



CITY OF DONNELLY
P.O. Box 725
169 Halferty Street
Donnelly, ID 83615
Telephone (208) 325-8859

AGENDA
SPECIAL CITY COUNCIL
MEETING
Monday, May 4th, 2026, at 5:30pm
Donnelly Community Center

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIENCE

NEW BUSINESS (Action Items)

AB 26-23 REQUEST FOR RECONSIDERATION AND POTENTIAL COUNCIL AMENDMENT TO THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR CASE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1, ORIGINALLY APPROVED AND EXECUTED ON MARCH 16, 2026 (MORE COMMONLY KNOWN AS BOULDER CREEK).

- The request for reconsideration was submitted to the city of Donnelly on March 30, 2026, prior to the statutory deadline for submittal, and was subsequently amended by the applicant on April 10, 2026, eleven days after the statutory deadline for submittal. According to the request submitted by Julia Thrower, with MOUNTAIN TOP LAW PLLC, the alleged “Affected Persons” making the request are as follows: Evelyn Adams, Daniel Bade, Melva Bade, Tony Cassetta, Victoria Casetta, Larry Eld, Susan Dorris, Rex Frazier, Jeff Higgins, Dan Margolis, Lynne Margolis, Bill Pilcher, Dan Steiner and Dee Verti.

AB 26-24 MARCH 30, 2026, PROTEST OF FEES FOR REQUESTED RECONSIDERATION OF CITY COUNCIL ACTION ON FILE NUMBERS 2026-AN-1, 2026-RZ-1 & 2026-CUP-1 (MORE COMMONLY KNOWN AS BOULDER CREEK) SUBMITTED BY JULIA THROWER, WITH MOUNTAIN TOP LAW PLLC.

ADJOURNMENT:

Any person needing special accommodation to participate in the above noticed meeting should contact the City Clerk’s Office at Donnelly 208-325-8859, at least 24 hours in advance of the meeting date.

Julia Thrower
MOUNTAIN TOP LAW PLLC
614 Thompson Avenue
McCall, ID 83638
T: 208.271.6503
E: jthrower@mtntoplw.com

Attorney for Affected Persons

BEFORE THE CITY COUNCIL FOR THE CITY OF DONNELLY

IN THE MATTER OF:

APPLICATION FOR AN ANNEXATION,
REZONING WITH A DEVELOPMENT
AGREEMENT AND A CONDITIONAL
USE PERMIT FOR A PLANNED UNIT
DEVELOPMENT, CURRENTLY
CALLED BOULDER CREEK, FOR
REUBAN ORTEGA, AN INDIVIDUAL,
AND FREEDOM MANAGEMENT
GROUP LLC, WITH MANAGING
MEMBER JOE CRITCHFIELD

**[CORRECTED] REQUEST FOR
RECONSIDERATION**

**CASE NOS. 2026-AN-1, 2026-RZ-1,
AND 2026-CUP-1**

Pursuant to Idaho Code § 67-6536(b) and Donnelly Unified Development Code (DDC) § 18.05.090, the following "Affected Persons," by and through their undersigned counsel, hereby submit this Request for Reconsideration of the City of Donnelly's approval of applications 2026-AN-1, 2026-RZ-1, and 2026-CUP-1 for the Boulder Creek project:

Evelyn Adams
Daniel Bade
Melva Bade
Tony Cassetta
Victoria Cassetta
Larry Eld
Susan Dorris
Rex Frazier
Jeff Higgins
Dan Margolis
Lynne Margolis
Bill Pilcher
Dan Steiner
Dee Verti

INTRODUCTION

On March 16, 2026, the Donnelly City Council approved the Findings of Fact and Conclusion of Law for applications 2026-AN-1, 2026-RZ-1, and 2026-CUP-1 (the Boulder Creek project, or Project). The approval annexed a parcel into the city, rezoned the newly annexed parcel to Rural Residential with a development code and a northern parcel from R4 to Compact Residential, and approved a conditional use permit for the two parcels that includes ~~88-97~~ apartment buildings, three short-term rentals, a recreational cabin park with 14 cabins, and an event center.

The Affected Persons file this request for reconsideration because the approvals are in violation of the DDC, are not based on substantial evidence, are arbitrary and capricious, and an abuse of discretion. The Affected Persons request that the City vacate the approvals in their entirety.

ISSUES FOR RECONSIDERATION

I. Application for Annexation and Rezone 2026-AN-1 and 2026-RZ-1

In order to approve a rezone, DDC § 18.55.010(F) requires that the City Council make the following specific findings:

1. The proposed zoning district(s) are in compliance with the comprehensive plan;
2. Adequate public facilities exist, or are expected to be provided, to serve any and all uses allowed on this property under the proposed zoning district(s);
3. The proposed zoning district(s) are compatible with the existing or planned uses in the surrounding area; and
4. No nonconforming uses will be created with the zoning district(s) proposed.

Such findings must be based on substantial evidence and not be arbitrary and capricious, or an abuse of discretion. Idaho Code (I.C.) § 67-5279. Here, the City's approval of the rezone for both the north and south parcels fails to meet the mandatory criteria set forth in DDC § 18.55.010(F). Specifically, the City reached conclusions that are internally inconsistent and unsupported by substantial evidence in the record.

A. The rezone of the southern parcel lacks a factual basis for Comprehensive Plan compliance.

Under DDC § 18.55.010(F)(1), a rezone must be in compliance with the comprehensive plan. While the Comprehensive Plan is a "guiding document" rather than a strict regulatory one, zoning ordinances (and amendments to them) must be "in accordance with" the policies set forth

in that plan. I.C. § 67-6511. “[T]o be valid the rezoning decision must be supported by adequate findings of fact to support a conclusion that the zoning amendment was in accordance with the plan.” *Love v. Bd. of Cnty Comm’rs of Bingham Cnty*, 105 Idaho 558 (1983).

Here, the City’s approval of the annexation and rezone of the southern parcel from Public Use/Open Space (PU/OS), as designated on the future land use map, to Rural Residential with development agreement (RR-DA) is not in accordance with the Comprehensive Plan. The City rationalizes this deviation from the future land use map as follows:

The proposed zoning designation of RR-DA (Rural Residential with a development agreement) for the southern is consistent with the comprehensive plan and future land use map designation of Public Use, Parks, and Open Space because, although RR is not shown on the Zoning Compatibility Matrix, the proposed use will be restricted with a development agreement to provide for pathways, and preservation of the Special Flood Hazard Area and wetland areas, in alignment with the comprehensive plan and Donnelly City Code.

The City’s justification that the development agreement, which requires that pathways be provided and wetlands be preserved, makes the rezone consistent is an arbitrary rationalization. Although I.C. § 67-6511A authorizes the City to enter into development agreements as a condition of rezoning, *see also* DDC § 18.60.010, the legal weight of a development agreement is typically used to limit or restrict uses further than the base zone—not to authorize something the zone specifically forbids, as is the case here with the RR zone allowing commercial entertainment centers.¹ While Idaho courts give local governments some wiggle room in applying the Comprehensive Plan, a rezone that fundamentally changes the character from public use/open space to a private, commercial event center exceeds the City’s discretion.

Additionally, the City failed to “make a[ny] factual inquiry into whether the requested zoning ordinance or amendment reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual circumstances surrounding the request” with respect to rezoning both the northern and southern parcels. *Taylor v. Canyon Cnty. Bd. of Comm’rs*, 147 Idaho 424, 438, 210 P.3d 532, 546 (2009) (“The [comprehensive] plan is required to have the following fourteen components . . . [T]he land use map is merely one subpart of a component of the [] comprehensive plan.”). This failure applies to both the rezone of the northern parcel from R4 to Compact Residential, and the southern parcel.

For example, policies in the Comprehensive Plan state that “[d]evelopment that places an excessive burden on the City’s infrastructure, and/or intensifies traffic congestion to a level of service that is not acceptable by the City will justify rejection . . .” and that “[u]pon re-zoning, potentially negative impacts are to be adequately mitigated.” *See* Comp. Plan at p. 26. The impacts from a significant increase in car traffic on existing traffic and the safety of pedestrians and cyclists on Eld Lane were blatantly ignored as no traffic impact study was ever performed,

¹ Notably, the RR zone does *not* permit or conditionally permit a recreational cabin park, which the City impermissibly allowed when approving the CUP. On the flip side, had the City zoned the southern parcel as PU/OS, as designated on the future land use map, the commercial entertainment center would have been a prohibited use. *See* DDC § 18.10.030.

and a study is never contemplated. *See e.g.*, FFCL at p. 17 (Conditions on Development 4.8 requiring a traffic study only on the *intersection* of Eld Lane and Highway 55). There is thus insufficient evidence for the City to make such findings.

Additionally, the Comprehensive Plan's policy regarding compatible transitions between residential and commercial use. The City rightly points out that the future land use map designates the area on the north side of Eld Lane as commercial, but it failed to explain how rezoning the south side of Eld Lane to residential will provide a "compatible transition . . . between higher intensity use of commercial and the lower intensity use of Residential." *See* Comp. Plan at pp. 27-28.

If a local government cannot reasonably find that a rezone request is in accordance with the Comprehensive Plan, as is the case here, Idaho law requires that the City amend the Comprehensive Plan first before approving the rezone. I.C. § 67-6511(c). By attempting to skip the Plan amendment process and jumping straight into a rezone with a development agreement, the City committed a procedural error that invalidates this decision. *See Price v. Payette Cnty. Bd. of Comm'rs*, 131 Idaho 426, 430, 958 P.2d 583, 587 (1998).

B. The City failed to find that adequate public facilities exist.

DDC § 18.55.010(F)(2) requires a finding that adequate public facilities exist or are expected to be provided. The City's findings here are a legal fiction rather than substantial evidence. The City explicitly notes there is insufficient municipal water capacity and that it is "unknown as to when sufficient capacity will be available." Staff Report at p. 2. Moreover, the recreational cabin park and event center will be serviced by a yet unapproved well. *Id.* at p. 16 (Conditions on Development 4.12). The City's findings here are a legal fiction rather than substantial evidence. A finding of adequacy cannot be based on purely speculative future improvements. By approving a rezone where the timeline for water availability is "unknown," the City has failed to provide a reasoned basis for compliance with its own code.

C. The compatibility finding ignores the actual impact of density.

DDC § 18.55.010(F)(3) requires a finding that the proposed zoning district is compatible with the existing or planned uses in the surrounding area. First the City incorrectly concluded that the existing residential homes located north of the proposed development are within an area that has "an R-8 zoning district." The current zoning map designates these parcels as R4; the future land use map designates these parcels as general commercial, which on the compatibility matrix allows for Commercial or Public Use/Open Space purposes. There is no current or future R8 designation for those parcels; thus the City's compatibility finding is arbitrary.

Second, the City failed to consider how an anticipated additional 700+ daily car trips from the proposed development down a single unpaved access road is compatible with and appropriate for the character of the area.

Third, the City failed to consider and find how the traffic, noise, and safety impacts of allowing a commercial event center in a residential area with one access road is compatible with the area. According to the City's compatibility matrix, *see* Comp. Plan at p. 25, these commercial uses are

not compatible with the surrounding residential zoning districts (R4 on the north side of Eld Lane and R8 on the south side of Eld Lane), the Public Use/Open Space designation of the southern parcel in the future land use map, Comp. Plan. p. 24, or with the rezone of the southern parcel to Rural Residential.

D. The recreational cabins are nonconforming uses within the RR-DA zone.

DDC § 18.55.010(F)(4) requires that no nonconforming uses will be created with the zoning district proposed. Although there are currently no nonconforming uses on the southern parcel under the rezone to RR-DA, approving the recreational cabin park, which is neither a permitted or conditionally permitted use in the RR zone, will create a non-conforming use.

II. Application for Conditional Use Permit 2026-CUP-1

In order to approve a conditional use permit, DDC § 18.40.030 requires the City to find adequate evidence showing that such use at the proposed location:

- A. Will, in fact, constitute a conditional use as established in this title for the zoning district involved;
- B. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title;
- C. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
- D. Will not be hazardous or disturbing to existing or future neighboring uses;
- E. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- F. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
- G. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of

excessive production of traffic, noise, smoke, fumes, glare or odors;

- H. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares; and
- I. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

A. A recreational cabin park is not a permitted or conditional use in the RR zone in violation of DDC 18.40.030(A).

DDC § 18.40.030(A) requires that an approved use “constitutes a conditional use as established” in the DDC “for the zoning district involved.” DDC § 18.10.030 establishes which uses are permitted or are conditionally permitted for different land use designations. The "Official Schedule of District Regulations Table and Text" indicates that although "commercial entertainment facilities (outdoor)" are conditionally permitted uses in an RR zone, recreational cabin parks are prohibited. Approval of the recreational cabin park is thus in direct conflict with the DDC.

B. The City failed to make findings that the conditional use will be in accordance with the Comprehensive Plan.

DDC § 18.40.030(B) requires that the conditional use “be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan.” As discussed above, *supra* Section I.A, the City failed to make the required findings that the rezone, to begin with, was in accordance with the Comprehensive Plan.

C. The City failed to account for traffic impacts and thus cannot make the requisite findings under DDC § 18.40.030(C)-(H).

- i. The City’s decision is arbitrary and capricious.

Here, the City cannot make a reasoned decision that the Project will not cause traffic congestion or safety issues because the facts supporting that decision are not yet available. Although the City calculated the Average Daily Traffic (ADT) from the Project and referenced a standard from the Ada County Highway District, this is insufficient.

First, the City claims that the apartments and recreational cabins will each generate 6.65 ADT, the existing home and short-term rentals will each generate 9.52 ADT, and the event center will generate 100 trips per event without reference to any data, standards, or studies from where it bases its calculations on.

Second, the City references the Ada County Highway District for standards on how much traffic is appropriate for a collector street without explanation of how this standard is applicable or

appropriate to use for Valley County or Donnelly. These standards are designed for Idaho's most populous and urbanized region and frequently cited in Boise-area planning and zoning hearings, such as in Eagle and Meridian. They are built for a high-density, interconnected grid system where traffic is distributed across multiple parallel routes where several collectors or arterials nearby can absorb traffic overflow. While these standards provide a convenient technical baseline, they fail to account for the unique rural environment of Donnelly and Eld Lane in particular. Although the transportation map identifies Eld Lane as a future collector, it is in reality now an unpaved road that does not connect to any other collector or arterial streets and is not a multi-use corridor providing for safe travel for pedestrians and bicyclists.

Relying on Ada County Highway District's technical standards to determine traffic impacts in a rural context is fundamentally arbitrary and capricious, as it lacks a rational connection between the metric used and the reality of Donnelly's small-town environment. By reflexively adopting an unrelated agency's manual, the City failed to account for critical local variables, such as seasonal traffic surges, the absence of alternative transit routes, and the heightened safety risks to pedestrians in a community where "collectors" often serve as primary residential corridors. To ignore these site-specific geographic constraints in favor of a one-size fits all urban number constitutes a failure to exercise independent, reasoned discretion, resulting in a decision that is untethered from the actual public health, safety, and welfare of the local community.

ii. The City's decision was not based on substantial evidence.

The City's approval of this large-scale project must be supported by substantial evidence in the record. I.C. § 67-6279. By deferring the traffic impact study as a condition of approval, the City failed to make the required mandatory findings regarding infrastructure capacity and public safety. This procedural shortcut bypasses the public's right to scrutinize the Project's impacts, and results in a decision that is not based on substantial evidence, is arbitrary and capricious, is an abuse of discretion, violates due process rights, violates Donnelly City Code, and cannot be legally sustained.

Deferring the traffic impact study until after approval (to the design review process) turns the planning process on its head. Instead of the study informing the "right to build" decision, the approval of the conditions use permit was made first without the traffic impact study, and the traffic impact study will be used later to justify it. By pushing the study to the Design Review phase, the City has approved the use without knowing if the infrastructure can support it. Since Design Review typically focuses on aesthetics and site layout rather than the fundamental right to build, *see* DDC § 18.15.020, the City put the cart before the horse, and is choosing to hope for a manageable outcome rather than ensuring one through rigorous pre-approval analysis. The City thus failed to base its decision on substantial evidence; its decision is arbitrary and capricious; and is an abuse of discretion.

Moreover, deferring the traffic impact study to a later, post-approval process also results in a deprivation of due process. The Planning & Zoning Commission, the City Council, and the public are denied the opportunity to weigh the Project's true cost against its purported benefits. Now that the Project is approved without a traffic impact study, the public will not have standing to challenge the approval based on its traffic impacts.

DDC § 18.40.030 provides that the City *shall* review the particular facts and circumstances of each proposed condition use in terms of the following standards and *shall* find adequate evidence showing that such use at the proposed location prior to approval of a conditional use permit. The Donnelly City code is not a suggestion; it is a set of mandatory findings that creates a condition precedent for approval that, by failing to require a traffic impact study before approval, failed to meet.

Without a traffic impact study, the City has not shown that the Project will be “served adequately by . . . highways [and] streets.” DDC § 18.40.030(E). Approval of the Project without a study assumes the existing street infrastructure is “adequate” for the new anticipated ADT. By bypassing the traffic impact study, the City has ignored its duty to verify that the public infrastructure can handle the specific density of the proposed development.

Without a traffic impact study, the City failed to establish adequate evidence that the Project will not be detrimental to the general welfare for reasons of “excessive production of traffic.” DDC § 18.40.030(G). Adequate evidence cannot be satisfied by arbitrary reference to other jurisdictions’ standards, lack of site-specific analyses, and unsupported conditions of approval determined by staff in a vacuum. Without a traffic impact analysis, the City cannot factually determine whether the traffic produced is “excessive” (either for Eld Lane or Highway 55) for the site where the development is proposed. Therefore, finding of compliance with Standard G is unsupported by substantial—or any—evidence.

Without a traffic impact study, the City failed to determine that vehicular approaches be designed “as not to create an interference with traffic on surrounding public thoroughfares.” DDC § 18.40.030(H). “Interference” is a technical metric involving sight distances, turn lane lengths, and other factors. A large-scale development introduces a volume of turning movements that can fundamentally alter the safety of existing public roads. In the absence of a traffic impact study, there is no professional analysis of turning movements at peak hours, sight-distance hazards, or queuing lengths that might block through-lanes. Again, unsupported conditions of approval can not adequately substitute for actual evidence to support the approval.

Approving a large-scale development without a traffic impact study constitutes a failure to follow Idaho law and its own Code.

- iii. The City’s reasoned statement approving the conditional use permit is inadequate under I.C. § 67-6535(2).

Based on the foregoing discussion, the City’s Findings of Fact and Conclusions of Law is legally insufficient because they do not meet Idaho Code § 67-6535(2)’s requirement that an “approval . . . be . . . accompanied by a reasoned statement.” *Veterans Park Neighborhood Assoc. v. City of Boise*, 175 Idaho 194, 564 P.3d 350, 364 (2025).

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D. The Project is in violation of DDC § 18.40.030(E) because it will not be adequately served by water.

DDC § 18.40.030(E) mandates that new development must be “adequately served by essential public facilities and services, including water.” The City has admitted that there is currently insufficient municipal water capacity to issue building permits for the proposed ~~88-97~~-unit apartment building, 14 recreational cabins and 3 short-term rental units. The decision explicitly acknowledges this deficiency and, instead of demonstrating current adequacy, attempts to address the gap with (a) a temporary well connection for a subset of units and (b) reliance on a future municipal project to expand water system capacity. This approach conflicts with DDC’s requirement for adequacy.

Adequacy under § 18.40.030(E) is a present-tense, project-wide requirement, not a future promise. A development cannot be considered “adequately served” when the governing body admits that water capacity is currently insufficient and no municipal service is available to the approved development. The City’s acknowledgement that it cannot issue building permits due to inadequate water capacity confirms noncompliance with § 18.40.030(E).

Additionally, the decision approves a temporary well connection for the recreational cabins and short-term rentals, contingent upon approvals from the Idaho Department of Water Resources, the Southwest District Health Department, and the Donnelly Rural Fire Protection District. This condition does not satisfy § 18.40.030(E) for several reasons.

First, a temporary, privately controlled or non-municipal water source for some units does not establish that the entire development is adequately served by essential public facilities and services “including water.” The Code’s adequacy requirement applies to the *entire* development; providing temporary alternative water for a fraction of the development does not resolve the shortfall for the remaining units.

Second, the temporary well connection is not currently effective or approved. It is expressly conditioned on third-party approvals that have not yet been obtained. A condition precedent to service is not service. Where water availability turns on speculative, future regulatory approvals of the well, the project cannot be deemed “adequately served” at the time of approval.

Third, the record acknowledges that municipal capacity is insufficient even for building permits. A temporary well for certain units does not resolve the lack of municipal capacity necessary to support construction, testing, fire flow, and ultimate occupancy across the project, including the ~~88-97~~-unit building. The City cannot satisfy a City Code adequacy standard with an interim, partial, and contingent measure.

Furthermore, reliance on a not-yet-constructed municipal improvement injects uncertainty into an adequacy determination that the Code treats as a threshold finding. The City’s plan assumes that (a) the future project will be timely completed, (b) it will deliver the necessary capacity for all project components, and (c) all intervening technical, regulatory, and funding risks will resolve favorably. Such assumptions are speculative and cannot substitute for the Code’s requirement of present adequacy.

Conditioning building permits or certificates of occupancy on later water availability also creates practical and legal risks that underscore the inadequacy of the approval. If the future capacity project is delayed or yields less capacity than projected, the development may be partially built but uninhabitable, burdening public health, safety, and welfare—the very concerns animating DDC § 18.40.030(E). The City’s own acknowledgement that it cannot issue building permits due to current capacity constraints confirms that the necessary adequacy showing has not been made at any stage of the development lifecycle.

Finally, to comply with § 18.40.030(E), the City was required to make supported findings that essential services, including water, adequately serve the development. The decision simultaneously (a) acknowledges insufficient municipal water capacity to issue building permits and (b) deems the project approvable based on temporary and future measures. These findings cannot be reconciled. A conclusion of adequacy cannot rest on evidence of current insufficiency coupled with conditions shifting provision of essential service to uncertain future events and third-party approvals.

Because the City’s own decision document establishes present inadequacy, there is no substantial evidence supporting a contrary adequacy finding. The approval therefore fails § 18.40.030(E).

E. There is insufficient evidence that the proposed development will be adequately served by police and fire protection, and schools.

DDC § 18.40.030(E) also requires a finding that a proposed development be adequately served by police and fire services, and schools. The only statement about schools is that the “Comprehensive Plan identifies that the schools are currently operating below capacity.” Staff Report at p. 5. However, the City provides no analysis of the *actual current* capacity, the number of expected increase in the student population from the proposed development, the cumulative impact on the student population from already entitled but yet to be built developments that will be serviced by the McCall Donnelly School District, and how that will impact school capacity.

Similarly with police and fire services. This project will produce an undue burden upon the City. The City has no code enforcement or law enforcement employed by the City. Currently, the Northwest Passage apartments in town, approximately 40 units, have generated 252 calls to the Valley County Sheriff in the last six years (2019-Jan. 2026). Managers and owners have been generally unresponsive to noise, parking, speeding, domestic violence, etc. This project is twice as populated, and there is no mechanism by which the City can ensure that management will be more responsive and responsible to its tenants and neighbors. Other than stating that “the Owner has been working with the Donnelly Rural Fire Protection District regarding the district’s requirements for access and fire flows,” Staff Report at p. 12, there is no evidence presented and no findings made regarding whether the police and/or fire can adequately serve another 100 residential units, a recreational cabin park, and an event center.

F. The Event Center is not compatible or harmonious with the existing character of the neighborhood.

As discussed above, the entire rezone of the southern parcel to RR-DA is not in accordance with the future land use map, and the City failed to make any findings of how it is in accordance with

the Comprehensive Plan. By extension, then, the City failed to adequately find that commercial event center is harmonious or compatible with the existing character of the neighborhood on Eld Lane.

III. Violation of International Fire Code Section D106

The development includes a total of 101+15 dwelling units (88-97 apartments, 14 recreational cabins, three short-term rentals, and an existing home) and a commercial event center. Under International Fire Code (IFC) Appendix D, Section D106, multiple-family residential projects with more than 100 dwelling units require two separate and approved fire apparatus access roads, unless *all* buildings are equipped with approved automatic sprinkler systems.² As explained below, the project exceeds the 100-unit threshold, and the City cannot rely on the D106.2 exception to waive the requirement for a second access road where a significant portion of the project remains unsprinkled.

IFC Appendix D, Section D106 establishes a mandatory baseline for fire apparatus access to multiple-family residential developments exceeding 100 dwelling units. The text requires two separate and approved fire apparatus access roads serving such projects, ensuring redundant ingress and egress for emergency responders and safeguarding occupant life safety and property protection. The dual-road requirement is not discretionary; it is a prescriptive standard triggered by the dwelling-unit threshold, reflecting the elevated risk profile and response complexity associated with higher-density residential occupancies. Compliance thus hinges on the provision of two distinct access routes that are each designed, constructed, and maintained to the “approved” standard applicable to fire apparatus access roads, including, at minimum, conformity with approved dimensions, load-bearing capacity, turning geometry, grade, and unobstructed clearance.

Section D106 provides a limited exception to the two-road mandate for projects where there are more than 100 and up to 200 dwelling units: a single approved fire apparatus access road may be permitted only where *all* buildings within the development are equipped throughout with approved automatic sprinkler systems. The exception is expressly conditioned on universal sprinkler coverage—across every building—without carve-outs for particular structures or mixed-use components.

~~To start, the City’s staff report clearly states that the project contains over 100 dwelling units: “The Owner is proposing 101 dwelling units (One existing home, 97 new apartments and three short-term rental units).” Staff Report at p. 4.~~

Second, the fundamental issue is that the City failed to classify or consider the recreational cabins when applying IFC Section D106 to the project. Although DDC § 18.05.130 exempts recreational cabins from density calculations, *it does not exempt such units from application of*

² IFC Appendix D, Section D106 requires multiple-family residential projects having more than 100 dwelling units be equipped throughout with two separate and approved fire apparatus access roads. Exception is “[p]rojects having up to 200 dwelling units may have a single approved fire apparatus access road when *all buildings, including non-residential occupancies*, are equipped throughout with approved automatic sprinkler systems . . .” (emphasis added).