

BEFORE THE CARSON CITY BOARD OF SUPERVISORS  
OBJECTION TO SECOND READING OF ZONING ORDINANCE  
BORDA CROSSING: ZA-2020-0005 and SUB-2020-0016  
March 18, 2021

Michael Tanchek  
Tanchek Family Trust  
740 E. Clearview Dr.  
Carson City, NV 89701

We own the property described as W1/2, SW1/4, SW1/4, SE1/4, S29, T15N, R20E, MDB&M, located at the northeast corner of Clearview and Center Drive intersection. This has been our primary residence since April, 1991. Our property is designated as Low Density Residential on the Master Plan and zoned SF 1A. We are adjacent to Borda Crossing for approximately 300 feet on the east side of Center.

We are objecting to both the proposed rezoning of APN 009-124-03, as well as the tentative plan for what is now called "Borda Crossing." For a variety of reasons, we believe that the actions of both the Planning Commission ("Commission") and the Board of Supervisors ("Board") have been arbitrary and capricious, constitute an abuse of discretion, and do not comply with all of the relevant statutes, ordinances, and regulations, including the City's Master Plan. Therefore, I am submitting the following alternative recommended motion to be considered by the Board.

**I move to deny the Zoning Map Amendment for APN 009-124-03, originally filed as ZA-2020-0005, because the required findings are insufficient to justify the amendment and the Planning Division Staff and applicant have failed to bring forth either an alternative zoning or a lot layout that would address the concerns raised at the June 18, 2020 Supervisors' as directed by this Board.**

I first testified regarding this proposal at the February 26, 2020 meeting of the Commission when I raised an objection to the connection between State Street Development's ("State Street") Silver View Townhomes project and what became their Borda Crossing project. The Planning Division staff took the position that there was no connection between the two and that my testimony should be discounted on that basis. There have been so many "coincidences" since that February 2020 meeting that I no longer believe that Staff's representations to the Commission to be credible. At this point, I also believe that Greg Short's description of the approval of the application as being a "done deal" following his conversation with one of the principals of State Street, Rob McFadden, was an accurate representation. All that remained was a pro forma rubber-stamping of the proposal.

Since that time, we have filed comments and provided testimony at the Commission meetings on May 27, 2020 and January 27, 2021 and the Supervisors' meetings on June 18, 2020 and February 18, 2021.

In order to avoid findings of arbitrary and capricious behavior agencies often disguise their findings and

decisions in technocratic, statutory, or scientific language. Mere conclusory statements that lack substantial evidence to sustain findings are not sufficient. This is particularly true in a case like this one, where the evidence weighing in favor of denying the application is ignored. In addition, failing to disclose or affirmatively hiding political influences and personal biases often factor into the mix. This lack of true transparency allows agencies to achieve plausible deniability and avoid accountability for their decisions. While administrative decisions are accorded deference based on substantial evidence, the standard is not "any excuse will do."

A more detailed explanation of the grounds for our objection follows.

**1. Due to the lack of clear transition zones on both Center and Clearview Drives, the proposed conversion of the Borda Crossing zoning to SF 6 adjacent to one SF 21 two SF 1A zoning districts does not comply with Title 18 of the Carson City Municipal Code.**

A real transition zone between SF 6 and SF 1A should be either SF 21, SF 12 or a combination of the two. The proposed donut-shaped common open space development lacks reasonable transition zones between the SF 1A to the south and east and the SF 21 to the northeast. CCMC 18.03.010 defines a "Transition zone" as "...**a zoning district** that permits uses compatible with uses permitted in 2 adjacent zones that, without the transition zones, could be considered incompatible to each other." (emphasis added) Streets, a sidewalk, some vegetation, and setbacks might be a screen or a buffer, but they are not a "zoning district." As a result, there is no transition zone between the SF 1A and SF 6.

**2. Rezoning the entire Borda Crossing parcel as SF 6 is arbitrary and capricious because it is inconsistent with the established policy and practice of both the Board of Supervisors and Planning Commission for the properties on the west side of Center Drive.**

I believe it was Supervisor White who said he would like to see some consistency. According to State Street, "Our alternative would also correct an inconsistency between the zoning and the master plan and is consistent with the past policy and practice of the Board and Commission." We dispute this claim because the zoning change is clearly inconsistent with the Board's past policy and practice.

Borda Crossing comprises about 5 1/4 acres of the 25 1/2 acre tract bounded by Koontz, Silver Sage, Clearview, and Center Drives. The tract was apparently reclassified as medium density residential (MDR) in 1996, most likely to accommodate higher density residential intrusion into the more rural community south of Koontz.

In the late 1990's, the northern 20 acres, now called Southpointe, was developed by Landmark Homes. Only the western portion of the tract was rezoned as SF 6 and consistent with the MDR designation. Except for the half acre reduced to accommodate the retention basin at Mayor's Park, the remaining parcels along Center were left in SF 1A zoning. Center remained zoned consistent with the original low density residential (LDR) designation on both sides of Center from Koontz all the way down to Snyder. When the Master Plan was updated in 2006, the LDR compatible zoning on Center was retained.

The zoning was changed on the west side of Center in early 2008 when Jim Schneider filed an application

to rezone his parcel at 4094 Center from SF 1A to SF 21. (The relevant Commission minutes from December 2007 and January 2008 are included as Attachment 1.)

The real estate website, Zillow, provides detailed information concerning this property as a "Rare one acre lot in Carson, has been approved to be sub-divided into two 1/2 acre lots. Main home and detached garage is situated on one half an acre to accommodate another home or maintain the one acre." The key word is "rare" which strongly indicates that the zoning on this property is not like other similarly situated properties. In a word, it is "inconsistent."

While Schneider knew only one house per acre was permitted, he built a house on the north half to justify building a second house on the south. The Commissioners were aware of both the existing zoning and master plan designation on Center. They were concerned that they would be "spot zoning" if they changed Schneider's parcel to SF 21 for his benefit while leaving the the parcels to the north and the south (Borda Crossing) as SF 1A. As a solution, the Commissioners directed the Staff representative, Mr. Plemel, to amend the application to rezone the two properties to the north as SF 21 as well. During the discussion, Commissioner Mullet proposed that the southern parcel be "split zoned" as SF 21 between the back lot line of the existing houses and Center in order to maintain the consistency of the transition zone on Center. His call for consistency was ignored and the parcel remained SF 1A.

At the following Commission, the three properties on the west side of Center were recommended for rezoning as SF 21. This was consistent with LDR and was considered by all involved to be a "good transition" between the SF 6 at Southpointe and the SF 1A on the east side of Center. Unlike the Schneider rezoning, State Street's proposal omits any transition zone between the SF 6 and the SF 1A, contrary to Board's established policy and practice for properties on the west side of Center between Koontz and Clearview.

Furthermore, adopting the established SF 21 zoning on the west side of Center would provide a direct benefit to State Street because they would no longer need to undertake the expensive improvements such as widening the street on their side and adding sidewalks, curb and gutter. In addition, they could limit the width of the emergency access portal from Bayonne to Center to a single driveable lane, reducing their costs even further.

**3. Failing to adequately consider reasonable alternative recommendations from the surrounding residents is a clear abuse of discretion by both the Commission and the Board.**

The Commission and Board have all taken the position that they are bound by statute to consider only the Master Plan in determining whether this property should be rezoned as requested. We disagree. When I got sued over the Cabela's project in Reno, I also took the position that my hands were tied by the statutes. The Supreme Court felt otherwise, pointing out that there was sufficient authority to take action outside those particular statutes. Failing to act was an abuse of discretion.

Krista Leach and I made at least four alternative zoning proposals in line with what the Board asked in June. The first being as far back as May 26, five months before State Street took control of the property

away from JJ Summers. At the minimum, our proposals would have agreed to seven SF 21 lots around the perimeter and as many SF 6 and SF 12 lots as State Street could squeeze into the remaining interior space.

Along with the Planning Staff and Legislative Council Bureau, we agree that the Board has the authority to either amend the proposed zoning or amend the Master Plan to place part of the property into LDR. While State Street says their "...alternative would also correct an inconsistency between the zoning and the master plan...", we maintain that split zoning or amending the Master Plan would, likewise, correct the inconsistency between the zoning, the Master Plan, and what actually exists in the neighborhood.

**4. Because both the Commission and the Board failed to consider all of the relevant evidence and relied on incorrect and incomplete information prior to making the decision to approve the zone change there has been a clear error of judgment.**

Perhaps the most egregious example, was when State Street's representatives, Mr. Turner and Mr. Carriola, as well as Commissioners Killgore and Wiggins took the position that the only alternative to State Street's SF 6 proposal was to leave the property vacant because it wouldn't be profitable otherwise. At an earlier hearing, Commissioner Perry asserted that there is no demand for SF 1A residential and all the developers are building is SF 6 or higher density. Ignoring that profitability may be considered an impermissible consideration, reality simply doesn't bear out these assertions.

Dynamic Diversified Developers and the Canyon Vista development built and sold around 26 residences adjacent to East Clearview about five or six years ago. Right now, there are two newly built homes and one lot being cleared on the east side of Center with a fourth on Ponderosa. On the other hand, the high density projects along Silver Sage haven't met with the same success. After 15 years, none of the 23 units at Ross Park have been built. Jackson Square, the recipient of a special use permit nine years ago has finally gotten around to completing about 25 out of 41 units. State Street's Silver View Townhomes-Borda Crossing project has yet to be fully vetted.

It was asserted that "Per Chapter 3, Land Use Planning, of the Carson City Master Plan, MDR land use is compatible with zoning designations with density ranges of 3 to 8 du/acre. SF6 zoning allows for a maximum density of 7.26 units per acre (while SF1A permits 1 unit per acre)." That is true as far as it goes. However, omitted was any consideration of the facts that the SF 21 and SF 12 transition zones allow for roughly 3 or 4 du/acre which could mean between 15 and 20 residences. With SF 6 available in the interior portion, this would easily fit with the number of homes Supervisor Giomi said he envisioned when he inquired about split zoning at the June Board meeting.

**5. Changing the zoning would allow the developer to move forward with a project that is not in substantial compliance with the goals, policies and action programs of the Carson City master plan.**

At the February 18 Supervisors' meeting, the project was referred to as "infill." As such, it would meet one of the goals of the Master Plan. However, if you put lipstick on a pig it is still a pig. Later on at the meeting, Hope Sullivan correctly pointed out that much of the friction being generated by this entire proposal was because it was, in fact, an "edge" proposal. The goals and policies for projects taking place at the "edge" between the urban parts of Carson City and the more rural areas bear an increased level of protection and

scrutiny.

Another word for the "edge" is the "friction zones" discussed by Supervisors Schuette and Giomi while discussing the annual review of the Master Plan at the January 21 Board meeting. In a section entitled "Land Use Friction Zones" the Master Plan says to *"Discourage rezoning of properties that create "friction zones" between land uses—for example, placing incompatible land uses such as industrial and residential adjacent to one another. Enforce standards for transitions between residential and commercial uses and develop standards for mixed-use development to address compatibility issues."*

*"Residential land use categories are intended to protect the character of established neighborhoods and provide opportunities for new residential neighborhoods." Goal 9.4 of the Plan clearly states "(T)he character of existing rural neighborhoods will be protected" and "(T)he quality and character of established neighborhoods will be maintained." 9.4a goes on to state that the policy is to "(E)nsure that infill and redevelopment is designed in a manner that minimizes impacts on the character and function of rural neighborhoods."*

Furthermore, the neighborhood where the project is slated is on the edge of one of the old Ormsby County communities. People down here have all manner of livestock from chickens and goats to horses and cows. Condition of approval 24 states:

Prior to recording the final map, the applicant shall provide the Community Development Department with a disclosure statement or similar instrument for review and approval. The document shall be recorded and provide for disclosure that properties in the vicinity are permitted to keep horses and other livestock and that there may be inconvenience or discomfort (e.g., noise, dust, and odors) that may arise from living in close proximity to such properties.

That is pretty substantial evidence that the City considers the adjacent land uses to be different from and in conflict with what is proposed at Borda Crossing that is necessary to warn potential purchasers about their more rural neighbors.

#### **6. The Board has failed to consider an important aspect of the issue, the close connection between Silver View Town Homes and Borda Crossing.**

Without mentioning that both projects were proposed by the same developer, Supervisor Jones cited the "project just across the street" as one of the reasons he was supporting the zoning change. State Street controls both projects and given the involvement of Mr. McFadden and State Street's consultant, Manhard Consulting, long before State Street took ownership of Borda Crossing, a reasonable person could easily conclude that they are directly connected. The Board should have considered that very real possibility.

Silver View is a high density residential project with a special use permit in an area zoned retail commercial. Borda Crossing is a medium density project dependent on the rezoning of a SF 1A parcel. Both are

ostensibly individually permissible the two separate applications. This is similar to a situation in Las Vegas when the Union Pacific pursued a gravel mining operation by filing three separate applications that were each permissible if you ignored the other two applications.

Viewing the Silver View Townhomes and Borda Crossing projects as part of a common scheme, the project would be an impermissible intrusion of a high density residential project adjacent to low density residential. Sixty-four dwelling units on 8 acres exceeds the maximum allowable number for medium density residential.

**7. In order to approve a zoning map amendment, the Board of Supervisors must make several fundamental findings of fact. I objected to several of the required findings in comments filed prior to the February 18, 2021 Board meeting and am incorporating them by reference.**

**In conclusion, the application to rezone the parcel (APN 009-124-03) should be DENIED.**

Michael Tanchek  
February 16, 2021

#### ATTACHMENT 1

##### **December 19, 2007 Planning Commission minutes**

H-2. ZMA-07-175 ACTION TO CONSIDER A ZONING MAP AMENDMENT APPLICATION FROM WESTERN ENGINEERING (PROPERTY OWNER: JAMES SCHNEIDER) TO CHANGE THE ZONING FROM SINGLE FAMILY ONE ACRE (SF1A) TO SINGLE FAMILY 21,000 (SF21), ON PROPERTY LOCATED AT 4094 CENTER DRIVE, APN 009-775-27 (3:51:47) - Chairperson Peery introduced this item. Mr. Plemel oriented the commissioners to the location of the subject parcel, and noted the medium density residential master plan designation in place since adoption of the 1996 comprehensive master plan. He further noted the current single family one acre zoning designation. He narrated pertinent slides, and reviewed the staff report.

In reference to an aerial photograph included in the agenda materials, Chairperson Peery suggested that rezoning would provide no benefit to “the properties in the middle” and that “it’s almost a neutral argument.” Mr. Plemel advised of having received no public comment at the time the staff report was prepared. However, just prior to distributing the agenda materials, the letter from Margaret O’Driscoll was received. Mr. Plemel referred to the letter in opposition to the rezoning, which was included in the agenda materials, and provided an overview of the same. In response to a question, he advised that the parcels to the north of the subject parcel are proposed for rezoning. Commissioner Mullet suggested considering rezoning the parcel to the south to ½ acre “along ... Center Drive for the depth of those lots and then the front part of that larger lot could then go down to the six ... to match the neighborhood to the north of it. ... kind of split that large one up ... so you have some consistency on Center.” Mr. Plemel acknowledged this would be a possible direction. He advised that the parcel to the south is not yet subdivided; however, and would likely be considered as part of a development application.

(4:04:40) Dennis Smith, of Western Engineering representing the applicant, acknowledged agreement

with the staff report. He advised of having represented the South Pointe Development application, and discussed design and construction of the development. He provided historic information on the four parcels south of Mayor's Park. He noted the long and narrow lot configuration of the four parcels, and that the placement of the structures in the middle of the two center parcels precludes subdividing them. He advised that the owner of the subject parcel had placed his residence on the north portion of his property with the intention of someday subdividing the lot. He anticipates that the property to the south will be developed at a higher density. He expressed the opinion that staff's findings for approval of the application are very good. He expressed the further opinion that the "hodge podge of lot sizes and different rural uses" represented by the properties adjacent to the subject property accommodate the requested ½ acre zoning. He expressed disagreement that the requested rezoning will detract from the neighborhood. He expressed the opinion that the ½ acre zoning is a suitable land use for the area and compatible with the surrounding uses in the neighborhood. He advised that the neighborhood was originally a land grant area. Lot sizes varied and have been further divided over the years. Mr. Smith expressed the belief that the comprehensive master plan accommodates approval of the application. He expressed the opinion that the application represents "a good use of the property and a reasonable request." He requested the commissioners' approval.

Mr. Plemel acknowledged the requirement for development of single-family dwelling units on an SF21 zoned parcel. Chairperson Peery opened this item to public comment and, when none was forthcoming, entertained additional comments or questions of the commissioners. In response to a question, Mr. Plemel advised that property owners to the north of the subject property were provided notice of the hearing.

There has been no response from the property owners and staff would only solicit their individual input if directed to do so by the commission. In response to a question, Mr. Sharp advised the parcels are connected to City utilities. In response to a question, Mr. Smith advised of no opposition to continuing the item to provide staff an opportunity to contact the property owners to the north of the subject parcel. He expressed the opinion that direct contact may not be productive "given the development of those two properties" in the middle. Chairperson Peery expressed an interest in receiving input from the neighbors.

In response to a question, Mr. Sullivan explained that the applicant submitted the application for his property and Mr. Plemel considered the overall area. He expressed appreciation for the applicant's concurrence to allow staff to contact the property owners to the north, to consider rezoning the properties to ½ acre, thereby establishing a pattern.

In response to a question, Mr. Smith expressed the belief that there is sufficient time to explore zoning issues. "Time is not of the essence." Commissioner Wendell suggested that a unanimous decision would make the rezoning much smoother. Mr. Smith advised of having participated in a similar process with other properties. "Most of the time ... the property owners don't understand ..." Mr. Smith expressed a willingness to send letters to the adjacent property owners requesting their cooperation. He suggested this could be accomplished within thirty days, but expressed skepticism over a favorable response.

Commissioner Wendell suggested that spot zoning would be a concern of the commission and of staff. He advised that the commission often receives feedback that property owners have been unaware of certain

applications. He suggested providing the information and requesting feedback with regard to the adjacent property owners' interest in participating.

In response to a comment, Mr. Plemel advised that the Planning Division would send notice to the specific property owners, if directed by the commission, and provide pertinent information. In response to a question, he provided additional clarification on the noticing process. Commissioner Vance suggested that some of the property owners on the east side of Center Street may be encouraged to participate as well.

In response to a question, Mr. Plemel advised that this had not been considered. He suggested it may be a little premature to start designating specific zoning for the larger parcels that may not develop for years.

Zoning around the parcels may change over time and therefore present a different situation at the time of development. Commissioner Vance expressed concern over continuing the item and thereby "opening a can of worms." Commissioner Wendell expressed the belief that staff was trying to alleviate the concern over spot zoning. The approach would be to consider the parcels as a transition area. Chairperson Peery agreed that continuing the item would provide the opportunity to consider "a different type of buffer."

Chairperson Peery called for additional discussion and, when none was forthcoming, entertained a motion. Commissioner Reynolds moved to continue ZMA-07-175, with the applicant's concurrence, and to direct staff to include the three parcels to the north of the subject parcel in a request to change the zoning from single family one acre to single family 21,000, depending upon the approval of those property owners, and to have the item reagendaized for the January commission meeting.

Commissioner Wendell seconded the motion. Motion carried 6-0.

#### **January 30, 2008 Planning Commission minutes**

H-4. ZMA-07-175 ACTION TO CONSIDER A ZONING MAP AMENDMENT APPLICATION FROM WESTERN ENGINEERING TO CHANGE THE ZONING FROM SINGLE FAMILY ONE ACRE (SF1A) TO SINGLE FAMILY 21,000 (SF21), ON PROPERTY LOCATED AT 4094 CENTER DRIVE, APN 009-775-27, AND INCLUDING THREE PARCELS LOCATED AT 3820 - 4040 CENTER DRIVE, APNs 009-775-24, -25, -26

(5:00:18) - Chairperson Peery introduced this item. Mr. Plemel reviewed the staff report in conjunction with displayed slides. He provided a brief overview of the written responses to the public noticing process, one which was included in the agenda materials and another which was provided to the commissioners and staff prior to the start the meeting.

(5:06:59) Dennis Smith, of Western Engineering representing the applicant, expressed agreement with the staff report and provided background information on this item. He expressed agreement with changing the zoning designation of the subject parcels, and the opinion "... it's a good transition zone between the 6,000 square foot lots in the South Pointe subdivision and the one acre lots across the street."

Chairperson Peery opened this item to public comment and, when none was forthcoming, entertained additional comments, questions, or a motion of the commissioners. Commissioner Wendell moved to approve ZMA-07-175, a zoning map amendment to change the zoning from single family one acre to single



family 21,000, on property located at 4094 Center Drive, and including three parcels located at 3820 through 4040 Center Drive, APNs 009-775-24, -25, -26, and -27, based on the findings contained in the staff report and on the testimony provided by the staff and the applicant's representative.

Commissioner Vance seconded the motion. Motion carried 7-0.

**From:** [Andrew Swann](#)  
**To:** [Public Comment](#)  
**Subject:** Comment on N104 Ordinance  
**Date:** Wednesday, March 17, 2021 1:11:00 PM

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"A discussion and possible action will be held relating to the adoption on second reading of Bill No. 104, an ordinance relating to zoning and establishing provisions to change the zoning from Single Family 1 acre to Single Family 6,000 on property located at the northeast corner of Silver Sage Drive and Clearview Drive. "

I Andrew Swann resides at 1550 Valleyview DR and strongly opposes any change to zoning from Single family 1 acre to single Family 6,000 on property located at the northeast corner of Silver Sage Drive and Clearview Drive. The city already accommodates many sub parcels of land for development of Single family 6,000 properties in the surrounding area. The location should continue to be zoned at 1 acre lots and remain the last stronghold of the beautiful feeling of living in Carson City. The change will negatively affect the area and create a feeling of living in a crowded and congested area and no longer have open space between neighbors .The area should remain without housing & traffic congestion with the current zoning in place. Also not to mention the safety concern with two four way stop signs within a half mile regarding traffic. Please deny the zoning Change !

Sincerely,  
Andrew Swann