

STAFF REPORT

Date: **January 27, 2021**

To: **Mayor and City Council**

Thru: **Doug Thornley, City Manager**

Subject: **I.2. Staff Report (For Possible Action): Case No. LDC21-00010 (Daybreak PUD Planning Areas 24 & 26) Appeal of the Planning Commission's decision to approve a tentative map to develop 205 single family detached dwelling units based on objection to Condition 14 of the approval. The ±97.1 acre subject site is located ±2,000 feet east of the intersection of Veterans Parkway and South Meadows Parkway. The site is zoned PUD Daybreak. The site has a Master Plan land use designation of Single-Family Neighborhood (SF) and Special Planning Area (SPA). Appeals were filed by the applicant, NPLC BV Investment Company, and the adjacent property owner, Sunny Hills Ranchos. The City Council may affirm, reverse or modify the decision of the Planning Commission.**

From: **Brook Oswald, Associate Planner**

Summary: This is a public hearing for an appeal of the Planning Commission's decision to approve a tentative map to develop 205 single family detached dwelling units. The applicant, NPLC BV Investment Company, appealed based on objection to Condition No. 14 of the approval. This condition of approval requires the reservation of right-of-way for a four lane arterial roadway, to accommodate the future extension of South Meadows Parkway, as required in the Daybreak Planned Unit Development (PUD) handbook. Although the tentative map was approved, the applicant has appealed the decision on the grounds that the requirement to reserve the right-of-way area for the life of the PUD, or until such time that the PUD handbook can be amended, effectuates a regulatory taking/inverse condemnation. A second appeal was received by the adjacent property owner, Sunny Hills Ranchos. While this appeal does not disagree with the Planning Commission decision, they are appealing to preserve their right to appeal to the District Court per NRS 278.3195.

Background: The tentative map request was heard by the Planning Commission on December 16, 2020. A memorandum from the Community Development Department was distributed to the Planning Commission on December 16, 2020 that details the background and basis for Condition #14. The analysis includes review of several documents, including the Daybreak PUD handbook, the 2040 Regional Transportation Plan, the South Meadows Multimodal

Transportation Study and City Master Plan policies. All of which provide support that the South Meadows extension, through the Daybreak property, was planned for and that the Daybreak PUD handbook specifically identified the roadway as needing to be reserved at the time of tentative map.

Condition #14:

14. Prior to the issuance of the first final map for Planning Areas 24 South/26, the applicant shall reserve the right-of-way for the future extension of South Meadows Parkway east of Rio Wrangler Parkway to the eastern boundary of the PUD with a width to support four lanes as identified in the PUD handbook. This reservation shall remain active until such time that the PUD handbook expires or the PUD is modified to no longer require the reservation.

The applicant outlined its opposition to the condition at the Planning Commission hearing, contending that the intent of the PUD language was not to reserve the right-of-way area in perpetuity; it was only intended to provide sufficient opportunity for an entity (e.g. the City of Reno, Regional Transportation Commission, or the adjacent property owner) to purchase the property. The applicant further contended that the right-of-way area does not serve its project.

Discussion: The Planning Commission discussion, as it specifically relates to Condition No. 14, focused on:

- The reservation being viewed as a potential regulatory taking.
- The timing of the right-of-way reservation and the intent of the language in the PUD handbook.
- The need to plan for connectivity to accommodate future growth.
- The need for the tentative map to conform to the governing body's master plan for streets and highways.

The Planning Commission is authorized to act finally on tentative subdivision maps in accordance with NRS 278.349. In approving a tentative map, the Planning Commission may impose conditions on the tentative map which safeguard the public health, safety, and welfare.

Planning Commission Vote: A motion to approve the Tentative Map, with modifications to Condition No. 4 (corrected an incorrect planning area reference) and Condition No. 14 (as included in the memo provided December 16), passed with four in favor and two opposed.

Appeal of Planning Commission's Decision:

NPLC BV Investment Company Appeal

The appeal request filed by the applicant, NPLC BV Investment Company, indicates the

applicant views Planning Commission's approval of the tentative map with the revised Condition 14 as contrary to law and the Daybreak Planned Unit Development Handbook. The appellant contends that the approval with Condition 14 is in effect a regulatory taking and/or inverse condemnation.

The following items are attached to this staff report to assist Council in considering the appeal request:

- Appeal filing
- Planning Commission staff report
- Planning Commission decision letter

Sunny Hills Ranchos Appeal

This appeal was filed by the adjacent property owner, Sunny Hills Ranchos. They agree with the Planning Commission's decision to approve the tentative map with the modification to Condition No. 14. They have only filed an appeal to protect their right to appeal the decision of the City Council per NRS 278.3195.

Draft minutes are included in the staff report. The video of the hearing can be viewed at the following link:

<http://renocitynv.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1912&Format=Minutes>

Financial Implications: None at this time.

Legal Implications: None at this time.

Findings: Nevada Revised Statute (NRS) 278.349. The governing body and planning commission to take action on a tentative map, shall consider:

- a. Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
- b. The availability of water which meets applicable health standards and is sufficient in quantity for the reasonably foreseeable needs of the subdivision;
- c. The availability and accessibility of utilities;

- d. The availability and accessibility of public services such as schools, police protection, transportation, recreation and parks;
- e. Conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;
- f. General conformity with the governing body's master plan of streets and highways;
- g. The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
- h. Physical characteristics of the land such as floodplain, slope and soil;
- i. The recommendations and comments of those entities and persons reviewing the tentative map pursuant to NRS 278.330 to 278.3485, inclusive;
- j. The availability and accessibility of fire protection, including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires, including fires in wild lands; and
- k. The submission by the subdivider of an affidavit stating that the subdivider will make provision for payment of the tax imposed by chapter 375 of NRS and for compliance with the disclosure and recording requirements of subsection 5 of NRS 598.0923, if applicable, by the subdivider or any successor in interest.

Recommendation: Staff recommends Council review the letter of appeal and Planning Commission action and affirm or modify the Planning Commission's decision.

Proposed Motion: Below are proposed motions with the findings for affirmation, modification, and reversal of the Planning Commission decision.

Motion to Affirm Planning Commission Decision

(Denying the appeal and approving the Tentative Map as conditioned)

In regards to the appeal of LDC21-00010 (Daybreak PUD Planning Area 24 and 26), based on this Council's review of the staff report, the record on appeal, and information presented at the public hearing for this appeal, I move to **AFFIRM** the approval of the Tentative Map by the Planning Commission and **DENY** the appeal, based on the ability to make all of the findings. The City Clerk is instructed to prepare and file an order.

Motion to Modify Planning Commission Decision

(Partially upholding the appeal and amending the tentative map conditions)

In regards to the appeal of LDC21-00010 (Daybreak PUD Planning Area 24 and 26), based on this Council's review of the staff report, the record on appeal, and information presented at the public hearing, I move to MODIFY the decision of the Planning Commission as follows ____*. As modified, I can make all of the required findings as listed in the staff report and I move to APPROVE the Tentative Map subject to conditions stated in the Staff Report and as modified by City Council . The City Clerk is instructed to prepare and file an order.

*Modifications to the conditions of approval outlined in the Planning Commission staff report are: [List modifications]

Motion to Reverse Planning Commission Decision

(Reversing the Planning Commission decision and denying the tentative map)

In regards to the appeal of LDC21-00010 (Daybreak PUD Planning Area 24 and 26), based on this Council's review of the staff report, the record on appeal, and information presented at the public hearing, and based on my inability to make the findings ____*, I move to REVERSE the approval of the tentative map by the Planning Commission and to directly DENY the tentative map. The City Clerk is instructed to prepare and file an order.

*List the findings that cannot be made.

Attachments:

- Appeal Request (PDF)
- Appeal for LDC21-00010 (Daybreak PUD Planning Area 24 & 26) (PDF)
- Planning Commission Staff Report 12.10.20 (PDF)
- Planning Commission Decision Letter (PDF)
- RGJ Proof of Publication for LDC21-00010 (Daybreak PUD Planning Area 24 & 25 Appeal) (PDF)
- Letter from Garrett Gordon to City Clerk re Continuing Appeal (PDF)
- RGJ Proof of Publication (PDF)