ADMINISTRATIVE INTERPRETATION REQUEST FORM FOR TITLE 18, "ANNEXATION AND LAND DEVELOPMENT"

DATE REQUESTED July 9, 2013 INTERPRETATION NUMBER 13-02

REQUESTED BY (NAME, ADDRESS, PHONE NUMBER) McDonald, Carano, Wilson; Michael Pagni; P.O. Box 2670, Reno, NV 89505; 775-788-2000

PROCESSED BY (PLANNER) Claudia C. Hanson, Planning Manager

CODE SECTION TO BE INTERPRETED RMC 18.06.405 (Special Use Permit) and RMC 18.24.203.1670 (Development)

EXPLANATION OF REQUESTED INTERPRETATION See attached letter from Michael Pagni; McDonald, Carano, Wilson

ADMINISTRATIVE INTERPRETATION/DECISION

NO. 13-02

DATE OF DECISION July 15, 2013

CODE SECTION RMC 18.06.405 (Special Use Permit) and RMC 18.24.203.1670 (Development)

INTERPRETATION The applicable provisions of state law relating to the subdivision of land and parcel maps state:

NRS 278.326 Local ordinances governing improvements, mapping, accuracy, engineering and related subjects.

1. Local subdivision ordinances shall be enacted by the governing body of every incorporated city and every county, prescribing regulations which, in addition to the provisions of NRS 278.010 to 278.630, inclusive, govern matters of improvements, mapping, accuracy, engineering and related subjects, but shall not be in conflict with NRS 278.010 to 278.630, inclusive.

NRS 278.462 Requirements which may be imposed by governing body. The governing body or, if authorized by the governing body, the planning commission or other authorized person:

1. May require street grading, drainage provisions and lot designs as are reasonably necessary.
2. If it anticipates, based upon duly adopted ordinances and plans, that the parcels will be used for residential, commercial or industrial purposes, may require off-site access, street alignment, surfacing and width, water quality, water supply and sewerage provisions only as necessary and consistent with the existing use of any land zoned for similar use which is within 660 feet of the proposed parcel.

Upon review, NRS 278.326 mandates that City Code governing parcel mapping cannot conflict with NRS 278.462. NRS 278.462, in turn, sets forth the conditions the City may impose on a parcel map application.

Since the limit of what can be considered with a Parcel Map application is constrained within state law the Special Use Permit application requirement extends beyond what is allowed for a governing body to review.

Therefore, through this interpretation and for the purpose of requiring a Special Use Permit, a project which only includes a "division of a parcel of land into two or more parcels" (RMC 18.24.203.1670) shall not be considered "development" and a Special Use Permit shall not be required under RMC 18.06.405 (Special Use Permit).

BACKGROUND: On May 13, 2013, C4 Equity filed an application for a special use permit to allow non-residential development (a parcel map) adjacent to residentially zoned property. The ±7.5 acre site is located ±745 feet northeast of Socrates Drive/Gaslight Lane Intersection (700 Gaslight Lane) in the I (Industrial) zone. The site has an Industrial Master Plan land use designation. The purpose of the parcel map application was to divide the Gaslight property into four separate lots. RMC 18.24.203.1670 defines "development" to include "the division of a parcel of land into two or more parcels." Because the parceling of the Industrially zoned property is viewed and treated by City Code as ***nonresidential development*** adjacent to residentially zoned property, RMC 18.06.405 requires the applicant to obtain a special use permit. Staff processed the application, and on July 9, 2013, the Planning Commission heard Case No. LDC13-00059 (Gaslight Lane Special Use Permit for Parcel Map).

At the Planning Commission meeting, the applicant argued that the application did not propose or seek approval for any specific uses, projects or developments, nor did it seek any land use changes: "as it is simply a parcel map, as a matter of law it does not nor could it be construed to alter or intensify any industrial use, opportunities, traffic, noise, dust, light or other use related issues. It is merely a request to divide the existing Property into four parcels. Any future development or uses will be subject to City Code requirements at the time such are established."

Opponents, in contrast, argued that approval of the parcel map would create, alter, and intensify industrial use, opportunities, traffic, noise, dust, light and other use related issues by allowing the applicant to engage in a wide range of permitted, unspecified industrial uses as a matter of right.

This interpretation shall supersede all previous interpretations of R.M.C. Title 18, Annexation and Land Development Code, concerning the above referenced code section and shall be in effect unless and until a subsequent interpretation concerning the above referenced code section is made by the Administrator, this decision is reversed by the Hearing Examiner, Reno City Council, or the code section in question is modified.

Pursuant to R.M.C.18.06.303, the Administrator has the authority to interpret the zoning ordinance provisions within the reasonable exercise of discretion. Any person aggrieved by the decision of the Administrator who alleges that there is an error in the decision, may appeal the decision to the Hearing Examiner within 10 days from the date of this decision. The written notice of appeal must briefly specify the grounds of the appeal on the appropriate form and be accompanied by the necessary fees. If the Hearing Examiner denies or modifies the appeal, the applicant may appeal to the City Council within 10 days of the Hearing Examiner decision by filing a notice of appeal with the City Clerk.

Claudia C. Hanson

Claudia C. Hanson, AICP, Planning and Engineering Manager

Alex C. Woodley, Customer & Code Enforcement Services Manager

Fred Turnier, AICP, Community Development Director
Department Approval

McDONALD·CARANO·WILSON LLP

Michael A.T. Pagni
mpagni@mcdonaldcarano.com

Reply to: Reno

July 8, 2013

Via Hand-Delivery
City of Reno Planning Commission
c/o Fred Turnier
1 E. First Street
Second Floor
Reno, Nevada 89505

Re: Parcel Map Application: 700 Gaslight Lane
Hearing Date: July 9, 2013

Dear Commissioners:

Our firm represents C4 Equity, LLC in connection with the industrial zoned property it owns located at 700 Gaslight Lane, Reno, Nevada (the "Property"). This letter is written in connection with the proposed parcel map application to subdivide the Property into four new parcels.

The Property is a 7.5 acre site master planned and zoned for industrial use. The Property is surrounded by a TMWA water tank to the north, vacant land to the east, an NV Energy electrical substation to the south and north, and seven (7) a single family residential lots to the west. The Property has held industrial land use entitlements for over 40 years, and is recognized as holding such entitlements as far back as zoning records exist. Notably, the Property held industrial land use entitlements before the residential uses to the west were established, and before it was annexed by the City in 1999.

It is critical to highlight at the outset what the application is and what it is not. The application pending before the Planning Commission only seeks approval of a parcel map. The application does not propose or seek approval for any specific uses, projects, or developments, nor does it seek any land use changes. As it is simply a parcel map, as a matter of law it does not nor could it be construed to alter or intensify any industrial use opportunities, traffic, noise, dust, light or other use related issues. It is merely a request to divide the existing Property into four parcels. Any future development or uses will be subject to City Code requirements at the time such are established.

It is well recognized that the requirements for subdividing industrial property are far less stringent than other types of subdivisions, and typically require no more than a record of survey and staff review. *See NRS 278.325-329.* Notwithstanding the fact that no proposed uses or specific developments are proposed in this application, City staff has indicated that RMC 18.06.405(a)(12) requires a special use permit to secure a parcel map in this case because the Property is zoned industrial and is located adjacent to property which was subsequently developed as a residential use.[1]

RMC 18.06.405(e) sets forth the general findings which govern the issuance of a special use permit. Subject to the reservations set forth in this letter, below is a summary of the applicability and evidentiary basis for making each of those findings:

a. The proposed use is compatible with existing surrounding land uses and development. Not applicable. This is only an application for a parcel map, and does not seek approval of any proposed uses or specific developments. As such, there is no "proposed use" to evaluate. As a matter of law, a parcel map is not a land use. Any future land use or development on the Property will be subject to applicable City Code prior to establishing such use.

b. The project is in substantial conformance with the master plan. The Property will retain its existing industrial base zoning, and after recordation of the parcel map will remain in substantial conformance with the Industrial Master Plan land use designation and in conformance with the following master plan policies:

i) P-1 Site access and circulation should be safe, convenient and logical while minimizing impacts onto adjoining roads. Site access is unchanged by this application.

ii) BD-1 Development density and building mass should be sensitive to surrounding area. No development or building is proposed in this application.

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[1] C4 Equity, LLC reserve all rights to object to the applicability of Reno Municipal Code 18.06.405(a)(12) to this Property. The industrial land use entitlements were lawfully established and in existence prior to annexation by the City of Reno and prior to the development of any adjacent residential use. Additionally, the imposition of a special use permit process on an industrial parcel map appears unconstitutional and contrary to the provisions in NRS 278.326 and the statutory distinction between special use permits for land uses and ministerial review of industrial subdivision maps. *See generally*, NRS 278.325-329. Finally, the imposition of a special use permit process on a parcel map and the manner in which RMC 18.06.405 may be applied to this application raises issues with respect to regulatory takings, nexus and proportionality, including principles espoused under *Lucas v. South Carolina Coastal Council* , *Nollan v. California Coastal Commission*, *Penn Central* and *Koontz v. St. Johns River Water Management District*. C4 Equity, LLC expressly reserves all rights with respect to such objections and issues, including rights to raise such in any appellate proceedings involving this application.

c. There are or will be adequate services and infrastructure to support the proposed development. Not applicable. This is only an application for a parcel map, and does not include any specific uses or specific developments. As such, there is no "proposed development", services or infrastructure to evaluate, nor are any required. As a matter of law, a parcel map cannot impact public services or infrastructure, as those issues only arise and can only be evaluated in the context of a specific proposed use and once the demands for services and infrastructure are known. Any future use or development on the Property will be subject to applicable City Code, including review of adequate services and infrastructure associated with such future use, prior to establishing such use.

d. The proposal adequately mitigates the project's traffic impacts and provides a safe pedestrian environment. Not applicable. This is only an application for a parcel map, and does not include any specific uses or specific developments. As a matter of law, a parcel map cannot impact traffic or pedestrian environment, as those issues only arise and can only be evaluated in the context of a specific proposed use. Any future use or development on the Property will be subject to applicable City Code, including review of adequate mitigation of traffic impact and providing a safe pedestrian environment, prior to establishing such use.

e. The proposed site location and scale, intensity, density, height, layout, setbacks, architectural and overall design of the development and the uses proposed, contribute to and enhance the character of the area in which it is located. The parcel map meets the industrial lot standard requirements outlined in RMC 18.12.104 for lot size, lot width and building setbacks, and includes access easements between the parcels. Otherwise, this finding is not applicable. This is only an application for a parcel map, and does not include any specific uses or specific developments, and as such there are no projects, designs, developments, or uses to evaluate. Any future use or development on the Property will be subject to applicable City Code, including review of these design elements, prior to establishing such use.

f. The project does not create adverse environmental impacts such as smoke, noise, glare, dust, vibrations, fumes, pollution or odor which would be detrimental to, or constitute a nuisance to area properties. Not applicable. This is only an application for a parcel map, and does not include any specific

uses or specific developments. As such there are no environmental issues to evaluate. As a matter of law, a parcel map cannot create environmental impacts, as those issues only arise and can only be evaluated in the context of a specific proposed use. Any future use or development on the Property will be subject to applicable City Code, including review of environmental impacts arising from such use, prior to establishing such use.

g. Project signage is in character with project architecture and is compatible with or complementary to surrounding uses. Not applicable. This is only an application for a parcel map, and does not include any request for new signage.

h. The structure has been designed such that the window placement and height do not adversely affect the privacy of existing residential uses. Not applicable. This is only an application for a parcel map, and does not include any request for new structures.

C4 Equity, LLC anticipates that any opposition to the parcel map application will focus solely on hypothetical concerns related to i) an inapplicable prior land use application denied by City Council in early 2013; or ii) speculation over non-existent potential future projects. While C4 Equity, LLC certainly appreciates such comments, they are irrelevant to this parcel map application, and the findings the Commission must consider. To be clear, C4 Equity, LLC has no intention of developing a Truck Terminal or rock crushing facility on the Property as was previously denied by City Council. Moreover, C4 Equity, LLC could not do so without securing a separate special use permit for those uses anyway, so any concerns regarding the prior land use application are additionally unfounded. Regardless, this is simply a parcel map application, and no approvals of proposed uses are sought, nor are any required by law.

Until an actual use is identified and specific project brought forward, such concerns are speculative and premature, and are wholly irrelevant to this application. There is no legal, factual or evidentiary basis to support any concerns related to uses that don't exist, are not proposed, and will not be approved by this application. Such comments can easily create confusion, however, and distract from the actual application that is pending. C4 Equity, LLC respectfully requests the Commission focus on the specific application and relevant findings that are at issue. Again, this is simply a parcel map application, and it is legally improper to consider speculative concerns over projects that don't (and may never) exist.

C4 Equity, LLC believes the parcel map will improve the functionality and economic value of the Property which will facilitate and encourage appropriate permissible uses in the future as and when future uses may be identified. Again, any

future use or development on the Property will be subject to compliance with applicable City Code prior to establishing such use.

Based on the foregoing, the application, and additional facts and testimony to be provided at the hearing, C4 Equity, LLC submits that substantial evidence supports the approval of the parcel map application in this matter, and respectfully requests the Planning Commission approve the parcel map on the Property.

We appreciate your consideration of these requests and welcome the opportunity to respond to any questions you may have at the hearing.

Sincerely,

Michael A. T. Pagni

MATP:mn
cc: Troy Carson
Angela Fuss