5, ¶ 28. Casco goes on briefly to describe how this is a substantial interference by alleging the potential for blocking large vehicles and an unsupported assertion about a great reduction in the value of Lots 8 and 9 as a result of the interference. *Id.* ¶ 29-34.

C. Analysis

The Court relies on its prior analysis to dispose of any assertion of improper pleading by Casco, law of the case, or of contract principles to govern a property dispute. The Courts prior analysis related to Wyoming's law of easements also applies and since the intent of the parties regarding the north-south portion of the easement is not in dispute the Court will proceed to the reasonableness analysis. *Jackson Hole Mountain Resort Corp*, 2005 WY 46, ¶¶ 10-11, 109 P.3d 555, 559-60 (Wyo. 2005).

Here the material facts are not in dispute. Both sides agree that the garbage truck and grease truck blocks the entire easement for about five (5) minutes early each weekday morning. Doc. 110-5, p. 13; Doc. 115-5, ¶ 28. There is no assertion that any person has ever actually been delayed by the interference, much less that such a situation would ever lead to an ill effect upon Casco. It seems far more likely that a delayed person would associate such a frustration with McDonald's. Also, given the nature of the interference, if a person was ever delayed, that person could quickly be apprised about the short duration of the delay by simply noticing the garbage crew at their work. Finally, Casco's unsupported assertion about a loss in property value is hollow without an accompanying appraisal. *Id.* ¶ 29–34. Considering the facts as far as possible in favor of Casco, the Court is convinced that no reasonable juror could conclude the interference caused garbage the truck and grease truck amount to an unreasonable use by McDonalds or to a substantial interference with Casco's rights to use the easement. Therefore, summary judgment is proper and granted and Casco is not entitled to any injunctive relief or monetary damages related to the interference caused by the garbage truck and the grease truck.

4. Sign Easement

A. McDonald's Argument

In summary, McDonald's argues as follows. Its only obligation as it relates to the sign easement is to not interfere with Casco's right to place a sign. Wyoming's law of easements does not require the servient estate holder to do anything other than allow the use of the easement. Therefore, McDonald's has no obligation to perform any affirmative act to aid Casco in exercising its rights Doc. 110, pp. 9–11.

In support of this argument McDonald's directs the Court to Wyoming's definition of an easement: “an interest in land which entitles the easement holder to a limited use or enjoyment over another person's property.” *Hasvold v. Park County Sch. Dist. No. 6*, 2002 WY 65, ¶ 13, 45

P.3d 635, 638 (Wyo.2002) (quoting *Mueller v. Hoblyn*, 887 P.2d 500, 504 (Wyo. 1994)).

Additionally servient estate holders do not have an affirmative duty to facilitate the use of easement holders. *Stephens v. Lavitt*, 293 P.3d 634, 640 fn 2. McDonald's also directs the Court to *Taylor v. Phelan*. 9 F.3d 882, 887 (10th Cir. 1993). Apparently this case is cited for the propositions that a federal court should not reach novel conclusions when applying substantive state law and also possibly for legal principles related to affirmative duties to act. *Id.* The Court cannot figure out how this case is in any way relevant since it discusses whether a federal court in the District of Kansas should extend Kansas law to require a Kansas City police officer to take affirmative steps to protect a witness who reports a crime. *Id.*

McDonald's then asserts that requiring it to submit a permit application to the City of Casper would require the servient estate holder to perform an affirmative act to enable the dominant estate holder, Casco, to use and enjoy the easement. McDonald's then goes on that there is no requirement that a servient estate holder ever perform any affirmative act, therefore, this Court cannot require McDonald's to submit an application on Casco's behalf.

As an alternate argument, echoing much of the substance of the argument related to the east-west portion of the access easement, McDonald's asserts that if such an obligation on McDonald's ever existed, it existed under the Declaration. Doc. 110, p. 9. And, no such language is found in the Declaration, which must be construed against its drafter, Casco. Doc. 110, p. 9–10.

McDonald's legal analysis related to Casco's contract rights is the same as discussed above and will not be repeated here. Regarding contract drafting, McDonald's directs the Court to *Collins v. Finnell* where the Wyoming Supreme Court held that any ambiguity in a contract must be construed against the drafter. 29 P.3d 93, 100 (Wyo. 2001).

As the 10th Circuit noted, the Declaration granted Casco the right to install, repair, and maintain signs on McDonald's property with particular limitations. See Doc. # 103-1 at p. 3. The 10th Circuit has confirmed the existence of an easement for signs. *See id.* at p. 21. McDonald's acknowledges it is willing to reduce its signage to accommodate Casco's easement rights if Casco cannot get a variance from the City of Casper to place its sign. Doc 110, p. 4–5. Finally, McDonald's claims "all contractual obligations have been eliminated." Doc. 110, p. 11. And Casco's allegations of the process to get a sign permit are unsupported. Doc. 110, p. 9.

B. Casco's Argument

Casco's argument regarding the sign easement can be summarized as follows. Casco relies on *Roussalis v. Wyo. Med. Ctr., Inc.* for the proposition that courts should interpret an agreement to carry out the reasonable intention of the parties. 4 P.3d 209, 231 (Wyo. 2000). Casco goes on to argue *Stephens v. Lavitt*, cited by McDonald's, is not on point because it turns on a factual situation where the plaintiff was in contempt for violating an injunction which justified terminating an easement held over several servient estates. 2010 WY 129, ¶ 20, 239 P.3d 634, 640, fn. 1 & 2. Casco goes on to assert that McDonald's misconstrues *Bard Ranch Co.*, by completely reading out any reference to the dominant estate holder's use and enjoyment of the property and any obligation on the part of the servient estate to refrain from substantial interference. 557 P.2d at 731.

Turning to the record, Casco asserts that the City of Casper limits free standing signage to 600 square feet. Doc. 115-5, ¶ 19. McDonald's is currently using 535 square feet which combined with Casco's current sign brings the total use up to 568 square feet. *Id.* ¶ 16. Casco wants to put up a 300 square foot free standing sign which would bring the total use up to 835 square feet. *Id.* ¶ 17–18. Casco goes on to describe its efforts to acquire conditional use permit to

exceed the 600 square feet allowed, but the City of Casper requires the application to come from the lot owner. *Id.* ¶ 11–14, 21–24. Casco concludes by asserting historic cooperation on these matters with McDonald’s predecessors. *Id.* ¶ 25. Casco presents its situation as a classic Catch-22. McDonald’s will not reduce signage unless the City of Casper won’t allow a conditional use permit. The City of Casper will not consider the conditional use permit without an application from the lot owner. McDonald’s will not apply, or assist in applying for a conditional use permit in any way. Under these circumstances Casco asserts it is effectively denied its bargained for rights under the easement.

C. Analysis

The Court relies on its prior analysis to dispose of any assertion of improper pleading by Casco, the law of the case, or of contract principles to govern a property dispute. The Courts prior analysis related to Wyoming’s law of easements also applies. Therefore, the Court will proceed directly to the text of the easement. The relevant provision is titled Sign and states as follows:

JB’s have granted to Casco the right to install, repair, and maintain signs on JB’s real property located on the plat attached hereto as Exhibits “C” and “D”, and by reference made a part hereof. Such signs shall not exceed the following dimensions:

(a) Sign easement #1 shall not be in excess of 66” high, as measured from the ground to the top of the sign.

(b) Total square footage of the two signs shall not exceed the lesser of 300 square feet, or 50% of the total dimensions and sign coverage allowed on Lot 5 by the City of Casper at the time the signs are to be erected.

Doc. 48-1, p. 6. McDonald’s memorandum in support of the Motion contains an interesting statement about interpreting the above language:

In sum, by claiming that McDonald’s must assist it in securing a sign permit in the light of a property interest (and seeking to somehow overcome the clear

directive in the Circuit's Order that Casco has no contract rights to enforce), Casco is really seeking an unwritten contractual right to which it is not entitled. This Court should not impose unwritten obligations on McDonald's, especially in light of the fact that the Circuit explicitly held that Casco no longer has any contractual rights to enforce.

Doc. 110, p. 11. Again the Court ignores the statements in the quote above about contract rights which, as stated before, miss the point. But the quote is useful because McDonald's boldly states that unwritten obligations should not be read into the Declaration and imposed upon them. This is interesting because it is McDonald's who reads into the Declaration an unwritten obligation imposing on Casco the burden to seek a conditional use permit, or the denial of a conditional use permit, before it can enjoy its rights. In contrast, the language of the easement indicates that JB's and Casco agreed to share the total sign coverage allowed by the City of Casper equally between them, 300 feet each. They even contemplated changes in the allowable signage but otherwise limiting Casco's right to 50% of the total should the total be reduced. The parties demonstrate their intention that neither of them would be required to seek a conditional use permit from the City of Casper to enjoy their respective rights under the easement.

Having settled the parties' rights under Sign provision, the Court turns to whether McDonald's refusal to reduce its signage is unreasonable and substantially interferes with Casco's use and enjoyment of its easement rights. Casco states the undisputed material facts as follows. The City of Casper limits free standing signage to 600 feet. Doc. 115-5, ¶ 19. McDonald's is currently using 535 square feet which combined with Casco's current sign brings the total use up to 568 square feet. Id. ¶ 16. Casco has a right under the easement to up to 300 square feet of free standing signage on lot 5, 50% of the total signage allowed under the ordinance. Doc. 48-1, p. 6. McDonald's is currently using 89% of the total signage allowed under the ordinance leaving only 11% of the available space for Casco instead of its rightful 50%. McDonald's assures the Court it will reduce its signage if the City of Casper fails to grant a

conditional use permit to Casco. Doc 110, p. 4–5. However, this position flips the burden. Based on the plain language of the easement, the party seeking a use in excess of its rights under the easement has the obligation of also seeking a conditional use permit from the City of Casper, not the party merely seeking to exercise its rights under the clear terms of the Declaration. Based on the above, the Court concludes that McDonald's signage in excess of 300 square feet substantially interferes with Casco's rights under the easement. In light of the undisputed material facts, summary judgment in favor of McDonald's is denied and summary judgment in favor of Casco is granted.

Conclusion

Upon reviewing the briefings and the record, the Court concludes that a hearing on this motion is unnecessary. For the reasons discussed above, the Court concludes the Declaration demonstrates a clear intent by the parties to allow the east-west easement to carry vehicular traffic. However there are material facts in dispute related to whether any alteration to the east-west portion of the access easement is reasonable or would create a substantial interference with McDonald's use and enjoyment of its lot rendering summary judgment improper. The Court further concludes the removal of waste by the garbage and grease trucks is not unreasonable and does not substantially interfere with Casco's use and enjoyment of the access easement. The Court further concludes that McDonald's use of 89% of the sign easement and refusal to reduce its signage is unreasonable and substantially interferes with Casco's use and enjoyment of its rights under the Declaration. Accordingly, it is

ORDERED that McDonald's Motion for Hearing (Doc. 125) on its Second Motion for Summary Judgment is DENIED. It is further


ORDERED that McDonald's Motion for Summary Judgment (Doc. 109) is DENIED with regard to the east-west portion of the easement. It is further

ORDERED that McDonald's Motion for Summary Judgment (Doc. 109) is GRANTED with regard to the north-south portion of the easement. It is further

ORDERED that McDonald's Motion for Summary Judgment (Doc. 109) is DENIED with regard to the sign easement and Summary Judgment in favor of Casco is GRANTED with regard to the sign easement. It is further

ORDERED that McDonald's is enjoined from using more than 300 square feet of free standing signage unless and until McDonald's is granted a conditional use permit from the City of Casper to allow more than 600 square feet of free standing signage on its lot.

Dated this 24th day of October, 2017.


Alan B. Johnson
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

2018 APR 18 PM 4:13

SHIRLEY A. ALLEN, CLERK
COURT REPORTER

CASCO, LLC, a Wyoming Limited Liability
Company doing business as Quality Inn &
Suites,

Plaintiff,

VS.

Case No: 13-CV-148-ABJ

MCDONALD'S REAL ESTATE COMPANY,
a Delaware Corporation,

Defendant.

ORDER ON MOTION TO AMEND

On October 24, 2017 the Court entered its *Order on Defendant McDonald's Real Estate Company's Second Motion for Summary Judgment* (Order). ECF No. 128. In the Order, the Court granted summary judgment for Casco, LLC (Casco) on the issue of the sign easement. Casco then filed a *Motion to Amend the Court's Order on Defendant McDonald's Real Estate Company's Second Motion for Summary Judgment* (Motion). ECF No. 132. McDonald's Real Estate Company (McDonald's) filed a Response asking the Court to withdraw the portion of the Order granting summary judgment on the sign easement arguing that Casco had not moved for summary judgment on that issue and the Court did not follow Fed. R. Civ. P. 56(f)(1), and in the alternate, argued for other corrections. ECF No. 133. Casco then filed a Reply. ECF No. 134. The relevant facts have not changed since the Order and therefore won't be repeated. The Court will first examine whether it should amend the Order and then address McDonald's assertion that granting summary judgment in favor of Casco was inappropriate.

Discussion

1. Whether the Court Should Amend the Order

Casco moved that the Court amend the Order to remove references to free standing signage. McDonald's responded by asking the Court to also correct statements concerning the total square feet of signage that McDonald's is currently using and the remove language in the Order indicating a conditional use permit must be part of any appropriate remedy. Such amendments are allowed under the federal rules prior to an entry of judgment for "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties. . . ." Fed. R. Civ. P. 54(b). The Court concludes than an amendment is appropriate and will review its reasoning in an effort to provide more clarity.

Regarding the sign easement, McDonald's asked the Court to enter summary judgment on the basis that "McDonald's has no duty to submit a sign application to the City of Casper on Casco's behalf." Brief in Support of Second Motion for Summary Judgment (Second MSJ), p. 3, ECF No. 110. The first place to look for a duty is in the Declaration which states:

JB's have granted to Casco the right to install, repair, and maintain signs on JB's real property located on the plat attached hereto as Exhibits "C" and "D", and by reference made a part hereof. Such signs shall not exceed the following dimensions:

(a) Sign easement #1 shall not be in excess of 66" high, as measured from the ground to the top of the sign.

(b) Total square footage of the two signs shall not exceed the lesser of 300 square feet, or 50% of the total dimensions and sign coverage allowed on Lot 5 by the City of Casper at the time the signs are to be erected.

Declaration, p. 6, ECF No. 48-1.

First, the easement language is clear and unambiguous, therefore the Court did not look outside the document to determine the intent of the parties. *See Bard Ranch Co., v. Weber*, 557 P.2d 722, 731 (Wyo. 1976). Second, the parties intended that Casco would be able to put up a

sign no greater than 300 square feet. Third, the Declaration does not address the situation we have at present where the total proposed usage by both parties would exceed the total allowed by the City of Casper. Therefore, the Court concluded the parties intended that McDonald's would either leave enough space available, or reduce the space it was using, so that Casco could erect its signs up to the size stated in the declaration. Since McDonald's has not left enough space, refuses to reduce its signage to make space available, and refuses to assist Casco in getting some exception from the City of Casper, the Court concluded that McDonald's is interfering with Casco's rights under the Declaration.

The Court then went on to examine whether McDonald's interference was substantial and unreasonable by analyzing the total square feet of sign space in use compared with what was allowed by the City of Casper. McDonald's disputes whether the Court used correct numbers in that analysis. Specifically, McDonald's asserts it is using 420.55 square feet instead of 535 square feet. In retrospect, this analysis was unnecessary. Any signage space used by McDonald's which leaves less than 300 square feet available for Casco prevents Casco from exercising its rights, which denies Casco the very thing it bargained for. This is a substantial and unreasonable interference. Even if the Court repeated its prior analysis using 420.55 square feet, it would still be substantial and unreasonable.

It may appear that the Court has wandered away from the issue as framed by McDonald's regarding whether McDonald's has a duty to submit a sign application to the City of Casper on Casco's behalf. But after reviewing Wyoming's easement law and the Declaration, the Court concluded that McDonald's framing of the issue is so narrow it misses the mark. Looking at the situation from a slightly wider perspective reveals that McDonald's actions go beyond the refusal to assist in gaining a permit, and taken as a whole, they amount to a complete denial of Casco's

rights. To put it another way, if all Casco has to do is order a sign and have it installed, then of course, McDonald's would have no obligation to do anything. But if the only way for Casco to put up its signs is for McDonald's to reduce its signage and/or assist in submitting or signing or authorizing or filing or taking some other similar act as required by the City of Casper then McDonald's has a duty to do so. To conclude otherwise would be to conclude that the Declaration is void.

When this case is finally resolved, Casco shall have its 300 square feet of signage, or as much of it as it wants to use, and McDonald's shall be able to use the balance plus however much more it wants that the City of Casper will allow. The Court does not know all the options available for reaching that result, but the Court is convinced that if the parties opted to cooperate, they could come up with a joint solution that would save everyone a great deal of time and money. However, in the absence of such cooperation, the Court must use the blunt instrument of an order.

The Court will amend its order to state that McDonald's shall reduce its signage such that 300 square feet is available for Casco to use as the parties clearly intended in the Declaration. The Court will further amend its order to make it clear that McDonald's shall also provide whatever cooperation is reasonably necessary in order for Casco to get any required approval from any appropriate government entity. This cooperation is separate from the reduction. After McDonald's reduces its signage, Casco may or may not require a permit or similar approval from the City of Casper to place its sign. Such information has not been put before the Court so this amended order must cover both possibilities. Finally, nothing in this amended order is to imply that Casco may sit back and wait for its signs to appear. Casco must also act reasonably to ensure it has identified all governmental requirements standing between it and placing the sign and

exercise good faith in trying to meet those requirements before calling on McDonald's for assistance.

2. Whether Granting Summary Judgment in Favor of Casco was Improper

In its response, McDonald's asserted that the Court should not have granted summary judgment in favor of Casco, the nonmoving party. Courts may grant summary judgment to a nonmoving party "after giving notice and a reasonable time to respond." Fed. R. Civ. P. 56(f)(1). A court may grant *sua sponte* summary judgment "if the losing party was on notice that [it] had to come forward with all [its] evidence." *Johnson v. Weld County, Colo.*, 594 F.3d 1202, 1214 (10th Cir. 2010). Furthermore, even if a court does not provide notice, the summary judgment will be affirmed unless the losing party can demonstrate "prejudice from the lack of notice." *Id.*

McDonald's argues that it did not receive proper notice that the Court was considering granting Summary Judgment in favor of Casco. Response, p. 2, ECF No. 133. McDonald's continues that it "did not have the opportunity to address the issues as framed by the Court upon which summary judgment was entered on this particular issue." *Id.* at 3. The Court will first consider whether McDonald's had notice before considering whether any lack of notice prejudiced McDonald's.

Casco argues McDonald's did receive notice from the Court in a status conference on February 21, 2017 at which the Court indicated that should McDonald's lose its motion for Summary Judgment, the case would essentially be over. Reply, p. 2, ECF No. 134. But even without this, the argument that McDonald's lacked notice to come forward with all its evidence is only plausible if the Court was stuck with McDonald's very narrow framing of the issue. That issue again was whether McDonald's had an obligation to submit a sign application on behalf of Casco. But such a narrow framing is unreasonable. In order to resolve McDonald's motion, the Court had no option but to examine how the parties intended any Casco signs would be installed

on McDonald's property as well as what the parties intended each of them to do or refrain from doing in that process. Therefore, McDonald's was certainly on notice that it had to come forward with any evidence that had anything to do with that process.

The Court's analysis of the Second MSJ revolved entirely around the issue as presented by McDonald's. When McDonald's filed its Second MSJ, it asserted that no material facts were in dispute regarding that issue. Therefore the Court can only conclude McDonald's had adequate notice.

If the Court assumes however, that McDonald's lacked notice, then McDonald's must show prejudice from that lack of notice. Yet McDonald's has not offered additional facts or law which it would have presented had it known the Court might grant summary judgment in favor of Casco. Indeed, McDonald's has not even asserted that there are such facts or law. McDonald's does argue that the Court should have used its own number for the amount of signage it is actually using. But had the Court done so, the conclusion would have been the same. McDonald's does assert that "[t]here is no evidence in the record to establish that McDonald's current use substantially interferes with Casco's desire to erect a 300 square foot sign." Response, p. 7, ECF No. 133. But even here, McDonald's fails to mention any facts or law it would have brought to bear had it known the Court might grant summary judgment in favor of Casco. If the Court were to withdraw the Order and direct the parties to brief this issue for summary judgment again, it would waste time and resources. The parties may have plenty of both, but the Court does not. The Court concludes that McDonald's had adequate notice, and even if it did not, it has shown no prejudice. The Court will not withdraw the Order.

Conclusion

The Court agrees with both parties the Order contained portions which are best corrected. However, the Court also believes that the intent of the Order was, and the intent of this amended order is, clear. Accordingly, it is

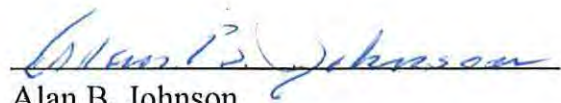
ORDERED that Casco's *Motion to Amend the Court's Order on Defendant McDonald's Real Estate Company's Second Motion for Summary Judgment* (ECF No. 132) is GRANTED. It is further

ORDERED that the Court's *Order on Defendant McDonald's Real Estate Company's Second Motion for Summary Judgment* (ECF No. 128) is AMENDED as follows and all portions of the Order not related to the sign easement remain unchanged. It is further

ORDERED that McDonald's shall reduce its signage so that Casco may erect a sign with dimensions limited to the lesser of 300 square feet, or 50% of the total dimensions of sign coverage allowed on Lot 5 by the City of Casper at the time the signs are to be erected. It is further

ORDERED that McDonald's shall also provide whatever cooperation is reasonably necessary in order for Casco to get any required approval to put up a sign from any appropriate government entity.

Dated this 18th day of April, 2018.


Alan B. Johnson
United States District Judge



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- GWS SINGLE ARM GATEWAY
- PSB PRE-SELL BOARD
- BA ANY LANE BOLLARD
- OHC ORDER HERE CANOPY (QTY
- MB MENU BOARD (QTY 2)
- WPS1 WINDOW POSITION SIGN 1
- WPS2 WINDOW POSITION SIGN 2
- WA WALL ARCH (QTY 3)
- WM 24" WORDMARK (QTY 2)
- WL WELCOME LETTERS (QTY 2)
- RS ROAD SIGN
- D DIRECTIONAL (QTY 2)

Customer:	McDONALD'S	Date:	07/03/13	Prepared By:	INI/CM/ISU	Eng:	X	Notes: Colors may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMX equivalent. If these colors are incorrect, please provide the correct PMS number and a reference to this drawing will be made.
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FRONT ELEVATION

10' RCE

46' RCE

24" WORDMARK 42" WALL ARCH 


8" WELCOME LETTERS



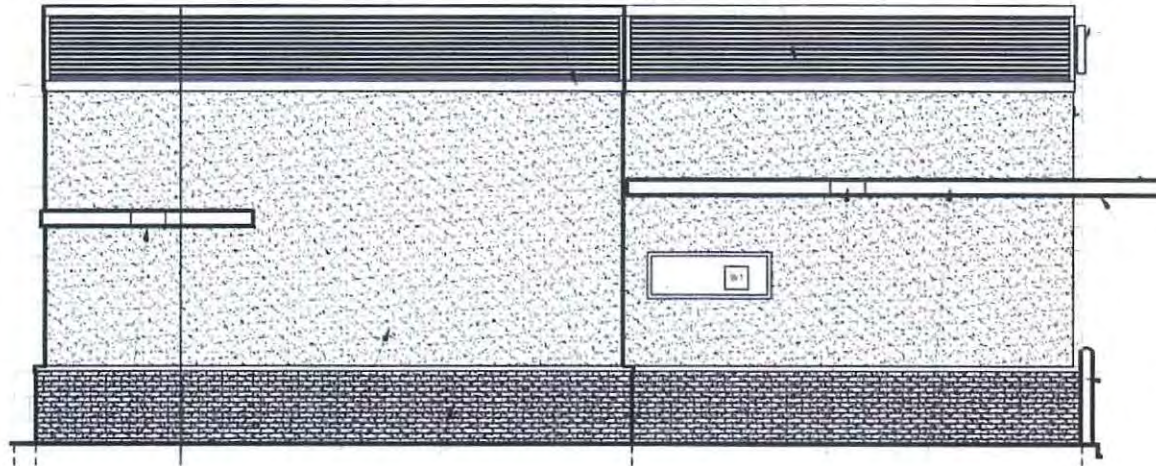
28'-0" +/-

LED CANOPY FASCIA


SCALE: 3/16" = 1'-0"

Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	Eng:	X	<small>Note: Color separations may be exact when viewing on printing, but during. All colors must be PMS or the closest CMX equivalent. If these colors are incorrect, please provide the correct PMS number and a revision to this drawing will be made.</small>	 PERSONA SIGN MAKERS IMAGE BUILDERS	DISTRIBUTED BY SIGN UP COMPANY 700 21st Street Southwest PO Box 210 Watertown, SD 57201-0210 1 (800) 843-9888 • www.persona-inc.com
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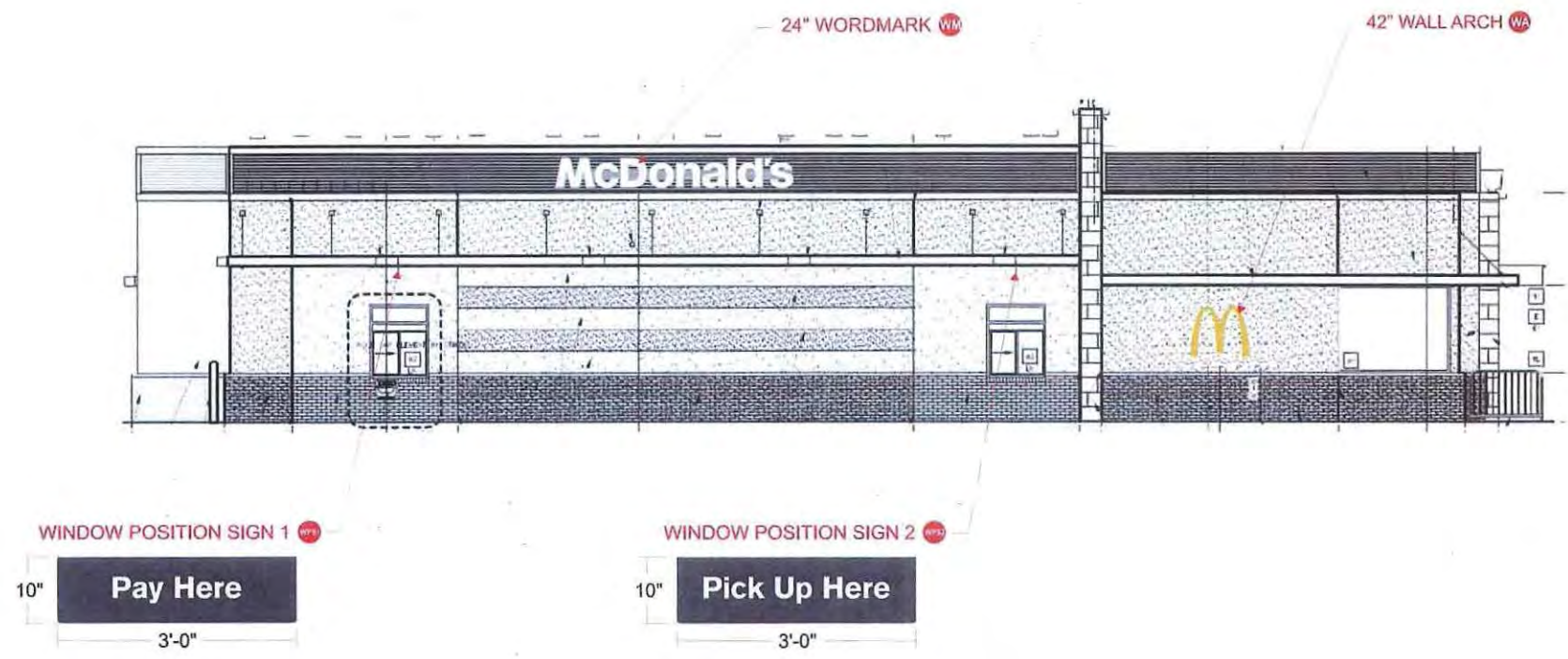
REAR ELEVATION



SCALE: 3/16" = 1'-0"

Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	Eng:	X	Note: Colors shown may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMYK equivalent. If these colors are incorrect, please provide the correct PMS match and a revision to this drawing will be made.		DISTRIBUTED BY SIGN UP COMPANY 700 21st Street Southwest PO Box 210 Watertown, SD 57201-0210 1 (800) 843-9888 • www.persona-inc.com
Location:	CASPER, WY	File Name:	119056 - R2 - 600 WEST F STREET - CASPER, WY - PROGRAM BOOK							

DRIVE-THRU ELEVATION



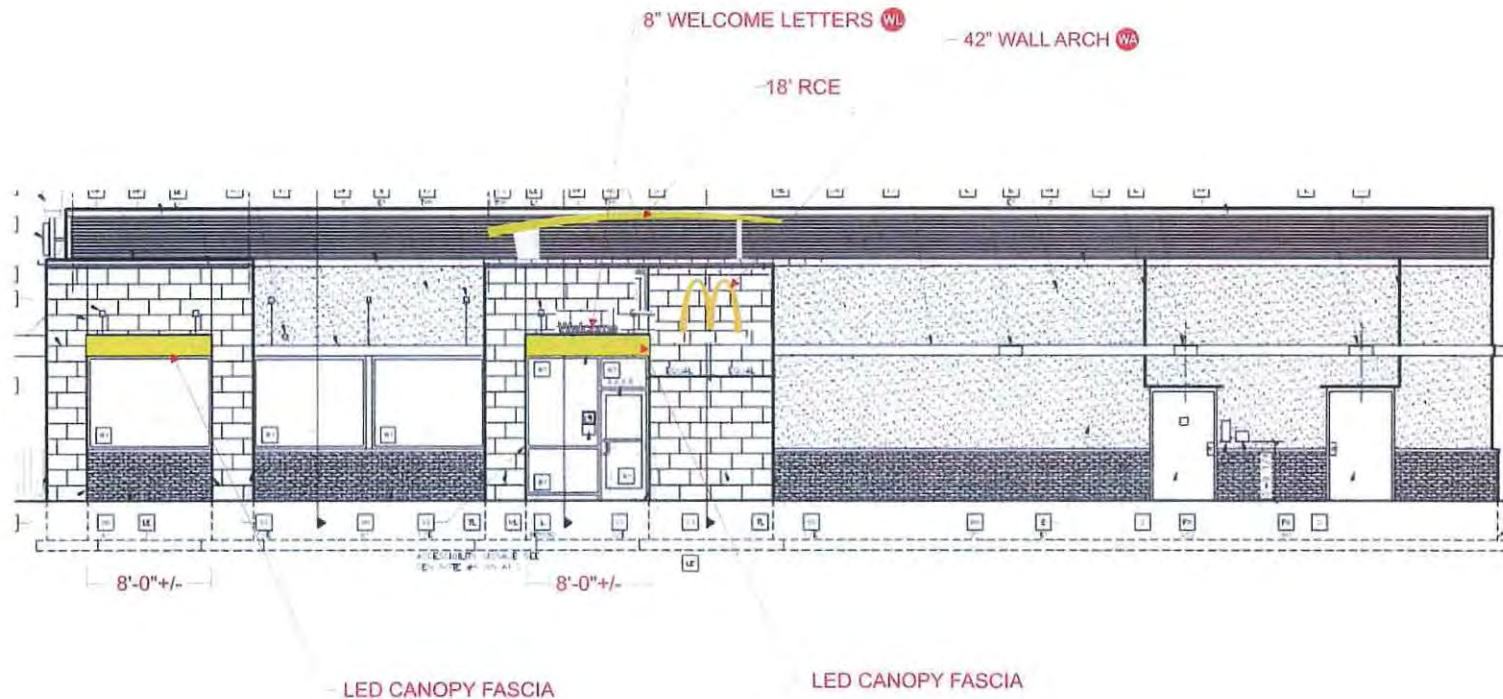
SCALE: 1/8" = 1'-0"

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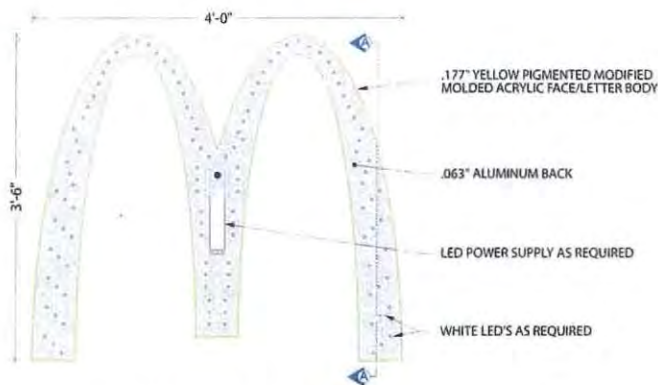
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NON DRIVE-THRU ELEVATION

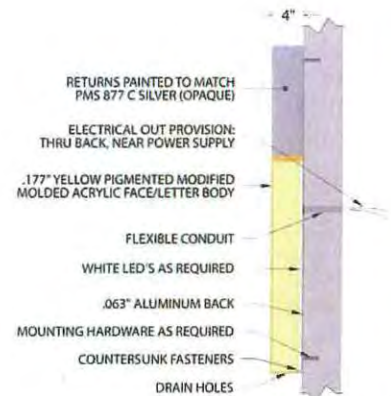


SCALE: 1/8" = 1'-0"

Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	Eng:	X	Note: Color surger may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMYK equivalent. If these colors are incorrect, please provide the correct PMS number and a revision to this drawing will be made.	PERSONA <small>TM</small> SIGN MAKERS IMAGE BUILDERS	DISTRIBUTED BY SIGN UP COMPANY 700 21st Street Southwest PO Box 210 Watertown, SD 57201-0210 1 (800) 843-9888 • www.persona-inc.com
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FRAME & LAMP DETAIL
SCALE: 3/4" = 1'-0"



CROSS SECTION A-A
SCALE: 3/4" = 1'-0"



GRAPHIC DETAIL
SCALE: 3/4" = 1'-0"

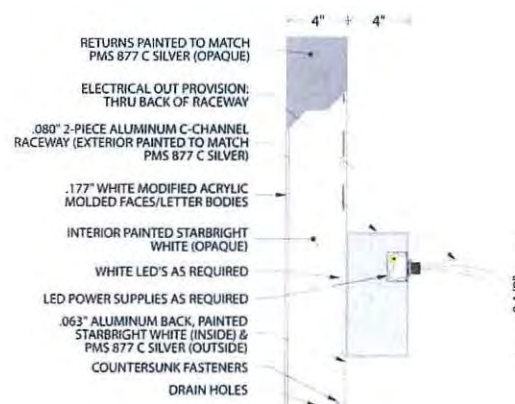
FRAME DETAIL:
DESIGN FACTOR: TBD
.177" FORMED YELLOW PIGMENTED (PMS 123 C)
MODIFIED ACRYLIC FACE/LETTER BODY
EXTERIOR FINISH: PAINTED TO MATCH PMS 877 C SILVER (OPAQUE)
INTERIOR FINISH: PAINTED STARBRIGHT WHITE (OPAQUE)
.063" ALUMINUM BACK - PAINTED STARBRIGHT WHITE
LETTER BODY REMOVABLE FOR SERVICE ACCESS
U.L. APPROVED
ELECTRICAL: 0.85 AMPS, 120 VOLTS
SQUARE FOOTAGE:
BOXED = 14.00
ACTUAL = 4.90



GRAPHIC DETAIL
SCALE: 1/2" = 1'-0"

NOTES:

.177" MOLDED WHITE MODIFIED ACRYLIC LETTER BODIES
INSTALLED ON ALUMINUM BACKS
EXTERIOR FINISH: MATCH PMS 877 C SILVER (OPAQUE);
BACKS PAINTED PMS 877 C SILVER
INTERIOR FINISH: STARBRIGHT WHITE (OPAQUE)
LETTER BODIES REMOVABLE FOR SERVICE ACCESS
ACCESS PANEL BEHIND LETTER "n" FOR RACEWAY ACCESS
U.L. APPROVED
ELECTRICAL: 2.50 AMPS, 120 VOLTS
SQUARE FOOTAGE:
BOXED = 33.38
ACTUAL = 19.53



LETTER PROFILE
SCALE: 1 1/2" = 1'-0"

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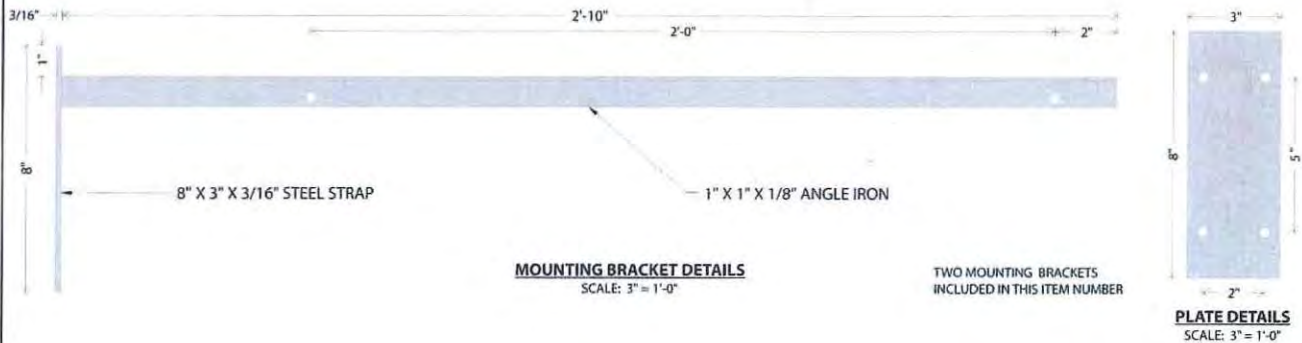
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GRAPHIC DETAIL
SCALE: 1 1/2" = 1'-0"

"WELCOME" LETTER DETAILS
3/4" ALUMINUM LETTERS WITH 1ST
SURFACE DECORATION:
7725-120 SILVER - "WELCOME"
COPY
BLACK POWDERCOAT - OUTLINE
SQUARE FOOTAGE: BOXED = 2.54
ACTUAL = 1.18

WPS1 WPS2



WINDOW POSITION SIGN DETAILS
SCALE: 1 1/2" = 1'-0"

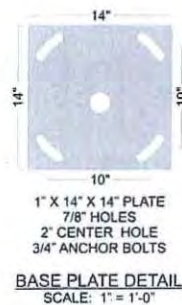
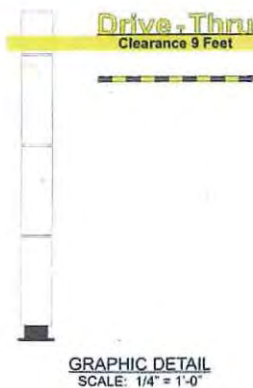
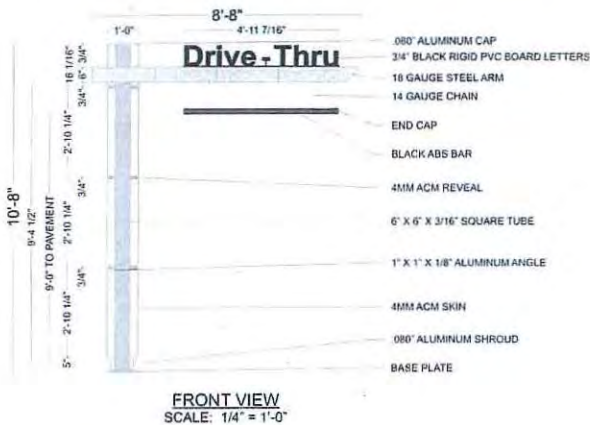
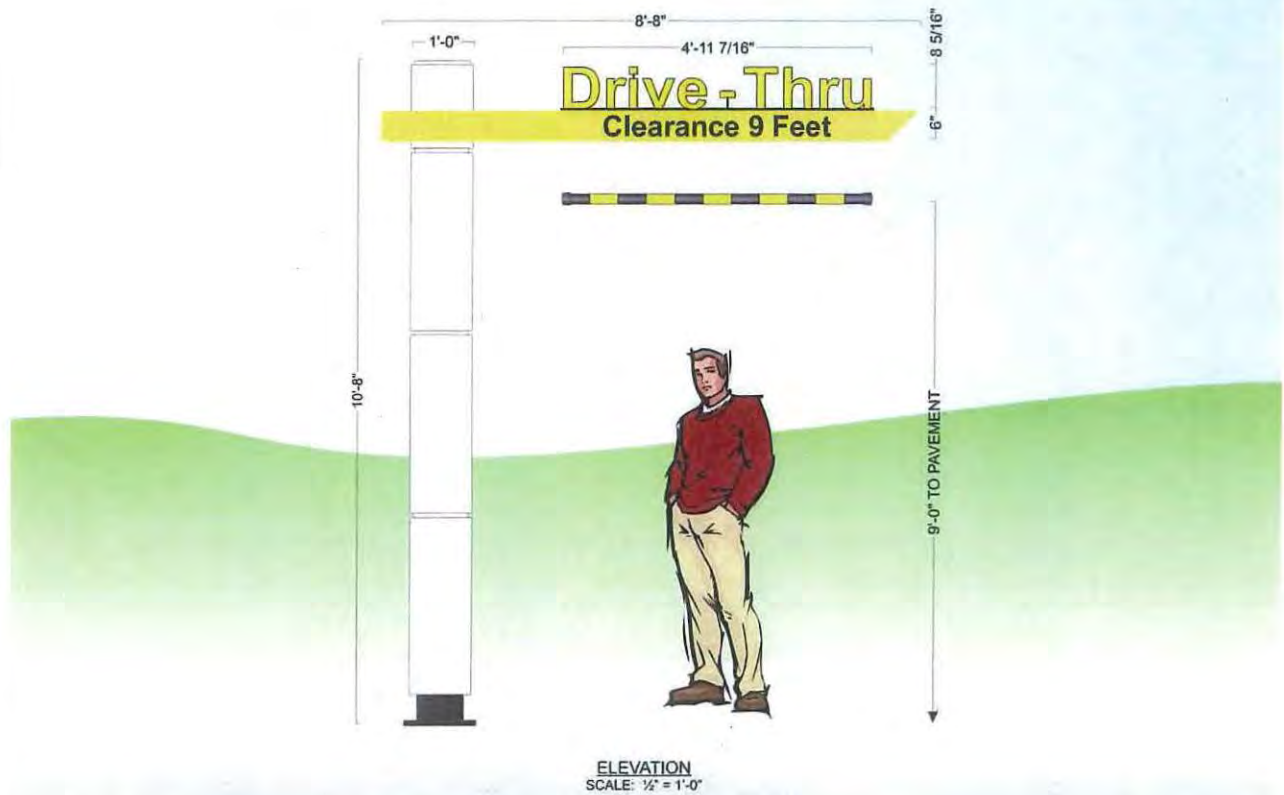
BRACKET DETAILS
DESIGN FACTOR: TBD
3/16" X 3" STEEL STRAP
1" X 1" X 1/8" ANGLE IRON ARM
EXTERIOR FINISH: PAINTED PMS
877 C SILVER
5/16" HOLES PUNCHED IN ANGLE
AND PLATE FOR MOUNTING

WINDOW POSITION SIGNS DETAIL
DESIGN FACTOR: TBD
.150" PIGMENTED PVC BOARD TO
MATCH GREY FORD - MED DK
PLATINUM
WHITE SCREENED COPY 1ST SURFACE
2.50 SQUARE FEET
* BOTH WINDOW POSITION SIGNS
ARE INCLUDED IN THIS ITEM.

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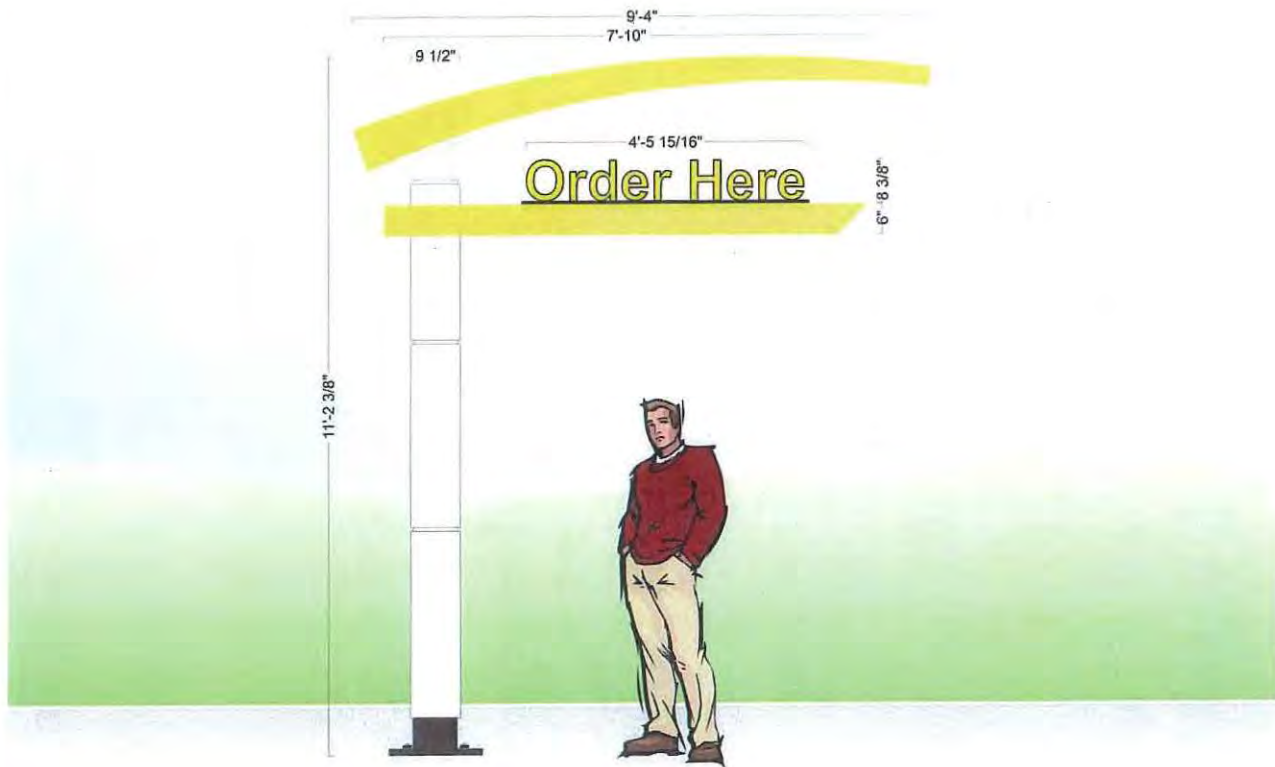
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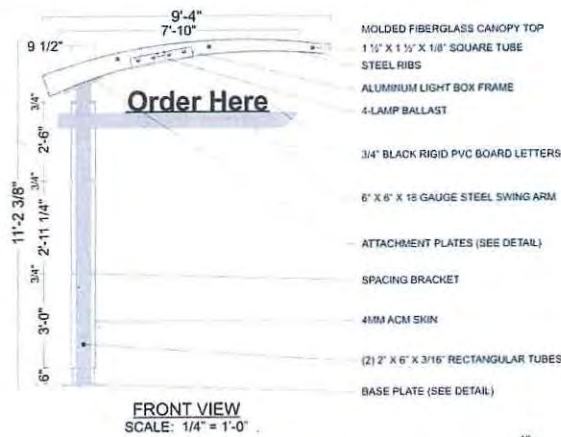


POLE COVER DETAIL
 DESIGN FACTOR: TBD
 4MM WHITE ACM POLE COVER
 .080" ALUMINUM CAP AND SHROUD
 EXTERIOR FINISH:
 POLE COVER & REVEALS -
 PRE-FINISHED BONE WHITE
 SHROUD AND BASE PLATE - MATCH
 B.M. 2130-20 DEEP CAVIAR
CLEARANCE BAR DETAIL
 BLACK ACM PIPE W/ 7725-15 YELLOW
 VINYL STRIPES APPLIED TO 1ST
 SURFACE
SQUARE FEET: BOXED = 92.44
 ACTUAL = 15.68

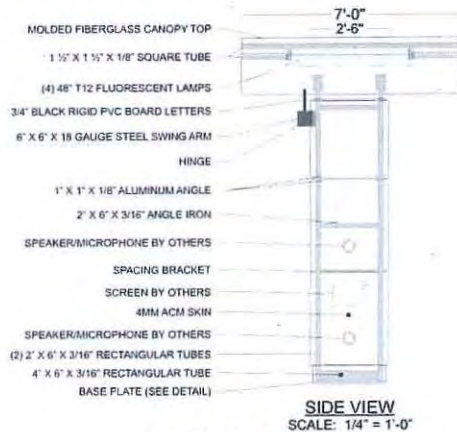
SWING ARM DETAIL
 DESIGN FACTOR: TBD
 18 GAUGE STEEL ARM WITH HINGE
 W/ 1ST SURFACE PAINT AND VINYL
 DECORATION:
 MATCH PMS 109 C YELLOW - SWING ARM
 7725-12 BLACK VINYL - "CLEARANCE 9 FEET"
 COPY
"DRIVE-THRU" LETTER DETAIL
 3/4" BLACK RIGID PVC BOARD ROUTED
 LETTERS W/ 1ST SURFACE VINYL
 DECORATION:
 7725-15 BRIGHT YELLOW - "DRIVE-
 THRU" COPY
 BLACK - COPY OUTLINE



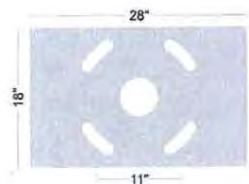
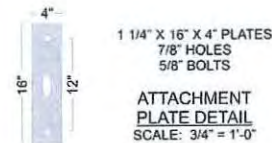
ELEVATION
SCALE: 1/2" = 1'-0"



- MOLDED FIBERGLASS CANOPY TOP
- 1 1/2" X 1 1/2" X 1/8" SQUARE TUBE
- STEEL RIBS
- ALUMINUM LIGHT BOX FRAME
- 4-LAMP BALLAST
- 3/4" BLACK RIGID PVC BOARD LETTERS
- 6" X 6" X 18 GAUGE STEEL SWING ARM
- ATTACHMENT PLATES (SEE DETAIL)
- SPACING BRACKET
- 4MM ACM SKIN
- (2) 2" X 6" X 3/16" RECTANGULAR TUBES
- BASE PLATE (SEE DETAIL)



- MOLDED FIBERGLASS CANOPY TOP
- 1 1/2" X 1 1/2" X 1/8" SQUARE TUBE
- (4) 48" T12 FLUORESCENT LAMPS
- 3/4" BLACK RIGID PVC BOARD LETTERS
- 6" X 6" X 18 GAUGE STEEL SWING ARM
- HINGE
- 1" X 1" X 1/8" ALUMINUM ANGLE
- 2" X 6" X 3/16" ANGLE IRON
- SPEAKER/MICROPHONE BY OTHERS
- SPACING BRACKET
- SCREEN BY OTHERS
- 4MM ACM SKIN
- SPEAKER/MICROPHONE BY OTHERS
- (2) 2" X 6" X 3/16" RECTANGULAR TUBES
- 4" X 6" X 3/16" RECTANGULAR TUBE
- BASE PLATE (SEE DETAIL)



SQUARE FOOTAGE: ACTUAL = 17.10
BOXED = 104.51

FIBERGLASS CANOPY DETAIL

DESIGN FACTOR: TBD
FIBERGLASS CANOPY WITH STEEL TUBE
AND RIB INTERNAL STRUCTURE
EXTERIOR FINISH: PAINT TO MATCH PMS
109 C YELLOW
LIGHT LENS REMOVABLE FOR SERVICE
U.L. APPROVED
ELECTRICAL: 1.90 AMPS, 120 VOLTS

BASE DETAIL

DESIGN FACTOR: 90 MPH
ALUMINUM ANGLE IRON STRUCTURE
4MM ACM SKIN
EXTERIOR FINISH:
SWING ARM - PAINT TO MATCH PMS
109 C YELLOW
BASE - BONE WHITE
SHROUD & POLE - DEEP CAVIAR
U.L. APPROVED

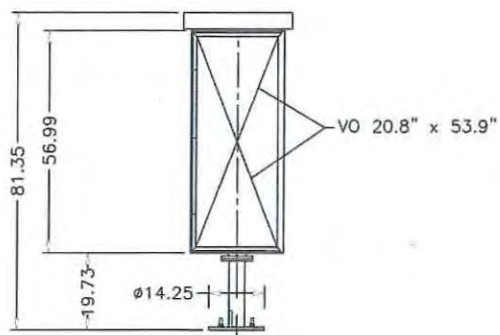
"ORDER HERE" LETTER DETAIL

3/4" BLACK RIGID PVC BOARD LETTERS W/
1ST SURFACE VINYL DECORATION:
7725-15 BRIGHT YELLOW - "ORDER
HERE" COPY
BLACK - COPY OUTLINE

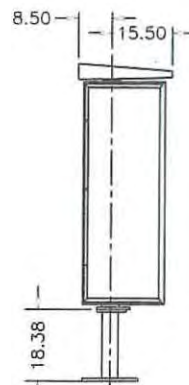
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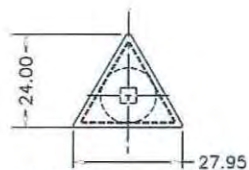
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FRONT VIEW
SCALE: 3/8" = 1'-0"



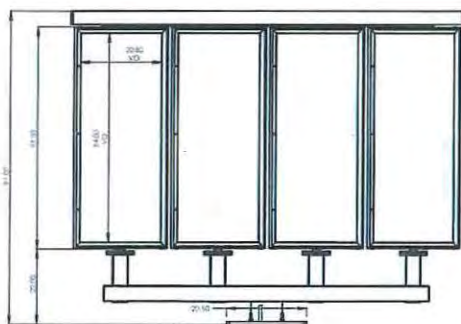
END VIEW
SCALE: 3/8" = 1'-0"



TOP VIEW
SCALE: 3/8" = 1'-0"



GRAPHIC DETAIL
SCALE: NOT TO SCALE



FRONT VIEW
SCALE: 3/8" = 1'-0"




END VIEW
SCALE: 3/8" = 1'-0"

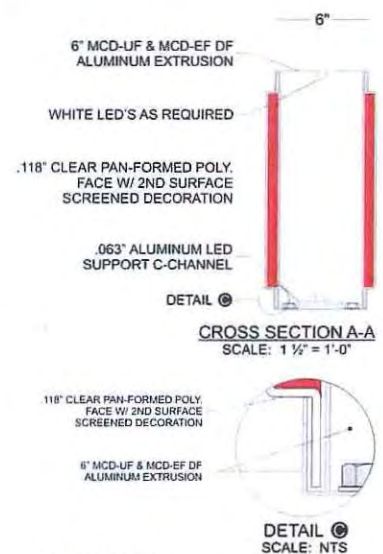
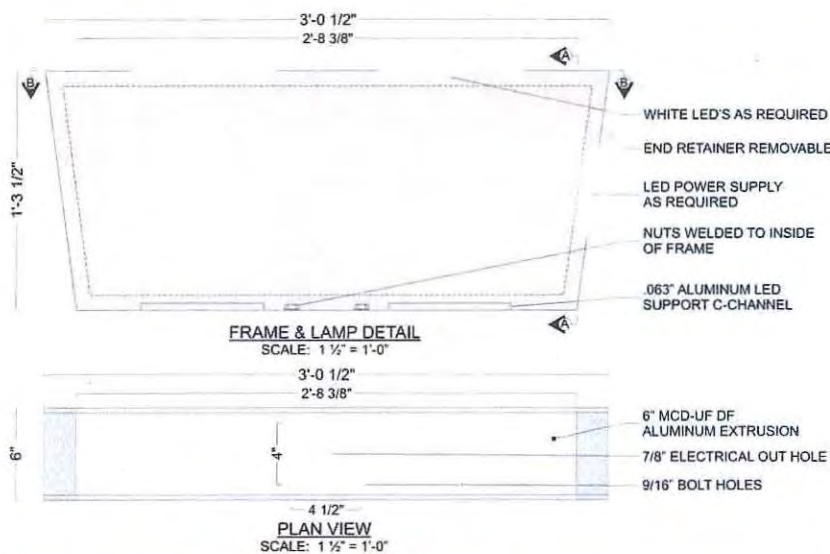


TOP VIEW
SCALE: 3/8" = 1'-0"



GRAPHIC DETAIL
SCALE: NOT TO SCALE

Customer:	McDONALD'S	Date:	06/06/13	Prepared By:	INI/CM	<div>Note: Color representation may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMYK equivalent. If there values are incorrect, please provide the correct PMS match and a revision to this drawing will be made.</div>	<div><div>DISTRIBUTED BY SIGN UP COMPANY 700 25th Street Southwest PO Box 210 Watertown, SD 57201-0210 1 (800) 843-9888 • www.personasigns.com</div></div>
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FRAME DETAIL:
DESIGN FACTOR: TBD
6" MCD-UF & MCD-EF DF ALUMINUM EXTRUSION
1" FLAT ALUMINUM RETAINERS
EXTERIOR FINISH: DUPONT CENTARI 5000 V3536 BRONZE
END RETAINER REMOVABLE FOR ACCESS
U.L. APPROVED
ELECTRICAL: 0.32 AMPS, 120 VOLTS
SQUARE FEET: BOXED = 3.93
ACTUAL = 3.71

FACE DETAIL:
.118" CLEAR PAN-FORMED POLY. FACE W/ 2ND SURFACE SCREENED DECORATION:
PMS 485 RED - BACKGROUND
PMS 109 YELLOW - ARCHES AND ARROW
WHITE - DIRECTIONAL COPY

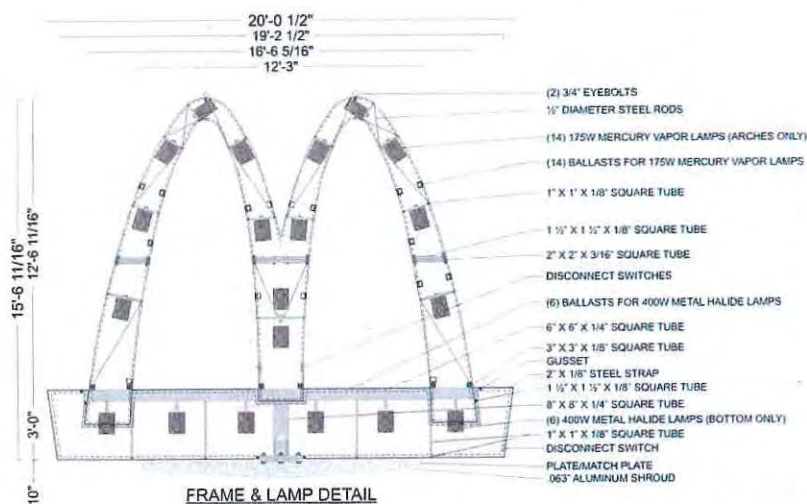
Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	Note: Color suggestions are not to be used when ordering or printing this drawing. All colors used are PMS or the closest CMYK equivalent. If these colors are incorrect, please provide the correct PMS match and a reference to this drawing will be made.
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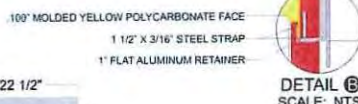
ELEVATION
SCALE: 3/32" = 1'-0"



FRAME & LAMP DETAIL
SCALE: 3/16" = 1'-0"



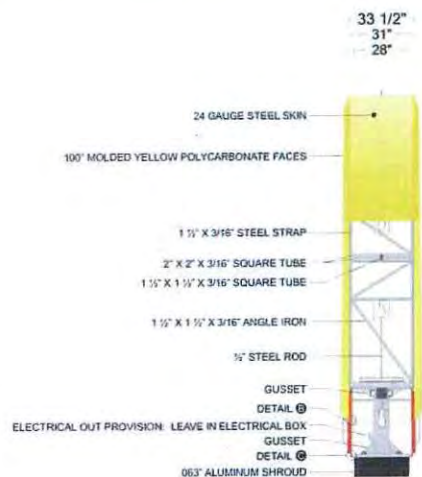
GRAPHIC DETAIL
SCALE: 1/8" = 1'-0"



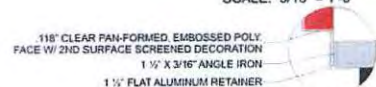
DETAIL B
SCALE: NTS



1" X 22 1/2" X 22 1/2" PLATES
1 1/8" HOLES
1" A325 BOLTS
PLATE WILL ACCEPT:
14" PIPE
14" TUBE
PLATE DETAILS
SCALE: 1/2" = 1'-0"



CROSS SECTION A-A
SCALE: 3/16" = 1'-0"



DETAIL ©
SCALE: NTS

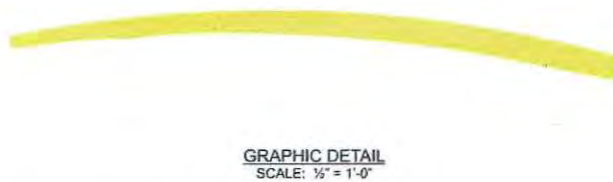
FRAME DETAILS

FRAME DETAILS
DESIGN FACTOR: 40 PSF
ANGLE IRON FRAME CONSTRUCTION
1 1/2" AND 1" FLAT ALUMINUM RETAINERS
EXTERIOR FINISH:
TOP FRAME = YELLOW DUPONT
CENTARI 5000
BOTTOM FRAME = DUPONT CENTARI
5000 V3536 BRONZE
INTERIOR FINISH: PRIMED WHITE
RETAINERS REMOVABLE FOR SERVICE
U.L. APPROVED
ELECTRICAL: 49.34 AMPS, 120 VOLTS, 4
SWITCHES
SQUARE FOOTAGE: BOXED = 311.79
ACTUAL = 121.75

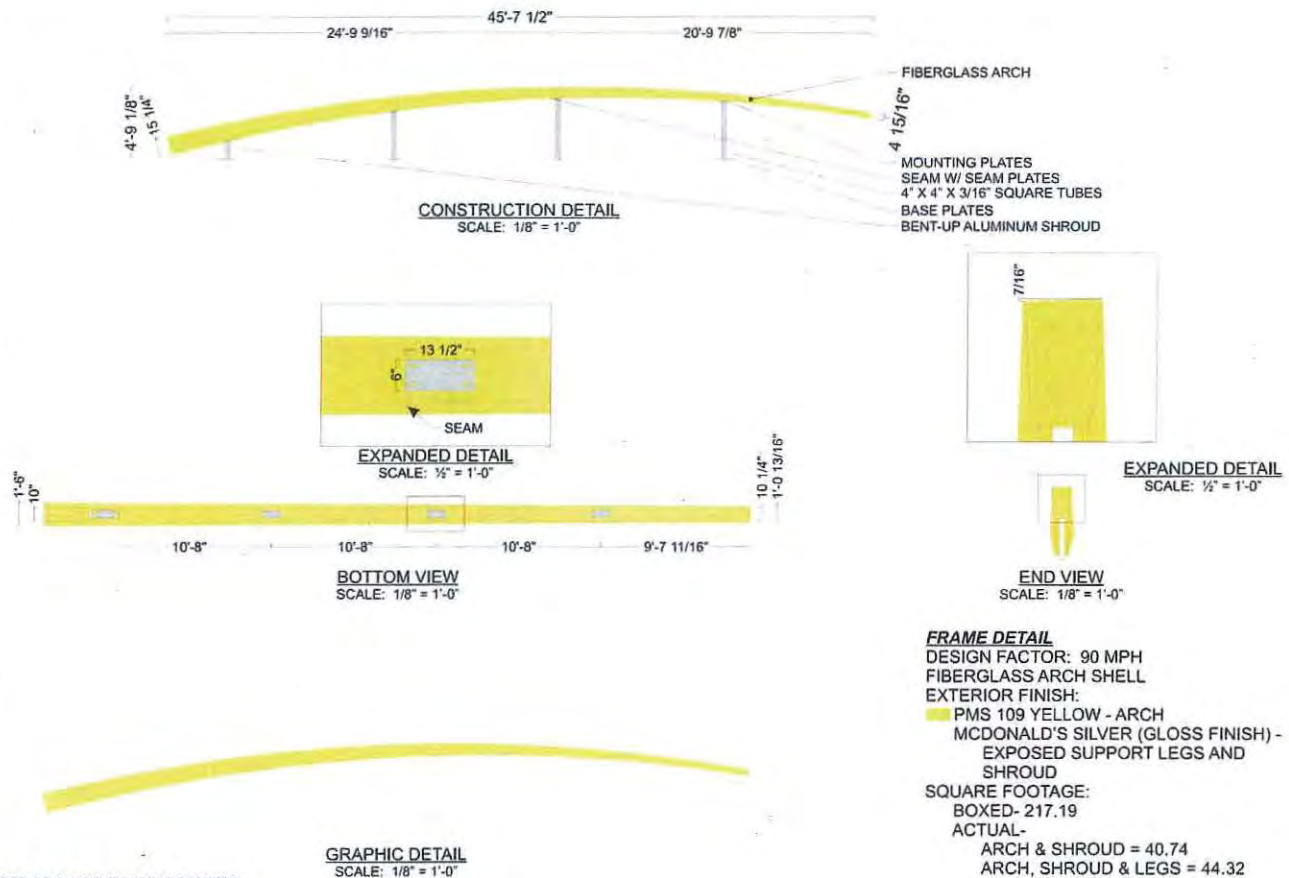
Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	Note: Color output may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMYK equivalent. If these colors are inaccurate, please provide the correct PMS number and a swatch to this drawing will be made.
Location:	CASPER, WY	File Name:	119056 - R2 - 600 WEST F STREET - CASPER, WY - PROGRAM BOOK			Eng:

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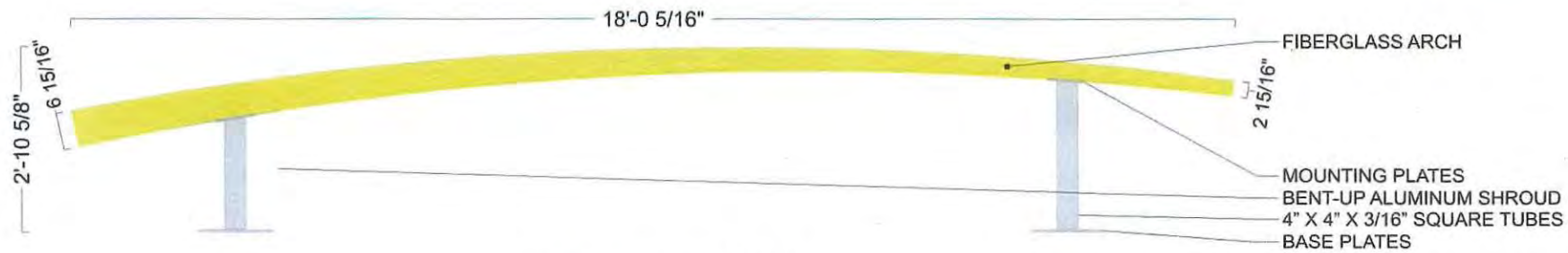


FRAME DETAIL
DESIGN FACTOR: 90 MPH
FIBERGLASS ARCH SHELL
EXTERIOR FINISH:
PMS 109 YELLOW - ARCH
MCDONALD'S SILVER (GLOSS FINISH) EXPOSED
SUPPORT LEG AND SHROUD
SQUARE FOOTAGE:
BOXED- 18.30
ACTUAL-
ARCH & SHROUD = 5.02
ARCH, SHROUD & LEG = 5.53

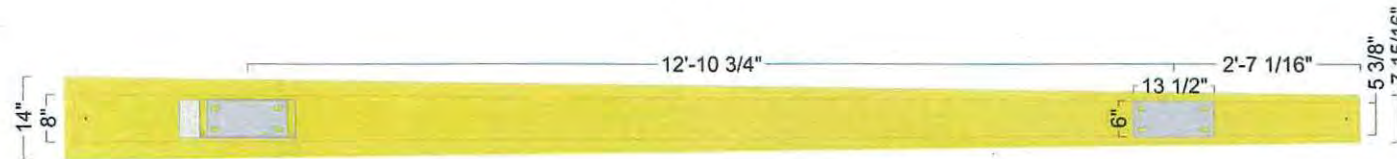


* SEE "RCE TIE BACK" DRAWING

Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	<small>Note: Color output may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMX equivalent. If there colors are incorrect, please provide the correct PMS number and correction to this drawing will be made.</small>		DISTRIBUTED BY SIGN UP COMPANY 700 21st Street Southwest PO Box 310 Wadena, MN 56581-0310 1 (800) 843-7858 • www.personasigns.com
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CONSTRUCTION DETAIL
SCALE: 3/8" = 1'-0"



BOTTOM VIEW
SCALE: 3/8" = 1'-0"



END VIEW
SCALE: 3/8" = 1'-0"



GRAPHIC DETAIL
SCALE: 3/8" = 1'-0"

FRAME DETAIL

DESIGN FACTOR: 90 MPH
FIBERGLASS ARCH SHELL

EXTERIOR FINISH:

PMS 109 YELLOW - ARCH

MCDONALD'S SILVER (GLOSS
FINISH) EXPOSED SUPPORT
LEG AND SHROUD

SQUARE FOOTAGE:

BOXED- 52.01

ACTUAL-

ARCH & SHROUD = 10.01

ARCH, SHROUD & LEG = 10.79

* SEE "RCE TIE BACK" DRAWING

Customer:	McDONALD'S	Date:	02/18/13	Prepared By:	INI	Note: Color output may not be exact when viewing or printing this drawing. All colors used are PMS or the closest CMYK equivalent. If these colors are incorrect, please provide the correct PMS match and a revision to this drawing will be made.
Location:	CASPER, WY	File Name:	119056 - R2 - 600 WEST F STREET - CASPER, WY - PROGRAM BOOK			Eng:

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Judith AW. Studer

From: Chris Bryan <cbryan@garfieldhecht.com>
Sent: Thursday, August 02, 2018 2:26 PM
To: Mary Wells; Ryan L. Ford
Cc: Maureen Wenz; Judith AW. Studer; Drew Lavin
Subject: RE: Casco v McDonald's

Mary, thanks for the e-mail. Casco is not interested in discussing variances at this time and prefers that the mediation process and pending motion practice proceed. I believe the mediator has communicated Casco's latest settlement offer to McDonald's, so the ball's in your court.

CHRIS

-----Original Message-----

From: Mary Wells [mailto:MWells@warllc.com]
Sent: Wednesday, August 01, 2018 4:17 PM
To: Ryan L. Ford; Chris Bryan
Cc: Maureen Wenz; Judith AW. Studer; Drew Lavin
Subject: Casco v McDonald's

Hello Ryan and Chris -

McDonald's plans to file a Petition for Variance with the city next week. One thing that may thwart our Petition is the fact that we don't know what Casco wants to erect. Without that information, the City may simply say that no variance is necessary because no one is using more than 600 SF. So please give us specific information about what signage Casco intends to erect, so that we can include that information with our Petition.

Thanks.

Mary

Sent from my iPad

This transmission may be: (1) subject to the Attorney-Client Privilege; (2) an attorney work product; or (3) strictly confidential. If you are not the intended recipient of this message, you may not disclose, print, copy or disseminate this information. Unauthorized interception of this e-mail is a violation of federal criminal law. If you have received this communication in error, please immediately notify our office at 303-830-1212 and destroy this message. Thank you.

MEMORANDUM

ISSUE:

Can the unique circumstances presented constitute a hardship?

FACTS:

McDonalds is required to dismantle an approved signage plan due to the existence of Court Orders under appeal. Such action is required even though the property is in compliance with the current Municipal Code. It is only in the event of the possible construction of a sign¹ by Casco, LLC ("Casco") that can cause the property at issue to exceed the allowable signage. A variance is required due to the enforcement action by Casco to enforce the Court's Orders. The effort to enforce the Court Order makes the need for the variance immediate. This is an unusual circumstance.

DISCUSSION:

No case specifically on point could be found that has addressed this unique circumstance. However, a number of cases have addressed whether uniqueness would constitute a hardship in order to obtain a variance. In *Dan's Mountain Wind Force, LLC v. Allegany County Board of Zoning Appeals*, 182 A.3d 252 at 257 (Md. 2018), the Court stated:

Courts have recognized a two-part test to determine whether a variance should be granted in a particular case. See, e.g., *Cromwell v. Ward*, 102 M.D. App. 691, 694-95, 651 A.2d 424 (1995). The first requirement, uniqueness, looks at whether: "The property whereon structures are to be placed (or uses conducted) is --- in and of itself --- unique and unusual in a

¹ Municipal Code 17.96.050 limits off-site signage to one sign not to exceed 250 sq. ft.

manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon the property." *Id.* at 694, 651 A.2d 424. If the applicant successfully proves that the property in question is unique, then the reviewing body moves to the second requirement --- practical difficulty or unnecessary hardship --- and examines: "Whether practical difficulty and/or [unnecessary] hardship, resulting from the disproportionate impact of the ordinance causes by the property's uniqueness, exists." *Id.* at 695, 651 A.2d 424.

As noted by the Court: "The uniqueness analysis guarantees that a granted variance cannot act as a precedent in an application regarding another property. If the effect of the zoning law operates similarly to the way in which they operate on a separate applicant's property, the uniqueness requirement is likely not satisfied." *Id.* at 259. See also, *In re Chestnut Hill Community Association*, 155 A.3d 658 (Pa. 2017) (A hardship warranting a variance must be unique to the property at issue, not a hardship arising from the impact of the zoning regulations on the entire district).

Under the facts presented, the Court Order has created a unique aspect to this property (Lot 5) not applicable to any other property zoned C-2.

Moreover, "[t]his Court has repeatedly made clear that in establishing hardship, an applicant for a variance is *not required to show that the property at issue is valueless without the variance or that the property cannot be used for any permitted purpose.*" *Marshall v. City of Philadelphia*, 97 A.3d 323 at 330 (Pa. 2014). The Court further noted: "However, a zoning board's discretion is 'not so circumscribed as to require the property owner to reconstruct a building to a conforming use regardless of the financial burden

that would be incident thereto.” *Id.* (The Court determined that the board acted within its discretion to conclude unnecessary hardship in granting use variance for conversion of property from a school to low income senior housing.)

And, in *Liberties Lofts, LLC v. Zoning Board of Adjustment*, 182 A.3d 513 (Pa. 2018), the Court noted that while “a property may once have not been burdened by an unnecessary hardship, the course of time may effect changes to that property and the surrounding area, which may ultimately result in the creation of an unnecessary hardship that did not previously exist.” *Id.* at 535.

McDonalds is now required to change its approved signage even though the signage allowance has not been exceeded. Here, “uniqueness” is not based upon a personal preference of McDonalds. To the contrary, it is based on the effective grant of an exclusive sign easement of the lesser of 300 sq. ft. or 50% of allowable signage to Casco. Under the current Municipal Code, it appears Casco will be limited to only one sign using 250 sq. ft. on only one of the easements at any time.

Ryan L. Ford
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& NEVILLE, PC
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Telephone: (307) 265-0700
Facsimile: (307) 266-2306
rford@wpdn.net

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

CASCO, LLC, a Wyoming Limited)	
Liability Company doing business as)	
Quality Inn & Suites)	Case No. 13-CV-148-J
)	
Plaintiff,)	
)	
v.)	
)	
MCDONALD'S REAL ESTATE)	
COMPANY, a Delaware Corporation)	
)	
Defendant.)	

MOTION TO ENFORCE ORDER
PURSUANT TO FED. R. CIV. P. 70

Plaintiff, Casco, LLC, d/b/a Quality Inn & Suites (hereinafter "Casco"), by and through undersigned counsel, hereby provides its *Motion to Enforce Order Pursuant to Fed. R. Civ. P. 70*, as follows:

PROCEDURAL HISTORY

This matter is not unfamiliar to the Court, so this recitation will be swift. The Court entered its *Order on Defendant McDonald's Real Estate Company's Second Motion for Summary Judgment* [Doc. 128] on October 24, 2017. Subsequently, on April 18, 2018, and on

July 2, 2018, the Court entered its *Order on Motion to Amend* [Doc. 144] and *Order on Motion to Stay* [Doc. 158], respectively. The intent of these orders is abundantly clear: McDonald's is enjoined from using more than 300 square feet of signage and must reduce its existing signage to become compliant.

With the recent denial of the *Motion for Stay*, the time has long since passed for McDonald's to comply with the Court's orders and to reduce its signage. As of the filing of this *Motion*, over nine months after the entry of the *Order on Defendant McDonald's Real Estate Company's Second Motion for Summary Judgment* (which was not materially altered by the subsequent *Order on Motion to Amend* with respect to McDonald's obligations), no actions have been taken by McDonald's to comply with the Court's orders. McDonald's has commenced an appeal to the Tenth Circuit, albeit on a tenuous, if not frivolous, basis. But McDonald's has not posted a *supersedeas* bond to secure a stay of this Court's rulings. Accordingly, the judgment should be enforced.

On July 6, 2018, Casco issued a formal demand to McDonald's, demanding its compliance. See **Exhibit 1** attached hereto and incorporated herein by reference. Despite the Court's orders and Casco's express demand, McDonald's remains disobedient. Having no other venue to recognize justice, Casco now seeks the Court's intervention to enforce the orders.

GOVERNING RULE

Fed. R. Civ. P. 70(a), regarding enforcing a judgment for a specific act, provides as follows:

Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to

be done – at the disobedient party’s expense – by another person appointed by the court. When done, the act has the same effect as if done by the party.

(Emphasis in original.) There is no requirement that any particular procedure be followed with respect to bidding and commencing the work, and the disobedient party is in no position, because of its default, to question the court’s action. *Clarke v. Chicago, B. & Q.R. Co.*, 62 F.2d 440, 442 (10th Cir. 1932).

ARGUMENT

THE TIME FOR McDONALD’S COMPLIANCE HAS PASSED.

Since before the inception of this litigation, McDonald’s has refused and/or ignored Casco’s requests to install signage per the terms and conditions of the Declaration. The correspondence provided in Exhibit 1 was responded to with mere summaries of potential outcomes and theories – but no material action. Even more disturbing and disappointing is McDonald’s refusal to act on the Court’s numerous orders. How much additional time, resources and fees must Casco endure to reach the ends of justice after obtaining an order which is decidedly in its favor? How many times must McDonald’s be told that 420.55 square feet of signage is greater than 300 square feet of signage? How many times must McDonald’s be asked by Casco and/or ordered to become compliant with the direction of the Court? The answer is a resounding “**No More.**”

The injunction issued by the Court makes it clear that McDonald’s is not to use more than 300 square feet of signage. By presently utilizing 420.55 square feet (as claimed by McDonald’s versus the 535 square feet as evidenced by McDonald’s sign permit), McDonald’s has violated the Court’s orders and has refused to take any substantive action to become compliant.

Upon information and belief, McDonald's has considered filing for a variance with the City of Casper. While such efforts sound like a logical resolution, McDonald's has not formally made a request. Assuming that one is filed between now and the middle of August 2018, it will not be heard at the Planning and Zoning Commission meeting until the middle of September at the earliest. That lapse in time would provide McDonald's with two additional months of utilizing its neighbor's property rights, free of charge and against the Court's order. There is no compelling argument which McDonald's can set forth justifying this delay. Indeed, there is no reason that McDonald's cannot reduce its signage now and then erect additional signage later if its variance efforts prove to be successful.

McDonald's failure and disobedience highlights its efforts to take signage rights away from Casco through litigation versus recognizing the validity of the Declaration and acting in a neighbor-like manner. Given that nine months have passed with no attempt at compliance, McDonald's actions can only be viewed as a direct and willful violation of the Court's orders. This dismissive behavior must not be permitted to continue. The time for McDonald's (or a marshal or other person appointed by the Court) to act is now.

Casco respectfully requests the Court to exercise the power granted to it under Fed. R. Civ. P. 70(a) to (i) appoint a marshal or other person to perform the specific act of taking the necessary steps and signing the necessary papers to reduce McDonald's signage, (ii) direct the marshal or other person to obtain bids to reduce McDonald's signage to 300 square feet (which necessarily includes amending the signage permit on file with the City of Casper), (iii) direct the marshal or other person to utilize the lowest bidder and perform the work, and (iv) direct all costs

and expenses of such efforts to McDonald's for payment. By now, it is abundantly clear that only through the action of the Court can this matter be resolved in accordance with the orders.

Due to McDonald's blatant disregard for Casco's rights and the orders, Casco also respectfully requests that the Court find McDonald's in contempt and award Casco its attorney fees and costs associated with the demand for compliance and this *Motion*. Casco is prepared to prove its attorney fees and costs at a hearing (set upon the Court's discretion) or upon further filings as permitted by the Court.

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 7.1(b)(1)(A), on July 6, 2018, July 9, 2018, and July 24, 2018, counsel for Casco corresponded with, spoke with and e-mailed (respectively) counsel for Defendant, seeking Defendant's conferral regarding this matter and inquiring if McDonald's would immediately reduce its signage. It is the good faith belief of counsel that Defendant opposes the relief sought herein.

WHEREFORE, Casco respectfully prays the Court grant its *Motion to Enforce Order Pursuant to Fed. R. Civ. P. 70*, in its entirety, appoint a marshal or other person to order and perform the reduction of McDonald's signage and amend McDonald's sign permit with the City of Casper, hold McDonald's in contempt for its willful disobedience, and award Casco its fees and costs in defense of this matter.

Respectfully submitted on the 24th day of July, 2018.

By: /s/ Ryan L. Ford
Ryan L. Ford,
Wyo. State Bar #7-4667

WILLIAMS, PORTER, DAY
& NEVILLE, PC
159 North Wolcott; Suite 400
Casper, Wyoming 82601
Telephone: (307) 265-0700
Facsimile: (307) 266-2306
rford@wpdn.net
Counsel for CASCO, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of July, 2018, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to counsel as follows:

Mary A. Wells
Wells, Anderson & Race, LLC
1700 Broadway, Suite 1020
Denver, CO 80290
Mwells@warllc.com

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Judith A. Studer
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141 S. Center St.; Suite 500
Casper, WY 82601
Jstuder@schwartzbon.com

/s/ Ryan L. Ford

CITY OF CASPER, WYOMING
PLANNING AND ZONING COMMISSION
PUBLIC HEARING

CONDITIONAL USE PERMIT

SEPTEMBER 22, 2009

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Case CU-09-012

The Planning and Zoning Commission of the City of Casper held a public hearing at 6:00 p.m., September 22, 2009, in the City Council Chambers, City Hall, 200 North David, Casper, Wyoming, to consider the following:

CU-09-012 -- Petition for a Conditional Use Permit for an off-premise sign in a C-2 (General Business) zoning district, located on, Lot 5, Klassen Addition, at 600 West F Street. Applicant: ERC Properties LLC.

Having considered the evidence and testimony presented at the hearing, the Planning and Zoning Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT:

1. ERC Properties LLC, as the property owner, has applied for a Conditional Use Permit for the installation of an off-premise sign to be located at 400 West "F" Street. The subject property is zoned C-2 (General Business), and an off-premise sign requires a Conditional Use Permit in the C-2 district.
2. The petition for the Conditional Use Permit was submitted at least 30 days prior to the Planning and Zoning Commission public hearing, as required by the Municipal Code.
3. Property owners within a 300' radius of the perimeter of the property were notified by first class mail, of the date, time, and place of the public hearing, as required in Section 17.12.240(D) of the Casper Municipal Code.
4. The property was posted, and a public notice was published as required in Section 17.12.240(D) of the Casper Municipal Code.
5. The height, size, and spacing of the proposed billboard meet the City's requirements.
6. The density of the proposed use is not applicable in this case.
7. The proposed sign will not increase the volume of business on the site.

8. There will not be an increase in traffic congestion or hazard caused by the use which may be over and above normal traffic for the area, as determined by the City Engineer and Community Development Director.
9. There are no off-premise signs located within five hundred feet (500') radius of the perimeter of the described property.
10. There are no other criteria affecting public health, safety, and welfare, as provided for by written rules of the commission.
11. The Conditional Use is consistent with the spirit, purpose, and intent of this Title; will not substantially impair the appropriate use of neighboring property; and will serve the public need, convenience, and welfare.
12. The Conditional Use is designed to be compatible with adjacent land uses and the area of its location.

CONCLUSIONS OF LAW:

Based on the foregoing findings, the Commission has jurisdiction over the proposed Conditional Use pursuant to Section 17.12.240 of the Casper Municipal Code Zoning Ordinance of the City of Casper. NOW, THEREFORE, the Planning and Zoning Commission hereby **approves** a Conditional Use Permit for an off-premise sign in a C-2 (General Business) zoning district, Lot 5, Klassen Addition located at 600 West "F" Street, with the following conditions:

CONDITIONS:

1. If the sign face is abandoned, damaged, blank, or removed for a period of six months or more, the applicant shall remove the sign structure in its entirety, and the Conditional Use Permit shall become void.
2. The maximum height of the off-premise sign shall be eight feet (8'), as measured from the level of the pavement on West "F" Street. The maximum permitted size of the sign face shall be 32 square feet.

DATED this 22nd day of September, 2009.

APPROVED AS TO FORM:

Walter Tremblay