REGULAR COUNCIL MEETING  March 1, 2017

Officials in Attendance: Mayor Dorothy Knauss; Councilmen John May, Payton Norvell and John Wight; Councilwomen Sharon Ludvig, Dee Henderson, Carra Nupp and Roberta McMillin

Staff Present: City Administrator Mike Frizzell, City Attorney Charles Schuerman, Clerk/Treasurer Pamela McCart

The Mayor called the meeting to order at 6:30 PM.

Audience Comments: None

Announcements/Appointments, including:
- Mayor’s Youth Award – Hailey Crise.
- I serve on the Board of Directors for the Association of Washington Cities and I am also the co-chair for the Small City Advisory Committee (representing eastern side of state). During city legislative days in Olympia, County Commissioner Wes McCart took me to an aeronautics caucus meeting to discuss the airport. Wes and I also met with Senator Short and Dave Warren from the Department of Natural Resources – we think we’re making some progress there – we think we can get DNR down on the price.
- I contacted every senator I could think of to ask them to support Senate Bill 5515 which has to do with getting HiTest Sand in Addy. That bill is in the Senate Ways and Means Committee – they’re going to tie it to the budget so it doesn’t have to be voted on by March 8th as is the case for all bills, otherwise they’re dead.
- During lunch with the governor, the Board of Directors was asked to submit questions – I asked “How can the State help rural counties get adequate and reliable broadband?” – so at least it was brought up again to get people thinking about it.

Presentation: None

Consent Agenda:
Motion by Councilwoman Ludwig approving Consent Agenda consisting of:
  > February 1st and 15th Regular Minutes
  > February Payroll and Claim Vouchers

Seconded by Councilwoman McMillin. Roll call vote taken with all in favor. Motion carried.

Public Hearing on Comprehensive Plan Amendment and Rezone to change land currently zoned Community Facilities (C-F) to Single Family Residential (R-1) – (Stevens County Tax Parcel No. 0256490)

The Mayor opened the public hearing and set forth the format that would be followed. There were no objections to the Mayor participating as chairman. There were no objections to any Councilperson’s participating in the proceedings. No Councilperson acknowledged any gain or interest with regard to this matter.

The following Councilmembers acknowledged communications outside of this hearing:
  Councilwoman Henderson: I had spoken with a few people but no one asked me to vote either way. I spoke with John Wight, Mike Frizzell, Mark Bingham and Jarod Arnold.
  Councilman Norvell: I spoke with Mike Bellevue, Susanne Griepp, Leslie Christiansen and about a dozen other people I can’t remember. Most of them were urging me to vote against the rezone.
  Councilman Wight ... with Dee and Mike Frizzell.

APPLICANT (CITY): CITY ADMINISTRATOR MIKE FRIZZELL stated that this application has come up because this is one of the properties that was identified by the committee established by the Mayor to look at all city owned properties and evaluate whether they were being under-utilized and maybe had a better use. All of the properties that were identified as under-utilized have been sold at this
point – this is the last one of those. But the question of whether to surplus or sell can’t come to the Council without going through this process. It needs to be rezoned in order to make it a salable piece of property.

**Staff Report by Ryan Hughes, Contract Planner, Studio Cascade:** I just want to be clear that this is what the zoning code classifies as a Type III decision. It is legislative in nature, it’s not a project application which would be administrative. According to the Chewelah Municipal Code, this type of application requires review and recommendation by the Hearing Examiner (previously the planning commission). We’ve gone through that process. Mr. Hughes summarized his staff report dated 12–28–16 consisting of 11 pages, attached hereto as #1 and made a part of these minutes in which approval of CPA-01-2016/REZ-01-2016 is recommended, subject to conditions.

**Public Testimony:**
The Clerk/Treasurer read a letter from Patricia Pastushin against the amendment/rezone. A Petition to the City Council signed by 22 residents of the Pinebrook Neighborhood against the amendment/rezone was submitted.
The following people orally testified against the amendment/rezone: Jared Arnold, Tom Bristol, Winston & Susanne Griep, Tom Distler, Susan Bristol and Sylvia Brock.

**The Mayor Closed the Public Hearing.**

**City Attorney:** You all have copies of the 18 page Hearing Examiner’s report and his recommendation -- in substance his decision recommends denial of the application. (See attached Findings, Conclusions and Decision of City of Spokane Hearing Examiner dated 2–23–17 consisting of 18 pages, attached hereto as #2 and made a part of these minutes). As would be with a planning commission, that is a recommendation. You are deciders and you need to make a decision whether or not to follow the recommendation of the Hearing Examiner or, if not, to make a decision on the rezoning that is contrary to that. You have good latitude – one of the choices that you would have is to elect as a body to put this off until the next meeting so that you would have the opportunity to review anything else you want to review. Under the RCW’s some kinds of actions have limited timelines in which they must take place from start to finish. This is one of those kinds of actions that is not bound by that constraint. As such, it means that you would have the latitude tonight to take up as the next council action a motion/decision which would make findings on this decision and approve, approve with modifications or deny the application. You also would have the opportunity tonight to choose not to do that – to postpone it to the next council meeting so that each of you would have the opportunity to independently/individually take a look at that. It’s real in your hands and you really do have the latitude to make decisions to either do something this night or something at a later time after you’ve had a chance to do more review if you so choose. As you know, the recommendation is just that, like it was from the planning commission -- it’s a recommendation.

**Motion by Councilman Norvell to accept the Hearing Examiner’s recommendation and deny the rezone on Stevens County Tax Parcel 0256490 otherwise known as Pepe Creek Park,** seconded by Councilman Ludwig. Under discussion,

**Councilman May:** I’m not in favor of that motion -- the opportunity for that piece of property to become a park before the City owned it did not happen and that is not this Council’s fault. A City council at some time decided that this was a piece of property that the City should own – that council no longer exists, except for one member. I think our responsibility is to use the monies and the facilities that we have to the best of our abilities for the majority of the population. The people represented here tonight consist of approximately 2.2% of the meters in the City. There’s a thousand meters – 22 people signed the petition. I was part of the committee that decided upon properties that we could do better without. Those properties are
now on the tax rolls and instead of being a burden on the City, they’re providing an income. Same thing could be true here. If we leave this a park, somewhere down the line those people, whoever they are, are going to insist that the City develop that into a park which will become something that we will have to spend money on. There are another 160 lots out there that aren't for sale that should be adequate for that purpose that do not belong to the City -- the City only owns 4.9 acres and it is my opinion that the best thing we can do with that is capitalize on it and use it for paying off some debt.

**Councilwoman Nupp:** Just prior to Mr. May’s election we were on the park committee -- before being removed from that committee -- we were passionately for about eight years trying to come up with a plan with that park area to generate it as a park area.

**Councilman May:** But then you're going to have to spend a whole bunch of money putting in irrigation systems -- you're going to have to maintain it -- pretty quick down the line somebody’s going to want a bathroom out there -- that’s another big expense that the City doesn’t need.

**Councilwoman McMillin:** It’s something that we should provide for our citizens, too.

**Councilman May:** We have a tremendous amount of park area right now. I read a statement made by somebody that I can’t believe was made publicly that this community is lacking in recreational opportunities. What kind of recreational activities do we need? We have skiing, fishing, swimming, tennis . . . we have a bowling alley that is vacant 95% of the time.

**Councilwoman Nupp:** It’s been requested for that park to actually be turned into a volleyball park -- that was part of the plan that we had talked about, trying to . . .

**Councilman May:** I know -- now we're going to spend some more money developing a volleyball park.

**Councilman Norvell:** I was part of that facilities committee looking at the properties. Money has to come from somewhere for that shop. I don’t believe this is going to be the source. The staff is put in a really hard spot . . . you’re asked to build a shop . . . nobody wants to pay for it. I feel there’s a lot of animosity out there and possibly there should be. But it’s not their fault - they’re put between a rock and a hard place. I’d like to defend the City for the application although I’m not voting for it in this case because I do believe we should preserve the park space. Just because it’s not a developed park doesn’t necessarily mean it’s not a park and people can’t use it. We may never develop it but people can still use it for the next 100 years.

**Councilman May:** But someplace down the line I can anticipate folks saying you must develop that into a park because that’s what it’s supposed to be.

**Councilman Norvell:** But we don’t have to.

**Councilman May:** I guess, you’re right, Payton. If I’d have been on the council when this was purchased I would have fought it tooth and nail. I don’t think the council should have done that. I don’t think one council can bind another council.

Roll call vote taken with Councilman May and Wight and voting against, remaining votes in favor. Motion carried.

**Committee/Commission Reports:**

- **Lodging Tax Advisory, Councilwoman Nupp:** Applications were reviewed - one was denied due to an incomplete application. $8,800 awarded (Chamber-$2,000, Community Celebrations-$2,000, Chokes & Spokes-$300, Chewelah Arts Guild-$1,000, Chewelah Float-$2,500, Chewelah Farmers Market-$1,000) resulting in a total of $13,498 for future City use. Motion by Councilman May to approve allocation of Hotel/Motel Tax funds as recommended by Committee, seconded by Councilman Norvell. Roll call vote taken with all in favor. Motion carried.
City Administrator Report:
- The draft noise ordinance listed under New Business will need to be postponed. Law enforcement has addressed some issues, primarily with regard to barking dogs. The new system would be measuring noise with a decibel meter — constant noise for two minutes at a certain level. While barking dogs can be an extreme annoyance, they may not bark for two minutes. The committee will need to decide whether to change the ordinance as written to include barking dogs or do we put barking dogs under the animal portion of the code and establish the rules and how law enforcement will deal with that.

City Attorney Report: None

Old Business: None

New Business: None

The Mayor adjourned the meeting at 7:47 PM.

Mayor Dorothy L. Knauss

Clerk/Treasurer Pamela McCart
STAFF REPORT
DATE: December 28, 2016

Project / File: CPA-01-2016/ REZ-01-2016

Proposal Description: A proposal to amend the City of Chewelah’s comprehensive plan land use designation from public (facilities) to single family residential and amend the City of Chewelah’s zoning map from community facilities (C-F) to single family residential (R-1) for a site consisting of approximately 4.9 acres

Proposal Location: Parcel No. 0256490, located east of Tamarack lane, north of W North Ave, west of Kruger St. and south of City limits; further described as the portion of SE ¼ of Section 11, Township 32, Range 40, Stevens County, Washington

Applicant: City of Chewelah, 301 East Clay Avenue, Chewelah, WA 99109

Approval Criteria: Chewelah Municipal Code Sections: 16.04 (State Environmental Policy Act Guidelines), 18.16.050 (Amendments), and 18.08.060 (Single-family residential) are the primary development regulations applicable to the site.

Additionally, consistency with the City of Chewelah Comprehensive Plan is also evaluated to ensure that the amendment furthers the overall goals of Chewelah.

Staff Planner: Ryan Hughes, AICP, Contract Planner, City of Chewelah

Reviewed by: Mike Frizzell, City Administrator, City of Chewelah

Exhibits/Attachments:

Exhibit 1: Vicinity Map
Exhibit 2: Comprehensive Plan Map
Exhibit 3: Zoning Map
Exhibit 4: Aerial Map
Attachment 1: Agency Comments
Attachment 2: Public Comments

I. BACKGROUND INFORMATION

A. Application Processing: CMC Section 18.16.050 (C) allows the Hearing Examiner or city council to initiate an amendment to the comprehensive plan.

The following summarizes key application procedures for this proposal:

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<th>Application Submitted:</th>
<th>October 14, 2016</th>
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<tr>
<td>Completeness Determination:</td>
<td>November 10, 2016</td>
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<tr>
<td>Notice of Application Issued:</td>
<td>November 10, 2016</td>
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CPA-01-2016/ REZ-01-2016

ATTACHMENT #1 TO REGULAR MINUTES OF MARCH 2, 2017 CONSISTING OF 11 PAGES
End of Appeal Period for DNS: November 17, 2016
Published Notice of Public Hearing (Hearing Examiner): December 28, 2016
Date of Public Hearing (Hearing Examiner): January 11, 2017
Published Notice of Public Hearing (City Council): February 1, 2017
Date of Public Hearing (City Council): February 15, 2017

B. Property Information:

<table>
<thead>
<tr>
<th>Size and Characteristics:</th>
<th>The site is vacant and is bordered to the north by City limits and to the south by W North Ave. The site, approximately 4.90 acres in size and is vegetated with grass and brush, with Paye Creek running through it starting at the NW corner.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Comprehensive Plan Designation:</td>
<td>Public (facilities)</td>
</tr>
<tr>
<td>Existing Zoning:</td>
<td>Community Facilities (C-F)</td>
</tr>
<tr>
<td>Existing Land Use:</td>
<td>The proposal consists of one parcel (0256490), which is currently vacant.</td>
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C. Surrounding Comprehensive Plan, Zoning, and Land Uses:

| North: | Comprehensive Plan – Unincorporated  
Zoning – Unincorporated  
Existing Land Use – Unincorporated |
|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| South: | Comprehensive Plan – Single family residential  
Zoning – Single Family Residential (R-1)  
Existing Land Use – Vacant and Single-family |
| East: | Comprehensive Plan – Single-family residential  
Zoning – Single Family Residential (R-1)  
Existing Land Use – Vacant and Single-family residences |
| West: | Comprehensive Plan – Single Family Residential  
Zoning – Single-family residential (R-1)  
Existing Land Use – Vacant and Single-family residences |

II. FINDINGS AND CONCLUSIONS SPECIFIC TO SEPA

Findings:
Section 16.04 (State Environmental Policy Act Guidelines) of the CMC implements the State Environmental Policy Act (SEPA) and Chapter 197-11 of the Washington Administrative Code (WAC) within the jurisdictional limits of the City of Chewelah. After examination of a completed SEPA checklist, the City has determined that there are not any significantly adverse unmitigated environmental impacts, and has issued a Determination of Non-Significance (DNS) for the proposal.
Conclusion(s):

Based on an examination of the completed SEPA checklist, a Determination of Non-Significance (DNS) was reached for the proposed action, meaning that the proposal does not have a probable significant adverse impact on the environment. This DNS finding also agrees with the environmental impact statement of 1997.

III. FINDINGS AND CONCLUSIONS SPECIFIC TO THE AMENDMENT REQUEST

A. Analysis

At present there is no application for development of the property. The City in its review of the proposed amendment in addition to the findings in CMC 18.16.050 should consider: traffic and circulation impacts, utilities impacts, and environmental impacts. Additionally, specific development proposals will be required to complete a Site Plan Review prior to development based on the property including a portion of Paye Creek and wetlands in the NW corner of the parcel.

B. Compliance with the Chewelah Comprehensive Plan

Relevant comprehensive plan goals and policies are in *italics* below and are followed by the staff's response:

The location of the area of proposed rezone is currently designated as Public (facilities) in the Chewelah Comprehensive Plan. This designation is intended to implement the community facilities zone. The proposed rezone will amend the zoning from community facilities to single-family residential.

_Cgoal LUG-1- (in part) Encourage urban development patterns that support existing expansion of urban services in a fiscally sound manner..._

The change in zoning/land use will allow the uses permitted and conditionally permitted in the single-family residential zone to occur on the proposed site. This proposal amends the comprehensive land use map from public (facilities) to single-family residential which is consistent with the surrounding land uses, and allows for more land to be available for residential development in an area where urban services already exist.

_CFG-1 Adopt and implement a Capital Facilities Plan to ensure public services and utilities are provided at the level of service currently enjoyed by residents of the City of Chewelah._

The adopted level of service standard (LOS) calls for 6 acres of parkland per 1,000 of city population. The projected 2020 number of city residents would require a total of 19 acres of the parkland. Eliminating “Paye Creek Park” from the City’s parkland inventory would not reduce the total to less than 19 acres.

Conclusion(s):

Based on the staff’s review of the City of Chewelah Comprehensive Plan, staff concludes that the proposed rezone/comprehensive plan land use map amendment is consistent with the comprehensive plan.
C. Compliance with Section 18.16.050 (Amendments) of the Zoning Code

Findings from CMC 18.16.050 are in italics below and are followed by the staff’s response:

The proposed amendment is consistent with the intent and goals of the Chevelah comprehensive plan and meets the requirements and intent of the Chevelah Municipal Code.

Section 18.16.050 of the Chevelah Municipal Code states that proposed amendments require consistency with the goals and policies of the comprehensive plan. The existing comprehensive plan has goals and policies that encourage urban development patterns that support the expansion of urban services in a fiscally sound manner. In addition as the surrounding zoning of the subject parcel is already R-1, changing the subject parcel from a C-F zone to an R-1 zone would be consistent with the zoning of the surrounding area.

The proposed amendment is consistent with applicable federal and state laws and regulations.

All applicable state and federal laws and regulations will be applied to any future development. A SEPA Determination of Non-significance has been issued in response to the proposed action. Notice of application has been provided to state and other applicable agencies for review (see Section V).

The city, other responsible agencies, and special zones will be able to supply the development resulting from the amended comprehensive plan or implementing ordinance with adequate roads and streets for access and circulation, water supply, storm drainage, sanitary sewage.

Any future development of the site will be required to ensure the adequacy of roads, access, water, storm drainage, sewage disposal, or emergency services.

The amendment adequately mitigates impacts identified through the SEPA review process, if applicable.

The SEPA review process identified impacts likely to occur are those which are consistent with single family residential development. Future development will be subject to all shoreline, critical areas, subdivision and zoning requirements.

The amendment is beneficial to the public health, safety, and welfare, and is in the public interest.

The proposed amendment will serve the public by designated additional lands as residential, thereby providing the city with further housing. Any further development of the site would be subject to CMC Title 17, Subdivisions, SEPA, critical area review, and all other permits and requirements of residential construction.

Conclusion(s):
Based on staff’s review of the proposed comprehensive plan amendment and implementing rezone, staff concluded that the proposed amendment and rezone has conformed to the Chevelah Municipal Code Section 18.16.050
D. Compliance with Section 18.08.060 (Single-family residential) of the Zoning Code

Findings:
Staff finds that the proposed rezone is for a parcel that is approximately 4.90 acres. The minimum lot size for the R-1 zone is 7,200 square feet or .165 acres. The proposed 4.90 acre lot is over 29 times the minimum lot size. The rezone will not create a non-conforming lot. Any further development will be subject to all development standards required in CMC 18.08.060.

Conclusion(s):
Based on staff’s review of the proposed rezone with applicable standards of the Chewelah Zoning Code, staff finds the application is consistent with the zoning standards for the Single-family residential zone, subject to the implementation of applicable conditions of approval.

IV. FINDINGS AND CONCLUSIONS SPECIFIC TO PUBLIC COMMENT

Findings:
Public comments were received during the comment period in response to the SEPA Determination of Non-Significance (DNS) and the Notice of Application. The concerns raised are summarized below as well as a response. Written comments are attached as exhibits to this staff report and recommendation.

The following topics were addressed in the public comments:

• Issue: Historic Subdivision Covenant and Park Designation
  o Commenters expressed concerns that the parcel was required to be a park as part of the Pinebrook Subdivision plan, and the loss of that opportunity. It will also noted covenant agreements in the Pinebrook Subdivision require agreement by 75% of Association members before changes can be made, and said covenant is being violated.

  o Staff Response: Concerns regarding the Paye Creek Park designation were evaluated using City documentation on the subdivision agreement, minutes, maps, and other relevant documents. A brief timeline of the history subdivision park process includes:
    ▪ The Pinebrook subdivision, with the map showing Paye Creek Park was approved in 1992, as recommended by the Planning Commission. The developer, in answering a question, indicated that the park would probably be developed within one year, and maintained by the home owners association (Regular Planning Commission Meeting, Feb 20, 1992, page 4).
    ▪ In 2007 the City of Chewelah purchased the land for $5,000.00 (Real Estate Purchase and Sale Agreement). A City Council meeting discussed the City’s ownership of Paye Creek Park and state that they would “look at what our options are in the future” (Regular Council Meeting, Sept. 5, 2007, page 3).

It was further noted in the documents that development of any park would be privately
constructed by the Home Owners Association of the Pinebrook Subdivision.

As stated above, the City’s parkland level of service current and future demand is adequately met by existing lands designated for parks and recreation.

- **Issue: Noticing Requirements**
  - **Comments** were expressed regarding noticing requirements that they believed to not be met, including posting in the neighborhood regarding the DNS and the notice of application. Concern was also expressed regarding notification of all residents of the Pinebrook neighborhood.

  - **Staff Response**: Project noticing has been conducted pursuant to requirements of the Chewelah Municipal Code. The code requires notice of application to be posted on the property at least 14 days, but not more than thirty days prior to the hearing (18.20.040.B.4.c). Property owners within 300 feet have been notified. Addresses of property owners are identified through Stevens County Assessor’s office (see Noticed Property Owner’s List).

- **Issue: Conflict of Interest**
  - **Written comments** expressed an apparent conflict of interest. The City, as the applicant, is also responsible according municipal code to issue final decisions on such proposals.

  - **Staff Response**: CMC 18.16.050 (C) gives authority to a Hearing Examiner and City Council, as the legislative body, to provide recommendations and decision making on amendments to the City’s comprehensive plan and Zoning Map.

**Conclusion(s):**
Staff concludes that concerns raised through public comments, where relevant to municipal code or city policy, can be adequately mitigated in conditions of any approval. Ample noticing was conducted for in accordance with adopted public noticing procedures provided in CMC 18.20.040.

**V. FINDINGS AND CONCLUSIONS SPECIFIC TO AGENCY COMMENTS**

**Findings:**
Agency comments are attached as exhibits to this staff report and recommendation. The following agencies submitted written comments for the proposal:

1. **Spokane Tribe of Indians (Tribal Historic Preservation Officer):**
   - The Tribe had concerns regarding the possibility of evidence below the surface of artifacts and human remains. See attached for full comments.
Conclusion(s):
Where appropriate, agency comments have been incorporated as conditions of approval.

VI. OVERALL CONCLUSION

Staff concludes that CPA-01-2016/REZ-01-2016 is consistent with the following plans and regulations:
- Chapter II (Land Use) of the Chewelah Comprehensive Plan;
- CMC 18.08.060 (Single-family residential zone);
- CMC 16 (Environment);

VII. STAFF RECOMMENDATION

After review and consideration of the submitted application and applicable approval criteria staff recommends approval of CPA-01-2016/REZ-01-2016, subject to the following conditions:

1. The City of Chewelah Zoning Map shall be updated to specify the change in zoning from Community Facilities to Single-family residential and the City of Chewelah Land Use map amended from Public (facilities) to Single-family residential for parcel number 0256490, associated with CPA-01-2016/REZ-01-2016.

2. Any future development shall be required to comply with all requirements of Chewelah Municipal Code (CMC) Title 16, ENVIRONMENT, Title 17, SUBDIVISIONS, and Title18, ZONING. This includes, but is not limited to, mitigation of adverse impact to the environment; regulation of land use; lot size; setback and height limitations, etc.

3. Any ground disturbing activities shall comply all with federal and state requirements and utilize best management practices for historic and archeological preservation.

4. Any further site division or development shall retain a portion of the property for stormwater retention; serving existing development in the Pinebrook Subdivision.
CITY OF SPOKANE HEARING EXAMINER

Re: Comprehensive Plan Map Amendment and Rezone by the City of Chewelah for 4.9 acres of property designated as common area within the Plat of Pinebrook Estates Div. I)

FINDINGS, CONCLUSIONS, AND DECISION

FILE Nos. CPA-01-2016 & REZ-01-2016

SUMMARY OF PROPOSAL AND DECISION

Proposal: The City of Chewelah seeks to change the land use designation and zoning of a 4.9-acre parcel of land located within the Plat of Pinebrook Estates Div. I ("Pinebrook Estates"). The city proposes to change the land use designation on the Comprehensive Plan map from "public" to "single-family residential." The city also proposes to change the zoning of the property from community facilities (C-F) to single-family residential (R-1).

Decision: The Hearing Examiner recommends denial of the application.

FINDINGS OF FACT

BACKGROUND INFORMATION

Applicant: City of Chewelah
Agent: Mike Frizzell, City Administrator
301 East Clay Avenue
Chewelah, WA 99109

Agent: Ryan Hughes, AICP
Studio Cascade, Inc.
429 E. Sprague Ave.
Spokane, WA 99202

Owner: Same as Applicant

Property Location: The property is located east of Tamarack Lane, north of W. North Avenue, west of Kruger Street, and south of the city border. The property is further described as a portion of the SE ¼ of Section 11, Township 32 East, Range 40 North, W.M., Stevens County, WA. The parcel is designated under tax parcel number 0256490.

Zoning: Community Facilities (C-F)

Comprehensive Plan Map Designation: The property is designated as Public.

Site Description: The site consists of approximately 4.9 acres of unimproved, open space. The site is a designated common area in the plat of Pinebrook Estates, which is commonly referred to as Peye Creek Park. The site is generally flat. Peye Creek runs through the property. Peye Creek has been identified as a potential habitat for resident

§2

ATTACHMENT TO REGULAR MINUTES OF MARCH 2, 2017 CONSISTING OF 18 PAGES
trout and bull trout. There are wetlands in the upper northwest portion of the site. The 100-year floodplain encompasses a portion of the site. The southern portion of the site is used for storm-water retention for Pinebrook Estates. There are trees, shrubs, and grass on the property. There are no structures on the site.

**Surrounding Uses:** The site is a common area of Pinebrook Estates, and constitutes the eastern border of the subdivision. The residences in Pinebrook Estates are located west of the southern half of the site. Westerly and northwesterly of the site, and north of the developed part of Pinebrook Estates, is open, undeveloped property. Directly north of the site is outside city limits. There are some structures located to the north and northwest. To the east is undeveloped land and single-family residences. To the south and southwest, the land is primarily developed with single-family residences.

**Surrounding Zoning:** The land to the east, west, and south of the site is zoned single-family residential (R-1). Directly to the north is outside city limits and therefore is not zoned pursuant to the city code. The land to the northwest and northeast, which is still within city limits, is zoned Retail Business (R-B).

**Project Description:** The proposal is to change the land use map (comprehensive plan) and zoning map for a 4.9 acre parcel of land. There is no specific, development project included in the city's application. Any development projects that may take place at a future date will be the subject of a separate application. However, the city has acknowledged that a three-lot short plat is being considered for the site, should the map changes be approved.

**PROCEDURAL INFORMATION**

**Authorizing Ordinances:** Cheney Municipal Code ("CMC") 16.04, State Environmental Policy Act Guidelines; CMC 18.16.050, Amendments; and CMC 18.08.060, Single-family Residential.

**Notice of Application/Public Hearing:**

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**Public Hearing Date:** January 11, 2017 and February 9, 2017

**Site Visit:** January 11, 2017 and February 9, 2017

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1 There are no affidavits of mailing or posting in the record for the January 11, 2017 hearing. However, there are documents which generally indicate that the mailing and publication took place. In addition, there were no objections made regarding any alleged failure to mail or publish the notice. It appears that the mailing and publication were properly completed in December 2016, although the precise date is not known.
SEPA: A Determination of Nonsignificance ("DNS") was issued by the City of Chewelah on November 3, 2016. The DNS was appealed by Mr. Jared Arnold on November 17, 2016. The SEPA appeal was considered at hearing conducted on January 11, 2016, in conjunction with the initial hearing on the city's application.

Testimony:

Ryan Hughes, AICP
Studio Cascade, Inc.
429 E. Sprague Ave.
Spokane, WA 99202

Mike Frizzell, City Administrator
City of Chewelah
301 East Clay Avenue
Chewelah, WA 99109

Gail Johannes
807 Tamarack Lane
Chewelah, WA 99109

Susan Bristol
2445 Highline Road
Chewelah, WA 99109

Margie Walters
1209 Pinebrook Dr.
Chewelah, WA 99109

Susanne Griep
909 W. Jenkins Ave.
Chewelah, WA 99109

Jim Richardson
1149 N. Kruger St
Chewelah, WA 99109

Tom Distler
2244B Cozy Nook Road
Chewelah, WA 99109

Tom Bristol
2445 Highline Road
Chewelah, WA 99109

Mark Bigham
P.O. Box 1213
Chewelah, WA 99109

Jared Arnold
1106 Pinebrook Dr.
Chewelah, WA 99109

Mick Childress
W. 712 King, P.O. Box 908
Chewelah, WA 99109

Tim Kaiser
2343 Flowering Trail
Chewelah, WA 99109

Exhibits:

1. Planning Services Staff Report
2. Application, including:
   2A General application
   2B Vicinity map
   2C Aerial existing buildings map
   2D FEMA floodplain map
   2E Current zoning map
   2F Proposed zoning map
   2G Critical areas map
2H Present easements map

3. Counter complete checklist
4. Spokane Tribe of Indians comments
5. Notice map
6. Parcel listing
7. Notice of application
8. Affidavit o' sign posting
9. Affidavit o' publication
10. SEPA Determination of Nonsignificance
11. Environmental Checklist
12. Emails dated 10-17-2016, 10-18-2016, 10-25-2016 Ryan Hughes, Emily Adams, Mike Frizzell
   re: CPA-REZ- Comp Plan Amendment/ Rezone – Pinebrook/ Tamarack Lane (attached: Application, Notice of Application, Notice of DNS, Property Owners in 300ft, SEPA Agency List)
13. Email dated 11-22-16 Ryan Hughes, from: Mike Frizzell
   re: 1992 Regular Planning Commission meeting minutes, Pinebrook Estates Div. 1 map, 2007 Regular City Council Meeting minutes
14. Email dated 11-22-16 Ryan Hughes, from: Mike Frizzell
   re: Pinebrook rezone, going through site history documents
15. Email dated 11-23-16 Ryan Hughes from: Mike Frizzell
16. 2016 SEPA Agency List
17. Letter from Randy Holt dated 11-09-16, parcel use and property value concerns
18. Letter from Gall Johannes dated 11-17-16, parcel use and subdivision covenant concerns
19. Letter from Jared Arnold with attached DNS dated 11-17-16, noticing and rezone concerns
20. Letter from Jared Arnold with attached previous letter dated 11-23-16, past designation concerns
21. Letter from Thomas Bristol dated 11-23-16, parcel use and conflict of interest concerns
22. Historical Documents regarding Pinebrook
   22-1 Oversized Document reference list
   22-2 Agreement between City of Chewelah and Delta Site Development, dated 05-28-92
   22-3 Final Draft of Declaration of Protective Covenants . . . , dated 06-09-92
   22-4 Planning Commission Recommendation Regarding Pinebrook Estates Subdivision, dated 02-27-92
   22-5 Chewelah Planning Commission meeting minutes, dated 08-20-92
   22-6 Staff Review, Pinebrook Estates Preliminary Plat, dated 02-14-92
   22-7 City of Chewelah City Council minutes, dated 09-02-92
   22-8 Letter to City Administrator from Health District, dated 02-19-92
   22-9 Letter to City Administrator from DOE dated 02-27-92
   22-10 Staff Review and Recommendations Exhibit "A;" dated 02-07-92
   22-11 Letter to Stevens Co. Planner from City Administrator, dated 01-31-92
   22-12 Letter to City Administrator from Stevens Co Office of Planning, dated 02-10-92

Findings, Conclusions, and
Decision - Page 4 of 18
22-13 Letter to City Administrator from WSDOT, dated 02-14-91
22-14 Affidavit of Publication dated 02-19-92
22-15 Affidavit of Publication dated 02-13-92
22-16 Pinebrook Estates Preliminary Plat
22-17 Agreement between Pinebrook, Inc., and Briere, Delta, Finley and Bigham dated 01-08-93
22-18 Release of Option dated 01-08-93
22-19 Verification of Intent dated 03-17-92
22-20 Comments on the Planning Commission’s recommendations, undated
22-21 Planning Commission Recommendation re Pinebrook Estates, for hearing held on 02-20-92 & 02-27-92.
22-22 Preliminary Utility Extension Agreement based on meeting dated, 03-10-92
22-23 Amended Agenda, Chewelah Planning Commission, dated 10-16-03
22-24 Memo to WSDOT from Building/Planning Dept., dated 08-29-02
22-25 Meeting notes re Pinebrook Subdivision, dated 09-17-03
22-26 Email from Bill Grimes to Jon Lind, dated 09-15-03
22-27 Memo from Chaz Bates to Chewelah Planning Commission, dated 10-16-03
22-28 Pinebrook Sign In Sheet, dated 09-18-03 – 1:30 p.m.
22-29 Hand written notes undated
22-30 Letter from Hahn Engineering to City Administrator Design Meeting, dated 09-05-03
22-31 Email from G. Nolander to B. Grimes, dated 12-08-03
22-32 Email from P. McCart to C. Bates, dated 01-08-04
22-33 Letter to Planning Commission from Hahn Engineering, dated 11-11-03
22-34 Certification of Title Company dated 10-03-03
22-35 Email from G. Nolander to J. Lind, dated 11-20-03
22-36 Staff Review and Recommendations, Draft, dated 02-07-92
22-37 General Land Use Permit Application, dated 11-19-03
22-38 Email from J. Lind to B. Grimes, dated 12-02-03
22-39 Letter of Transmittal from Hahn Engineering, dated 11-09-03
22-40 Memo to Mayor Bauman from N. Bradbury, Building/Planning Dept., dated 08-29-02
22-41 Business cards re Preliminary Plat meeting 2002
22-42 Letter from City Administrator to Gulf Insurance Group, dated 06-29-06
22-43 Letter from City Administrator to M. Bigham, dated 09-10-02
22-44 Road Base Specifications from Street Department, undated
22-45 Unfinished portion of Pinebrook Dr., handwritten cost sheet totaling $70,000, undated
22-46 Overview of street layouts, undated, untitled
22-47 Subdivision Performance Bond from Gulf Insurance Group, dated 11-07-02
22-48 Memo from Building/Planning Dept. to Mayor and City Administrator, dated 08-29-02
22-49 Planning Commission Recommendation re Pinebrook Estates, dated 02-27-92
22-50 Plat Construction Bond, dated 08-03-94
22-51 Minutes from the City Council meeting, dated 03-25-92
22-52 Memo from W. Grimes to Chewelah Planning Commission, dated 11-20-
22-53 Planning Commission meeting minutes, dated 11-20-03
22-54 Attachment 1 Planning Commission (Memo from C. Bates) dated 11-20-03
22-55 General Land Use Permit Application, dated 09-26-03
22-56 Memo from C. Bates to Planning Commission, dated 12-18-2003
22-57 Letter from WSDOT to Mayor of Chewelah, dated 04-23-92
22-58 Handwritten note, unknown author, dated 05-05-04
22-59 Pinebrook Plat Amendment overview statement of events
22-60 Memo from R. Hegney to J. Lind, dated 12-05-03
22-61 Letter from Welch, Comer and Associates to Water and Sewer Dept., dated 01-05-04
22-62 Letter from Mayor to WSDOT, dated 03-16-92
22-63 Letter from City Administrator to B. Grimes, dated 11-12-03
22-64 Memo from W. Grimes to Planning Commission, dated 11-20-03
22-65 Stevens County Title Company
22-66 Easement document dated 08-31-92

A  Exhibits received at time of hearing
   A-1 Planning's PowerPoint Presentation
   A-2 Submittal by Jared Arnold
      A-2a Declaration of Protective Covenants, dated 01-25-10
      A-2b Statutory Warranty Deed, dated 09-11-07
   A-3 Submittal by Gail Johannes
      A-3a Declaration of Protective Covenants, dated 08-28-92
      A-3b Declaration of Protective Covenants, dated 04-28-99
   A-4 Submittal by Mark Bigham
      A-4a Notice of Public Hearing - Hearing Examiner for 01-11-17
      A-4b Stevens Co. Property Search, Deed and Sales History
      A-4c Stevens Co. Property Search – Map of Property ID 47116
         for 2016
      A-4d Stevens Co. Property Search – Map of Property ID 47116
         for 2016
      A-4e Published notice from The Independent, dated 11-03-16
      A-4f Newsprint article regarding project
      A-4g Statutory Warranty Deed, dated 09-11-07
      A-4h Pinebrook Estates Plat Map recorded on 10-15-92
      A-4i Photo of excavation for drainage pond

B  02-09-17 Hearing Exhibits
   B-1 Notice of Public Hearing
   B-2 Public Notice Affidavit of Mailing dated 01-20-17
   B-3 Public Notice Affidavit of Posting dated 01-26-17
      B-3a Location of Posting and copy of signs
   B-4 Public Notice Affidavit of Publication dated 01-20-17
      B-4a Copy of published notice

C  Exhibits received at time of 02-09-17 hearing
   C-1 Submitted by Jared Arnold
C-1a Regular Council Meeting, 6-6-07
C-1b Regular Council Meeting, 09-05-07
C-1c Planning Commission Meeting, 01-17-08
C-1d Emails regarding Info needed on Council Items and draft Resolution 15-09 dated 08-05 through 08-08-16
C-1e Regular Council Meeting Minutes 01-07-15 through 12-07-16
C-2 Public Comment Letters
C-2a Susan Bristol
C-2b Thomas Bristol
C-2c Thomas Distler
C-2d Rich and Peggy Richmond

FINDINGS AND CONCLUSIONS

To be approved, the proposed rezone and comprehensive plan map amendment must comply with the criteria set forth in Section 18.16.050 of the Chewelah Municipal Code. The Hearing Examiner has reviewed the application for a rezone and comprehensive plan map amendment and the evidence of record with regard to the application and makes the following findings and conclusions.

A. SEPA Appeal

On November 17, 2016, Mr. Jared Arnold filed an appeal of the Determination of Non-significance (“DNS”). See Exhibit 19. Mr. Arnold made two primary arguments in support of his appeal. First, he contended that the city’s decision to issue a DNS was based upon misrepresentations. See Exhibit 19. For example, through its responses in the checklist, the city asserted that the proposed project would not displace any existing recreational uses. See Exhibit 11, p. 10, ¶ B(12)(b). Mr. Arnold contended that this answer was obviously false. He also maintained that the checklist was filled out in a manner that was incomplete or misleading. See id. He noted in particular that “Paye Creek Park” was not mentioned in the land use application, the environmental checklist, the DNS, or in the notices of application or public hearing. Testimony of J. Arnold. Ultimately, Mr. Arnold contended that the DNS should be withdrawn due to such misrepresentations and omissions. See id.

Mr. Arnold next argued that the environment review was inadequate. He contended that the elimination of a park certainly would result in probable, significant, and adverse impacts to the environment. Testimony of J. Arnold. He also criticized the city’s answers to some of the questions in the checklist. In particular, he noted that the city’s descriptions of the impacts and proposed mitigation measures were vague. See id. For example, the city stated the anticipated impacts would only be those associated with single-family residential development. See Exhibit 11, p. 13, ¶ D(4). Similarly, the city stated that the proposed mitigation measures would be to take actions consistent with

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2 In his appeal, Mr. Arnold made several arguments. However, the contentions that were germane to the SEPA analysis fell into the two categories discussed in the decision. The remaining arguments, such as the alleged conflict of interest, the effect of the restrictive covenants, etc., are relevant to the underlying application, not to the SEPA analysis. The non-SEPA arguments will be addressed elsewhere in this decision.
applicable law. See id. In Mr. Arnold's view, these responses were inadequate. 
Testimony of J. Arnold.

The Hearing Examiner does not agree that the DNS was issued based upon misrepresentations or that the environmental review was inadequate. The Hearing Examiner reaches these conclusions for several reasons.

First, the alleged failure to identify the property as "Peye Creek Park" is not evidence of a misrepresentation by the city, in the Hearing Examiner's opinion. The property is identified by parcel number and abbreviated legal description in the checklist. The checklist is associated with a specific application, identified by number, and the application file contains maps and other information about the property. It did not appear, on this record, that there was any genuine confusion about which property was the subject of the application or environmental review. Although it does seem odd that the name is not mentioned, especially since the name is a part of the full legal description, there was no evidence that city officials attempted to deceive anyone about the proposal. Claims to the contrary seemed to be based on suspicion or speculation, not evidence.

Second, the city's answers to checklist questions about recreation do not demonstrate that the threshold decision was erroneous, even though the record supports the argument that the rezone could impact recreational uses. It must be acknowledged that, in response to the question as to whether the project would displace any recreational uses, the city simply said "No." The individuals testifying at the hearing disputed this claim. According to area residents, Peye Creek Park is a valuable resource, for recreational and environmental reasons. The parcel is used for walking, walking dogs, skiing, and playing, among other things. Testimony of J. Richardson; Testimony of S. Griepp. The city did not rebut this testimony. It appears, then, that the city's answer in the checklist did not address the current recreational uses, or account for the possibility that a rezone could displace such uses, at least in part.

The city's answer, however, does not demonstrate that the threshold decision itself is invalid. One can argue that the answer to that one question is incorrect, based upon the testimony at the hearing. However, the question is whether, considering the record on the whole, the city properly considered the potential environment impacts of the proposal when it issued the DNS. See Richard L. Settle, The Washington State Environmental Policy Act § 13.01(4)(c), p. 13-50.3 (2016) (stating that the courts do not strictly scrutinize checklist answers, but instead look to whether the overall process lead to credible conclusions). The answers to the checklist questions were prepared before this testimony was offered. At that time, the city's judgment was that no recreational uses would be displaced by the proposed rezone. That judgment was consistent with the city's position that the property was never actually developed into a park. Testimony of M. Frizzell. In addition, at the hearing, the city pointed out that recreational uses may not be displaced even after the rezone, depending on the project ultimately developed. See id. Under the law, the city's judgments in making a threshold decision are entitled to a certain degree of deference. See RCW 43.21C.060; see also CMC 16.04.240(A)(4) (noting that the city's decision is entitled to "substantial weight"). In any case, based on the record as a whole, the Hearing Examiner concludes that the city did consider the potential impacts of the proposal on recreation, although the opponents of the rezone
obviously disagree with the city’s conclusions. Despite the understandable criticisms of
the city’s answers regarding recreational use of the site, the Hearing Examiner
concludes that the threshold decision is not legally infirm.

Third, approval of the rezone, in and of itself, will not result in significant
environmental impacts. The rezone is a nonproject action. There is no development
approval or permit being sought at this time. This circumstances distinguishes this
proposal from those with a project-level component. As the Court of Appeals has
explained it:

Unlike an administrative decision to proceed with highway construction or
to issue a construction permit, a nonproject zoning action has no
immediate or measurable environmental consequences. It is a legislative
action designed to accomplish permissible changes in land use. It would
be unreasonable to require every rezoning petition to be accompanied by
a site plan solely to generate exact environmental consequence
information.


Certainly, rezoning the property will allow the property to be developed with
residences in the future. However, the city repeatedly testified that the project will be
subject to full environmental review at the project stage. Testimony of R. Hughes and M.
Frizzell. That being the case, if there are significant impacts arising from the
development of the property, the SEPA process will require that those impacts be
addressed.

Fourth, Mr. Arnold (as the appealing party) had the burden to show that the
threshold decision was “clearly erroneous.” See Pease Hill Cnty. Group v. County of
that an EIS is not required is reviewed under the “clearly erroneous” standard). The
Hearing Examiner is not left with “a definite and firm conviction” that the city made a
mistake in issuing the DNS. See Lancze G. Douglass, Inc. v. City of Spokane Valley,
standard).

Mr. Arnold maintained that rezoning Peye Creek Park for residential purposes
would inevitably result in significant environmental impacts. However, precisely how
such impacts would occur, and why they could not be avoided, was not clear on this
record. This is particularly true given that there is no development proposal to consider
at this stage. Without knowing such specifics, it is very difficult to know whether the
existing recreational use will be displaced, or to what degree. Similarly, the
development of 2-3 houses may or may not have any effect on sensitive areas of the
site, assuming applicable setbacks are observed. Again, without analyzing a specific
proposal and mitigation measures designed for that proposal, it cannot be assumed that
significant impacts are inevitable. And, as the city noted, if significant impacts are
apparent once the site is studied with a project in mind, then SEPA may require those
plans to be abandoned. Testimony of M. Frizzell.
Even if there are some shortcomings in the environmental checklist, the Appellant did not demonstrate that the threshold determination was “clearly erroneous.” As a result, the Hearing Examiner recommends denial of the SEPA appeal.

B. Threshold Issues

The opponents of the proposed rezone and map amendment raised three legal arguments that can be characterized as “threshold issues,” i.e., matters which must be addressed before the substance of the proposal is considered. First, it was submitted that the administrative process was tainted by conflict of interest, and therefore the proposal should be denied. Second, it was maintained that the city council did not “initiate” the rezone process, as required by the municipal code, and therefore the current application is invalid. Third, there was a contention that restrictive covenants on the property precluded residential development of the property, and therefore the application must be denied. The Hearing Examiner will address each of these threshold questions in turn.

1. The administrative process is not tainted by a conflict of interest. Therefore, the application can be considered on its merits.

Mr. Arnold contended that the proposed rezone should be denied due to a conflict of interest. He noted that the City of Chewelah simultaneously acts as the project applicant, reviewing authority, and decision-maker regarding the rezone proposal. Under such circumstances, Mr. Arnold contended that an inherent conflict of interest tainted the entire process, justifying denial of the project outright. The Hearing Examiner does not agree with these contentions, for various reasons.

First, the Hearing Examiner was unable to find any legal authority to support the "inherent conflict of interest" theory. In other words, the mere fact that a government agency is both the applicant and the reviewing authority does not result in automatic denial or invalidation of a project. To the Hearing Examiner’s knowledge, there is no Washington law that mandates such an outcome. And Mr. Arnold did not point out such authority, if any exists.

Second, there was no evidence presented that established any recognized basis for a conflict of interest. There is a robust body of law concerning conflicts of interest. None of the typical indicia of conflict appear to be present in this case. For example, there is no evidence that a decision-maker is influenced by the familial ties, a financial interest in the project, an employment relationship, or any personal relationships. In the Hearing Examiner’s view, it is not enough to merely allege that the process as a whole is tainted by conflict or bias. There must be more specific evidence that the decision-makers themselves are not acting in the public interest due to an improper influence of some kind.

Finally, government bodies routinely apply for permits and authorizations for government-sponsored projects. In such cases, public agencies are generally required to follow the same rules and procedures as apply to private developers. Government bodies can act in both “governmental” and “proprietary” capacities. Stated another way, government bodies sometimes exercise legislative and regulatory powers. Other times, government bodies act and are treated in ways similar to private enterprise, such as
occurs when government-owned property is developed. These realities do not automatically give rise to a conflict of interest, to the Hearing Examiner’s understanding of the law.

2. The rezone process was “initiated” within the meaning of the municipal code. The application is not invalid due to a procedural error in its commencement.

Mr. Arnold contended that the rezone application should be denied because the Chewelah Administrator lacked legal authority to apply for a rezone on behalf of the city. In support of this claim, Mr. Arnold pointed to CMC 18.16.050(C), which is entitled “Initiation of Amendment by the City.” That provision states, in its entirety, as follows:

The hearing examiner or city council may initiate an amendment to this title at any time. Before such an amendment can be passed, the hearing examiner shall first investigate the merits of the proposed change and shall conclude the change, if adopted, will be in conformance with the comprehensive plan and promote the health, welfare, and safety of the people or constitutes good zoning practices and conforms to the laws of the state.

See CMC 18.16.050(C) (emphasis added). Mr. Arnold acknowledged that Mr. Frizzell can act as an agent of the city. Mr. Arnold also acknowledged that a special facilities committee of the city council was formed to evaluate and make recommendations regarding the use or disposal of city-owned properties, including the subject site. Nonetheless, Mr. Arnold insisted that the city council never “initiated” the rezone within the meaning of CMC 18.16.050 because the city council did not authorize the rezone application at the beginning of the process. The rezone application is invalid, according to Mr. Arnold, because the actions of Mr. Frizzell were undertaken without prior approval of the city council.

The Hearing Examiner does not agree with this contention. The Hearing Examiner believes that Mr. Arnold’s reading of the word “initiate” is too narrow. The municipal code does not define the word “initiate.” In such cases, the ordinary dictionary definition of a term is usually applied. The word “initiate” means “to cause to begin.” See The American Heritage Dictionary, Second College Edition, p. 662 (1985). There is no reason that the city council cannot “initiate” the rezone process by appointing a committee to investigate the matter and report back. The same holds true for the application process commenced by the Chewelah Administrator in conjunction with the committee. These activities are just part of the process the city followed to seek an amendment to the zoning and land use maps.

The Hearing Examiner does not believe that Mr. Frizzell was acting without authority. Nor does the Hearing Examiner accept the theory that Mr. Frizzell was carrying out a unilateral agenda. The city council formed a committee to explore options

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3 Mr. Arnold submitted copies of the city council minutes from January 27, 2015 to December 2016, in order to demonstrate that the city council did not approve the rezone application at the beginning of the process. See Exhibit C-1e. There is no need to analyze the minutes, however, since the city conceded that the rezone application was not specifically approved in advance. The critical issue, then, is a legal one—not a factual one.
to dispose of surplus property. The committee was made up of certain city council members. Mr. Frizzell worked with the committee, carrying out his role as the City Administrator. Both the committee and Mr. Frizzell were acting as agents of the city in this regard, and did so in the clear light of day. In addition, the city council was well aware of the committee's role, although it was conceded that the city council did not approve a rezone application for Peeye Creek Park ahead of time. *Testimony of M. Frizzell.* The committee and Mr. Frizzell had sufficient authority to “initiate” a rezone process. Actual approval of any rezone will require action by the full city council. Prior to that time, there are several ways that the process might be commenced. The process followed here does not appear to be inappropriate.

The municipal code does not define “initiate” to require the city council to pass an ordinance (or take some other formal action) authorizing an application before any other steps can be followed. Rather, the code broadly states that the city council can cause the process to begin “at any time.” Under the circumstances, the Hearing Examiner concludes that the process followed here was consistent with CMC 18.16.050(C).

3. The Hearing Examiner declines to resolve the legal dispute regarding the effect of the restrictive covenants on Pinebrook Estates. The interpretation and application of the covenants is a matter which must be addressed by the courts.

One of the common objections to the proposal was that the city's plans for the property were prohibited by the restrictive covenants of Pinebrook Estates. One resident contended that a change of use of the common area would require approval of 75% of the owners of Pinebrook Estates. *Testimony of G. Johannes.* She insisted that no such approval was ever obtained. *See id.* Another claim was that the common area could not be subdivided and sold under the covenants. *Testimony of J. Arnold.* Specifically, the covenants prohibit any residential lot from being further subdivided. *See id.* Several people testified that the lots in Pinebrook Estates were sold with the representation and commitment that Peeye Creek Park would be a permanent amenity of the subdivision. *See e.g. Testimony of S. Bristol, M. Walters, T. Distler & S. Griep.* In the end, the opponents of the proposal argued that the rezone and map change should be denied because the covenants preclude any proposal to subdivide and sell the site.

There was no genuine question that the city acquired Peeye Creek Park subject to the existing covenants. The Statutory Warranty Deed, by which the city acquired the land, explicitly states that title is subject to CCRs. See Exhibit A-2b. Rather than contesting the application or validity of the covenants, at least at this stage, the city emphasized that the proposal seeks only to change the zoning and land use designation, not to develop or use the property in any specific way. *Testimony of M. Frizzell. See id.* The potential uses of the property will be considered by the city at a later time, according to the city. *See id.* The city also noted that it will be researching the legal effect of the covenants. *See id.* If the covenants do prohibit subdivision, for example, the city would not pursue that option. *See id.* Outside of such restrictions,

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4 There was no evidence of violations of the Open Public Meetings Act, as was suggested by Mr. Arnold. *Testimony of J. Arnold.* For example, there was no evidence of closed-door meetings, decisions made outside the public forum, or other transgressions of open meeting laws. Those claims were conjecture, in the Hearing Examiners view.
however, the city believed that it should be free to use or dispose of the property in whatever manner is consistent with the law, like any property owner.

For several reasons, the Hearing Examiner declines to make a ruling on the legal effect of the restrictive covenants. First, the Hearing Examiner notes that his recommendation on a rezone or map amendment has no bearing on the validity or enforcement of any existing CCRs. A covenant is a restriction on the use of land which is created by the parties to a conveyance of real estate. A zoning classification, by contrast, is created legislatively and is regulatory in nature. Certainly, both can create land use restrictions. However, they are fundamentally distinct and independent from one another. Ultimately, the CCRs are legally enforceable, or not, for reasons completely independent of the zoning classification or the comprehensive plan map.

Second, any dispute about the proper interpretation or enforcement of a restrictive covenant is a matter for the courts to resolve. In this case, there are numerous legal questions that would have to be answered before the covenants could be interpreted and applied. Those questions concern issues such as the authority of a developer to act prior to the formation of an HOA, the legal effect of the alleged failure to formally organize the HOA, the impact of the alleged failure to develop the common area as a “park” as originally intended, and similar matters. These kinds of questions could only be answered by a court, after a full record is developed. It is not properly the Hearing Examiner’s role to adjudicate such claims in this administrative proceeding.

Third, regardless of the Hearing Examiner’s role, the record is currently insufficient to render an opinion on the matter. For example, a complete title review would need to be done. The title records that are available are not comprehensive or sufficient. There are three recorded CCRs referenced in the Statutory Warranty Deed. See Exhibit A-2b. However, only two recorded CCRs are part of the record. See Exhibits A-3a & A-3b. Further, one of the CCRs submitted into the record contains only 8 of its 19 pages. See Exhibit A-3b. A third declaration was submitted as evidence, but that document is not dated or recorded. See Exhibit A-2a. And there are missing pages, including the signature and acknowledgement pages. See id. There is no way to verify, on this record, that this document is legally effective or even applicable. It is not even clear how the two sets of covenants (dated 1992 and 1999, respectively) should be read together. The later covenant, for example, is not explicitly a replacement for the earlier one. See Exhibit A-3b.

The Hearing Examiner believes it would not be appropriate to decide whether or not the CCRs of Pinebrook Estates effectively preclude the city from subdividing and selling the site in the future. That is a matter which must be resolved in another forum.

C. Application for Rezone and Land Use Map Amendment

1. The proposed amendment is consistent with the single-family residential provisions of the zoning code. See CMC 18.08.060.

The project site is 4.9 acres in size. The minimum lot size in the R-1 zone is 7,200 square feet. Testimony of R. Hughes. The rezoning of the parcel, therefore, will not result in the creation of a nonconforming lot. See id. There is nothing about the current
application which is inherently inconsistent with a residential zoning designation. In addition, the current application is a non-project action. A specific development has not yet been proposed, so it is not possible to analyze a project for compliance with specific development standards, such as setbacks. Any further development of the site will be required to satisfy the development standards of CMC 18.08.060. See Exhibit 1, p. 5. The Hearing Examiner finds that this criterion is satisfied.

2. The proposed amendment is consistent with the intent and goals of the Chewelah comprehensive plan and meets the requirements and intent of the Chewelah Municipal Code. See CMC 18.16.050(E)(2)(a).

There was no evidence that the proposal transgresses any specific requirements of the municipal code. Thus, the proposal meets the requirement and intent of the municipal code. The more difficult question is whether the proposal is consistent with the comprehensive plan. After considering the testimony and evidence in the record, the Hearing Examiner concludes that the proposal is consistent with the comprehensive plan, for a number of reasons.

A common contention at the hearing was that “Peye Creek Park” should be considered part of the city’s park system, and that removal of the property from the park inventory transgressed public policy. Testimony of J. Arnold. Tom Bristol, former chairman of the Planning Commission, argued that removal of Peye Creek Park from the park inventory would reduce the available parkland below the minimum requirements. Testimony of T. Bristol. In support of this view, he questioned whether certain areas, such as school properties and the Barber athletic facility, should be considered park lands in the city’s inventory. See id. He criticized the proposal as eliminating valuable parkland from a city that is lacking in adequate recreational resources. See id.

The Hearing Examiner is sympathetic to the contention that Peye Creek Park should be preserved as a green space. However, the issue here is whether the proposed rezone is consistent with the comprehensive plan. With respect to that issue, the Hearing Examiner agrees with the city officials. The comprehensive plan does not identify Peye Creek Park as part of the park inventory. The Barbour complex, by contrast, is specifically identified as part of the park system. See CP, Table 4-8, Chapter 4, pp. 41-42. The comprehensive plan also corroborates the testimony that the Barbour complex is jointly operated by the city and the school district. See CP, Chapter 7, p. 86; Testimony of M. Frizzell.

The comprehensive plan concludes that the existing park area in the city amounts to approximately 35 acres. See CP, Table 7.1, Chapter 7, p. 88. The projected demand for parks, forecasted to 2030, in only 19 acres. See id. Thus, the city has 16 acres more parkland that will be needed in the near term. The elimination of Peye Creek Park will not, therefore, reduce the available park area below the requirements, even if it is deemed to be a part of the official calculations.

The city contended that the proposal fulfilled other goals of the comprehensive plan. For example, the city explained that the proposal was consistent with the goals and policies which encourage urban development and the expansion of urban services in a fiscally responsible manner. See Exhibit 1, p. 4. It was also noted that the development of
single family residences was consistent with the surrounding uses. See id. There was no
testimony or evidence that directly refuted these contentions.

Based upon the record as a whole, the Hearing Examiner agrees with the city that
the proposal is generally consistent with the goals and intent of the comprehensive plan
and the municipal code. As a result, the Hearing Examiner concludes that this criterion for
approval is satisfied.

3. The proposed amendment is consistent with applicable federal and state laws and
regulations. See CMC 18.16.050(E)(2)(b).

The proposed rezone is a non-project action. There is nothing in federal or state
law which precludes the proposed rezone, to the knowledge of the Hearing Examiner.
Any project that might be pursued, assuming a rezone was first approved by the City
Council, would be required to adhere to state and federal law governing land use and
development. Although a Notice of Application was circulated, no agencies commented
that the proposal was in any way inconsistent with state or federal law. No evidence was
introduced at the hearing suggesting that there were legal impediments to this proposal.
The Hearing Examiner concludes that this criterion is satisfied.

4. The city and other responsible agencies and special zones will be able to supply
the development resulting from the amended comprehensive plan or implementing
ordinance with adequate roads and streets for access and circulation, water
supply, storm drainage, sanitary sewage disposal, emergency services, and
environmental protection. See CMC 18.16.050(E)(2)(c).

This is a non-project proposal. As a result, at this stage, the record does not
address matters such as access, water supply, storm drainage, and the like. However, it
is clear that if any project is proposed following a rezone of the property, that such a
proposal would be required to satisfy all the applicable development standards. That
includes making adequate provisions for roads, access, water, sewer, storm drainage,
sewage disposal, and emergency services. See Exhibit 1, p. 4. In addition, full
environmental review will be required at the time a specific project is pursued. Testimony
of R. Hughes. The Hearing Examiner concludes that this criterion for approval is met.

5. The amendment adequately mitigates impacts identified through the SEPA review
process, if applicable. See CMC 18.16.050(E)(2)(d).

The proposal is for a rezone and land use map change. There is no specific
project being considered at this stage. Any project that is proposed will undergo separate
SEPA review. Testimony of M. Frizzell and R. Hughes. In addition, any project that is
proposed will be required to comply with applicable development standards and laws. The
Hearing Examiner has already concluded, when considering the SEPA appeal, that the
project does not given rise to any significant impacts on the environment. The Hearing
 Examiner therefore concludes that this criterion for approval is satisfied.

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6. The Hearing Examiner recommends denial of the rezone and map amendment because the proposed action is not in the best interests of the public.

The last criterion for deciding whether or not to approve a rezone or map amendment is found in CMC 18.16.050(E)(2)(e). That criterion states as follows:

The amendment is beneficial to the public health, safety, and welfare, and is in the public interest.

For the Hearing Examiner, this is the criterion that is most central to this case. A decision to change the zoning and land use map comes down to a policy judgment. Given the history of this site, the Hearing Examiner cannot recommend that this open space be converted into a new site for home development, even though most of the technical requirements for a rezone are satisfied. A review of some of the evidence in this record should make it clear why this recommendation is being made.

The history of this site compels the conclusion that the property should remain as open space. The original developer testified that the property was set aside as a common area of Pinebrook Estates. Testimony of M. Bigham. There were very good reasons for that decision, including setting aside environmentally sensitive areas as well as creating an area to handle drainage for potentially 100-150 homes. See id. The drainage pond takes up approximately ¼ of an acre, and may need to be expanded to provide drainage for future development of the adjacent properties. See id.

The former chairman of the Planning Commission noted that the former development standards required a developer to set aside park land if the proposed subdivision was over 50 lots or encompassed 100 acres. Testimony of T. Bristol. If parkland was not set aside, park fees were required. See id. These rules applied to Pinebrook Estates. See id. Another former plan commission member confirmed that providing “green space” or “open space” was a constant concern of the Planning Commission at that time. Testimony of M. Childress. Ultimately, the history confirms that Peaye Creek Park was set aside as open space or park area to support the development of Pinebrook Estates. Testimony of T. Bristol. As a matter of proper planning, it is inappropriate to unwind the efforts of the Planning Commission to ensure that development was pursued responsibly, taking care to create sufficient green space for residents as well as future generations. See id.

The residents of Pinebrook Estates purchased their properties with the understanding that Peaye Creek Park would be a permanent, common area for their use and enjoyment. This was part of the “package” when they bought their properties. Testimony of G. Johannes; Testimony of S. Griep. Some residents purchased their property specifically because of the green space provided. Testimony of M. Walters. The common area was specifically held to potential purchasers as a valuable feature of the subdivision. Testimony of S. Bristol. It seems inappropriate now, even if some conditions have changed, to eliminate common area given this history.

Setting aside this area made sense, not only as a common amenity and green space for enjoyment of the community, but also because of the environmental features. There are “German Browns” in Peaye Creek. Testimony of M. Bigham. There are also raccoons,
birds, and other animals present on the site. Testimony of M. Childress. In addition to
the creek, there are associated floodplains and wetlands. See id.; Testimony of J.
Richardson. The majority of the site is taken up by a drainage pond and sensitive areas.
Testimony of M. Bigham. The development potential of the site is very small. See id. But
the more important point is that developing this type of site is poor planning. See id.;
Testimony of T. Bristol.

There were several arguments about whether "Peye Creek Park" was really a "park." The
Hearing Examiner concludes that the property was not developed as a park, as
originally intended. The Hearing Examiner has already concluded that the site is not
part of the park system, within the meaning of the comprehensive plan. However, this
does not mean that the site is not a valuable community asset. The site was intended,
from the very beginning, to serve as common area and open space. In the end, the
Hearing Examiner agrees with Mr. Distler that changing the zoning and treating the
property as just another development site ignores the history, the nature of the property,
and the community benefits of keeping the property in a more natural state. Testimony
of T. Distler.

In the Hearing Examiner’s opinion, rezoning the property and changing the land use map
is not, on the whole, in the public’s best interest. For this reason, the Hearing Examiner
recommends that the proposal be denied.

DECISION

Based on the Findings of Fact and Conclusions of Law above, the Hearing
 Examiner recommends that the city council deny the proposal to change the land use
designation and zoning of the 4.9-acre parcel known as "Peye Creek Park."

DATED this 23rd day of February 2017.

Brian T. McGinn
City of Chewelah Hearing Examiner Pro Tem
REVIEW AND APPEAL PROCESS

The Hearing Examiner's decision is a recommendation to the City Council. CMC 18.20.030(K)(6). Upon receipt of the Hearing Examiner's recommendation, the City Council will schedule and hold an "open record" public hearing for the purpose of taking testimony, hearing evidence, considering facts germane to the proposal, evaluating the proposal for consistency with the requirements of the municipal code and other applicable laws and regulations, and for considering the Hearing Examiner's recommendation. CMC 18.20.030(K)(7).

The city council, before adoption, modification, or rejections of a Type III application, shall make findings of fact representing the official determination of the council and specifying the basis for the decision. CMC 18.20.030(K)(8).

Action by the city council on a Type III application shall be final and conclusive, unless within twenty-one days from the date of publication of the notice of decision, the original applicant or a party adversely affected by the decision makes proper application to a court of competent jurisdiction for a writ of certiorari, a writ of prohibition, a writ of mandamus, or other action as maybe provided and allowed by law to review the action of the city council. CMC 18.20.030(K)(9).