

ORDINANCE NO. 2019-27

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING THE FLAGSTAFF ZONING MAP TO REZONE APPROXIMATELY 11.97 ACRES OF REAL PROPERTY LOCATED AT 1650 EAST PONDEROSA PARKWAY, FROM RURAL RESIDENTIAL (“RR”) TO HIGH DENSITY RESIDENTIAL (“HR”); PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, Ponderosa Parkway, LLC (the “Applicant”), applied for a Zoning Map Amendment for approximately 11.97 acres of land located at 1650 East Ponderosa Parkway, Coconino County, Arizona, a legal description of which is provided in Exhibit “A” attached hereto (“the Property”), for the purpose of multi-family residential development.

WHEREAS, in furtherance of the Applicant’s reasons for the rezone, the Applicant has applied to the City of Flagstaff to amend the zoning of the Property from Rural Residential (RR) zone to High Density Residential (HR) zone for 11.97 acres; and

WHEREAS, the Applicant conducted a neighborhood meeting on May 1, 2019 to discuss the proposed Zoning Map Amendment with the surrounding community, as required by Section 10-20.50.040 of the Flagstaff Zoning Code; and

WHEREAS, the Council finds that the Applicant has complied with all application requirements set forth in Chapter 10-20 of the Flagstaff Zoning Code; and

WHEREAS, the Council has read and considered the staff reports prepared by the Planning Division and all attachments to those reports, the Applicant’s application, the narrative provided by the Applicant, and the Council finds that the proposed Zoning Map Amendment, subject to the conditions set forth below, meets the findings required by Section 10-20.50.040(F)(1)(a) of the Flagstaff Zoning Code.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The amendment requested in the application is consistent with and conforms to the goals of the General Plan.

SECTION 3. The amendment requested in the application will not be detrimental to the public interest, health, safety, convenience or welfare of the City and will add to the public good as described in the General Plan.

SECTION 4. The affected site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle access and public

services and utilities to ensure that the amendment requested in the application will not endanger, jeopardize or otherwise constitute a hazard to the property or improvements in the vicinity in which the property is located.

SECTION 5. The Zoning Map designation for the Property is hereby amended from Rural Residential (RR) zone to High Density Residential (HR) zone for 11.97 acres, as depicted in Exhibit "A", through the approval of the application and all other documents attached to the staff summary submitted in support of this ordinance.

SECTION 6. The City is specifically relying on all assertions made by the Applicant, or the applicant's representatives, whether authorized or not, made at the public hearing on the zone change application unless the assertions were withdrawn on the record. Those assertions are hereby incorporated into this ordinance.

SECTION 7. That the Zoning Map Amendment be further conditioned upon the Applicant's satisfaction of the following conditions proposed by the Planning and Zoning Commission, as augmented by staff:

CONDITIONS:

1. The subject property must be developed in accordance with the approved site plan and the conditions of approval dated May 28, 2019. Modifications (other than minor modifications) to the approved site plan will require an amendment to this Direct to Ordinance Zoning Map Amendment request.
2. All other requirements of the Zoning Code and other City codes, ordinances and regulations, shall be met by the proposed development.
3. All terms, conditions, and restrictions detailed within the "Development Agreement Miramonte at Ponderosa Parkway Condominiums" must be fully satisfied.
4. In the event the property is rezoned and the Developer fails to obtain final Civil Plan approval within two (2) years of the effective date of the rezoning ordinance, then the City may schedule a public hearing before the City Council for the purpose of causing the zoning on the Property to revert to the former classifications of Rural Residential (RR) in accordance with A.R.S. § 9-462.01.

SECTION 8. That City staff is hereby authorized to take such other and further measures and actions as are necessary and appropriate to carry out the terms, provisions and intents of this Ordinance.

SECTION 9. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 10. This ordinance shall become effective sixty (60) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 3rd day of September, 2019.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

Exhibits:
Exhibit A – Legal Description

Exhibit "A"

Legal Description of Property

WHEN RECORDED, RETURN TO:

Ponderosa Parkway, LLC
4578 North 1st Avenue, Suite 160
Tucson, Arizona 85718
Attn: Christopher Kemmerly

70504643-JRK

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, **Franz R. Lupton Jr., as trustee of the Frantz R Lupton Jr Separate Property Trust Dated 12/03/1996**, as to an undivided 13.3334% co tenancy interest; **Senex Arizona, Inc.**, an Arizona corporation, as to an undivided 13.3333% co tenancy interest; **The Kramer Family Limited Liability Company**, an Arizona limited liability company, as to an undivided a 13.3334% co tenancy interest; **Green Mesa Developments LLC**, a Colorado limited liability company, as to an undivided 13.3333% co-tenancy interest; **Kenneth Bates**, a married man as his sole and separate property, as to an undivided 13.3333% co-tenancy interest; **Edward Rudnitsky**, a married man as his sole and separate property, as to an undivided 6.0000% co-tenancy interest; and **Barry Werner**, a married man as his sole and separate property, as to an undivided 27.3333% co-tenancy interest; collectively, (the, "**Grantor**"), does hereby convey to Ponderosa Parkway, LLC an Arizona limited liability company (the, "**Grantee**"), the real property situated in Coconino County, Arizona, and legally described on Exhibit A attached hereto and incorporated herein by this reference, together with all rights and privileges appurtenant thereto (the "**Property**"), together will all improvements and fixtures thereon and all rights, benefits, privileges, entitlements and appurtenances pertaining thereto, held or owned by Grantor, including, without limitation, to the extents such rights exist: any right, title and interest of Grantor in and to (i) any property lying in or under the bed of any street, alley, road or right-of-way, open or proposed, abutting or adjacent to the Property; (ii) the strips, gaps or gores, if any, between the Property and abutting property; (iii) all water, water rights, oil, gas or other mineral interests in, on, under or above the Property; (iv) all rights and interests to receive any condemnation awards from any condemnation proceeding pertaining to the Property; (v) all sewer rights, water courses, wells, ditches and flumes located on or appurtenant the Property.

SUBJECT TO all matters of record and all matters an accurate survey or proper inspection of the Property would reveal (the "**Exceptions**");

TO HAVE AND TO HOLD such interest in the Property, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in any way appertaining unto the Grantee and unto Grantee's successors and assigns forever, and that Grantor will defend the title to said interest in the Property unto Grantee against the claims and demands of all persons claiming by, through or under Grantor and no other, except for the Exceptions as set forth above.

Except for the limited title warranty expressly set forth herein: (a) the Property is hereby conveyed in an "AS IS," "WHERE IS" and "WITH ALL FAULTS" basis and condition; and (b) Grantor makes no additional representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; including but not limited to representations or warranties with respect to the use, condition (including the environmental condition), occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record).

In accordance with A.R.S. § 33-404, the names and addresses of the beneficiaries under the FRANTZ R LUPTON JR SEPARATE PROPERTY TRUST DATED 12/03/1996 are set forth on Schedule A to this instrument.

[Signatures appear on the following pages]

Unofficial Copy

Exhibit "A"

PARCEL NO. 1:

A portion of the parcels of land described in Document No. 3376344 and re-recorded in Document No. 3385837 and Document No. 3228142, records of Coconino County, Arizona, located in the Southwest quarter of Section 14, Township 21 North, Range 7 East, Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

COMMENCING AT THE Southwest corner of Section 14, monumented with a USDI/BLM Brass Cap dated 1981 from which point the West quarter corner of Section 14, monumented with a 3" aluminum cap marked "LS 26406" bears North 01 degrees 35 minutes 29 seconds West, 2720.59 feet;

THENCE North 88 degrees 39 minutes 25 seconds East along the South line of the Southwest quarter of Section 14 and along the North lines of the parcels of land described in Document No. 3101540 and Document No. 3086724, a distance of 498.81 feet to the Northwest corner of the parcel of land described in Docket 2035, page 815 and to the Northeast corner of the parcel of land described in Document No. 3086724, monumented with a 1/2" iron pipe;

THENCE North 88 degrees 47 minutes 13 seconds East along the South line of the Southwest quarter of Section 14 and along the North line of the parcel of land described in Docket 2035, page 815, a distance of 134.25 feet to the West right-of-way line of Ponderosa Parkway, as conveyed to the City of Flagstaff in Instrument No. 3555011, records of Coconino County, Arizona;

THENCE North 88 degrees 41 minutes 10 seconds East along the South line of the Southwest quarter of Section 14, and along the North line of the parcel of land described in Docket 1108, page 138, a distance of 107.25 feet to the West line of Parcel 1 as described in Docket 1827, page 471;

THENCE North 88 degrees 41 minutes 10 seconds East along the South line of the Southwest quarter of Section 14, a distance of 9.80 feet to the East right-of-way line of said Ponderosa Parkway;

THENCE North 88 degrees 41 minutes 10 seconds East along the South line of the Southwest quarter of Section 14, a distance of 99.88 feet to the East line of Parcel 1 as described in Docket 1827, page 471, and to the West line of the parcel of land described in Document No. 3227936;

THENCE North 18 degrees 26 minutes 19 seconds West along the East line of Parcel 1 described in Docket 1827, page 471 and along the West line of the parcel of land described in Document No. 3227936, a distance of 153.89 feet to the Southwest corner of the parcel of land described in Document No. 3385837, monumented with a 4" concrete post, and the TRUE POINT OF BEGINNING, hereinafter referred to as Point "A";

THENCE North 18 degrees 13 minutes 20 seconds West along the East line of Parcel 1 and along the West line of the parcel of land described in Document No. 3385837, a distance of 110.98 feet to the East right-of-way line of said Ponderosa Parkway, hereinafter referred to as Point "D";

THENCE Northerly along the East right-of-way line of said Ponderosa Parkway, along a curve to the right, having a radius of 765.00 feet and a central angle of 5 degrees 57 minutes 54 Seconds, an arc distance of 79.64 feet (chord bearing North 21 degrees 22 minutes 04 seconds East, chord distance 79.61 feet);

THENCE North 24 degrees 21 minutes 00 seconds East along the East right-of-way line of said Ponderosa Parkway, 137.50 feet;

THENCE Northerly along the East right-of-way line of said Ponderosa Parkway and its Northerly extension as conveyed to the City of Flagstaff by easement recorded in Instrument No. 3613223, records of Coconino County, Arizona, along a curve to the left, having a radius of 884.74 feet and a central angle of 20 degrees 00 minutes 01 seconds, an arc distance of 308.84 feet (chord bearing North 14 degrees 21 minutes 00 seconds East, chord distance 307.27 feet);

THENCE Northerly along said East right-of-way line of Ponderosa Parkway, along a curve to the left, having a radius of 1648.76 feet and a central angle of 18 degrees 07 minutes 31 seconds, an arc distance of 521.57 feet (chord bearing North 04 degrees 42 minutes 46 seconds West, chord distance 519.40 feet), to the North line of the parcel of land described in Document No. 3385837;

THENCE South 81 degrees 54 minutes 10 seconds East along the North line of the parcel of land described in Document No. 3385837, a distance of 429.72 feet to the Northeast corner of the parcel of land described in Document No. 3385837;

THENCE South 31 degrees 18 minutes 30 seconds East, 665.41 feet to the South line of the parcel of land described in Document No. 3228142 and to the North line of the parcel of land described in Docket 1947, page 830;

THENCE North 73 degrees 06 minutes 23 seconds West along the South line of the parcel of land described in Document No. 3228142 and along the North line of the parcel of land described in Docket 1947, page 830, a distance of 98.22 feet to the Southeast corner of the parcel of land described in Document No. 3385837, monumented with a 5/8" capped rebar marked "LS 26406";

Thence South 71 degrees 29 minutes 36 seconds West along the South line of the parcel of land described in Document No. 3385837 and along the North line of the parcel of land described in Docket 1947, page 830, a distance of 320.96 feet to the Northwest corner of the parcel of land described in Docket 1947, page 830, monumented with a 5/8" capped rebar marked "LS 13010";

THENCE South 18 degrees 30 minutes 41 seconds East along the South line of the parcel of land described in Document No. 3385837 and along the West line of the parcel of land described in Docket 1947, page 830, a distance of 251.55 feet to the Northeast corner of the parcel of land described in Document No. 3340460, monumented with a 5/8" capped rebar marked "LS 26406", hereinafter referred to as Point "B";

THENCE South 71 degrees 32 minutes 55 seconds West along the South line of the parcel of land described in Document No. 3385837 and along the North line of the parcels of land described in Document No. 3340460 and Document No. 3227936, a distance of 566.31 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

An easement for motorized vehicle access, as reserved in deed recorded in Instrument No. 3555008, records of Coconino County, Arizona, over a portion of that parcel described as Parcel 1 in Deed recorded in Docket 1827, Page 471, records of Coconino County, Arizona, located in the Southwest quarter of Section 14, Township 21 North, Range 7 East, Gila & Salt River Base and Meridian, Coconino County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 14, monumented with a USDI/BLM brass cap dated 1981, from which point the West quarter corner of Section 14, monumented with a 3 inch aluminum cap, LS 26406, bears North 01° 35' 29" West, 2720.59 feet (Basis of Bearings for this description);

THENCE North 88° 39' 25" East along the South line of the Southwest quarter of Section 14 and along the North line of the parcels described in Instrument Nos. 3101540 and 3086724, records of Coconino County, Arizona, and along the South line of the parcel described in Instrument No. 3469519, records of Coconino County, Arizona, a distance of 375.60 feet to the Southeast corner of said parcel described in Instrument No. 3469519 and to the Southwest corner of the parcel described as Parcel 1 in Instrument No. 3478120, records of Coconino County, Arizona, monumented with a nail in concrete;

THENCE North 88° 40' 08" East along the South line of the Southwest quarter of Section 14, and along the North line of the parcel described in Instrument No. 3086724, records of Coconino County, Arizona, and along the South line of said Parcel 1 of Instrument No. 3478120, a distance of 123.29 feet to the Northeast corner of said parcel described in Instrument No. 3086724, and to the Northwest corner of the parcel described in Docket 2035, Page 813, records of Coconino County, Arizona, monumented with a 3/4 inch iron pipe;

THENCE South 18° 35' 16" East along the East line of said parcel described in Instrument No. 3086724 and along the West line of said parcel described in Docket 2035, Page 813, a distance of 111.28 feet to the Southwest corner of said parcel described in Docket 2035, Page 813 and the Northwest corner of the parcel described in Docket 2072, Page 530, records of Coconino County, Arizona;

THENCE South 18° 35' 16" East along the East line of said parcel described in Instrument No. 3086724 and along the West line of said parcel described in Docket 2072, Page 530, a distance of 140.00 feet to the North line of the 105 foot wide right-of-way for Route 66, monumented with a 5/8 inch rebar with aluminum cap marked ARENCO LS 13010;

THENCE North 71° 20' 15" East along the South line of said parcel described in Docket 2072, Page 530, and along the North right-of-way of said Route 66, a distance of 100.50 feet to the Southeast corner of said parcel described in Docket 2072, Page 530 and to the Southwest corner of the parcel described in Docket 1108, Page 138, records of Coconino County, Arizona, monumented with a scribed X in concrete;

THENCE North 71° 20' 15" East, along the South line of said parcel described in Docket 1108, Page 138 and along the North right-of-way line of said Route 66, a distance of 108.53 feet to the Southeast corner of said parcel described in Docket 1108, page 138 and to the Southwest corner of the parcel described as Parcel 3 in said Docket 1827, Page 471, monumented with a scribed X in concrete;

THENCE North 71° 20' 15" East along the south line of said Parcel 3 in Docket 1827, Page 471 and along the South line of the parcel described as Parcel 1 in said Docket 1827, Page 471, and along the North right-of-way line of Route 66, a distance of 126.70 feet to the Southeast corner of said Parcel 1 in said Docket 1827, Page 471 and to the Southwest corner of the parcel described as Parcel 3 in Instrument No. 3227936, records of Coconino County, Arizona;

THENCE North 18° 35' 24" West, along the East line of Parcel 1 in said Docket 1827, Page 471 and along the West line of Parcel 3 in said Instrument No. 3227936, a distance of 300.51 feet to the Northwest corner of said Parcel 3 in Instrument No. 3227936 and to a point on the South line of the parcel described in Instrument No. 3385837, records of Coconino County, Arizona, monumented with a 4 inch by 4 inch concrete post, being the TRUE POINT OF BEGINNING;

THENCE North 80° 01' 56" West, a distance of 55.29 feet to a non-tangent curve whose radius bears South 87° 17' 01" East;

THENCE Northerly along a curve to the right having a radius of 300.43 feet and a central angle of 09° 33' 20", an arc distance of 50.10 feet (chord bearing North 07° 29' 39" East, chord distance 50.05 feet);

THENCE South 80° 01' 56" East, a distance of 30.60 feet to the East line of Parcel 1 in said Docket 1827, Page 471, and to the South line of said parcel described in Instrument No. 3385837;

THENCE South 18° 16' 17" East, along the East line of Parcel 1 in said Docket 1827, Page 471, and along the South line of the parcel described in said Instrument No. 3385837, a distance of 56.75 feet to the TRUE POINT OF BEGINNING.