PONDEROSA TRAILS HOA

Sent via first class mail

September 11, 2020

City of Flagstaff – Zoning Committee
211 W Aspen Avenue
Flagstaff, AZ 86001

RE: Aura Flagstaff

Dear Zoning Committee:

This letter is being written on behalf of the members of the Ponderosa Trails Homeowners Association regarding common concerns of its members, with the updated proposed development "Aura Flagstaff". In August 2020, an informal poll of the members of the Association was taken. A brief summary of the types of City Zoning pertaining to the property was given and the following question was asked: "Are you in favor of the proposed zoning change to rezone the property to Medium Density Residential (MR)?

There is a total of 639 lots within the Association, most with multiple owners; the poll was sent out to over 850 owners/representatives representing over 621 lots. 338 responses were tallied, resulting in 88% opposed to the zoning change, 11% were in favor, and 1.5% did not have an opinion either way.

Sincerely,

Katy Kuhns

Katy Kuhns, Community Manager
For:Bryan Burton, President
Board of Directors
Ponderosa Trails HOA
www.ponderosatrailshoa.com

Alaxandra Pucciarelli

From: Nathan Jones <ndj1187@gmail.com>
Sent: Wednesday, July 1, 2020 7:39 PM
To: Alaxandra Pucciarelli
Subject: Aura Flagstaff

Hi Alex,

I hope this email finds you well during these challenging times.

I am writing to you today to express my frustration and resounding disapproval of the Aura Flagstaff development. I have attended every neighborhood meeting dating back to the initial meeting in either 2018 or 2019 when this project first started and came to the planning and zoning meeting. I have left every meeting feeling like I am being lied to and made to feel unintelligent.

Before I get into my points, I do want to assure you I support growth and development within Flagstaff, as long as it makes sense. I would fully support single family homes being built in lieu of these apartments, as I have recognized the need for more single family homes.

I have many concerns about this development, but I first want to start with my frustration with the developer. I understand that they are just doing their jobs to the best of their ability, but their inability to actually answer any of the questions is appalling. It is very apparent talking to them that they are lawyers and they think they know what's best for a town they have never, nor will they ever, live in. I feel like they haven't done any research about Flagstaff, but rather they insist on making the residents feel like we don't know what we are talking about. I have asked multiple questions during every meeting and never feel like my question is answered. They have no problem following up one-on-one with someone to answer their question, but I see this as a tactic to dance around the subject rather than face it head on.

Now to my concerns. My biggest issue with this development is the purchase of the entire 11 acres, but with no plan to build on 2 of them so they can "claim" they are saving trees. Are they saving trees? I guess, but not really if the intent is to never build there in the first place. My question to you, is how is this ok? Am I the only one that sees an issue with this? My next issue - Traffic. Traffic on High Country has always been a point of contention with the residents of Ponderosa Trails, and by adding 200-300 people to this neighborhood without adding an additional exit will only make it worse. Now the developer is saying that bus stops will be added along High Country which will only cause bottlenecks and more frustration. Thirdly - Parking. The current apartment complexes along High Country already park along Wild West trail when they run out of spots. What is stopping this from happening with this complex? I get that they are alloting 1.5 spaces per unit, but we both know most, if not all units, will have more than one car.

Some questions I have for you. I hope you are able to answer them, but I understand if you are not.
1. What data are they using to show the (to use the developers words) "overwhelming" need for additional apartments? Flagstaff has multiple complexes already under construction with more getting ready to come.
2. How old is their traffic study data? They never show us the data they have, which never makes sense. If you have the data and it backs up your point, why wouldn't you show it?
3. What are your thoughts on this development?

I know I just threw a lot at you, but I appreciate you taking the time to read through this.

Thank you,
Nathan Jones

Alaxandra Pucciarelli

From: CRAIG ROSE <rose5az@hotmail.com>
Sent: Thursday, September 10, 2020 1:33 PM
To: Alaxandra Pucciarelli
Subject: AURA Flagstaff

Importance: High

My name is Craig Rose, and I live in Ponderosa Trails. We have been here, in this Development since 2002. I am a native of Flagstaff. We are currently troubled in this proposed development on High Country Trail, Lot # 110-50-211. I'm sure your office is aware of the request to rezone this plot for apartments. My position is negative. It will not be a family friendly apartment complex, due to the amount on only 1 bedroom apartments, (which would be destined for students). Only a few 2 bedroom and no 3 bedroom. The plans still show a high density apartment complex, and not a medium density complex. The wording is wrong by the developer who is wanting to build here. There are approximately 750 trees, that they will have to destroy to complete this complex, and I believe there are comprehensive plans/community plans that prohibit the destruction of open areas.

My question is what happened to the comprehensive/community plans that prohibit this type of building in an open area. What percentage of mature trees have to remain to keep this area. When we built our home here, we were told by the city, that we have to keep a certain percentage of trees on our property to keep it in perspective to the city plans. We have been to city hall when this first started and your commission recommended disapproval of this complex. Ponderosa Trails Development does not need extra traffic, on high country trail, this would cause more back up, accidents during snow season, safety to our citizens, who live here already, we have one exit on High Country Trail, and it's backed up every day. During work start times. Plus the area, is on two dangerous curves and during snow season is very icy, and I have personally seen since living here, about 150 accidents or slide offs.

So please take this to heart and not let this go through.

Sincerely
Craig Rose
3739 S Wild West Trl
Flagstaff, AZ 86005

Sent from Mail for Windows 10

Alaxandra Pucciarelli

From: CRAIG ROSE <rose5az@hotmail.com>
Sent: Tuesday, December 1, 2020 10:54 AM
To: Alaxandra Pucciarelli
Subject: PZ-20-00008-01 Aura of Flagstaff

Commissioner Zimmerman and zoning commission members.

Good morning, My name is Craig Rose and live in the area adjacent to where this complex is proposed.

I'm sure you have seen and received a lot of emails concerning the planned mess. We have lived on Ponderosa Trails for 18 years, and knew that the Apartment complexes across the street at 250 and 300 High Country Trail were coming. Because that was part of the plan discussed when our area went in.

But, adding another apartment complex in this area, will deteriorate the beauty we have come to know in the Aura submission.
Additional reasons we don't need this project. The crime in the area has risen dramatically since the apartment complex's have been built. I canvassed the FPD and the excel sheet is to extensive to send to you. But we have seen the FPD and FFD's there constantly (usually on a daily basis). We witnessed a murder, and 2 suicides', in the past year.

As of now Flagstaff has to many apartment complex's in the works, and do not need to add to that process. I canvassed the apartments at Fremont station (only 47% occupied), The standard (45% occupied). The Lumber Jack (HUB) 47% occupied. NAU admissions in down 12% as of November and continuing to decline. The Developer who purchased the MVD property has pulled out of building for the reasoning of lack of students and would not be lucrative to his company. We really don't need this to develop .

Thank you for your time and consideration to deny this proposal.

Sent from Mail for Windows 10

Alaxandra Pucciarelli

From: Uri Farkas <Uri.Farkas@nau.edu>
Sent: Tuesday, December 1, 2020 9:21 AM
To: Alaxandra Pucciarelli
Cc: David Zimmerman; Becky Cardiff
Subject: RE: PZ-20-00008-01
Attachments: P and Z Letter.docx

Hi Alaxandra,

Thanks to you, Chairman Zimmerman and Committee for the opportunity to share information. I've attached a brief statement for their review.

Will look forward to speaking with you all on Dec. 9th –

Best,
Uri Farkas
198 West Gold Rush Trail
Flagstaff, Arizona
86005

From: Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>
Sent: Monday, November 30, 2020 12:01 PM
To: Uri Farkas <Uri.Farkas@nau.edu>
Cc: David Zimmerman <zimmerdg@gmail.com>; Becky Cardiff <bcardiff@flagstaffaz.gov>
Subject: RE: PZ-20-00008-01

Hi Uri-

I have copied the Chairman on this email to make him aware of your request to speak. Did you wish to put anything in writing? I include copies of any written comments in the packets that go out to the commissioners.

Thank you,

Alaxandra Pucciarelli
Current Planning Manager
Community Development
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 213-2640
Email: apucciarelli@flagstaffaz.gov

From: Uri Farkas <Uri.Farkas@nau.edu>
Sent: Monday, November 30, 2020 8:43 AM
To: Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>; Tammy Bishop <tbishop@flagstaffaz.gov>
Subject: PZ-20-00008-01

Hi Alaxandra –

I would like to request to speak at the December 9th Planning and Zoning Meeting regarding the Aura and PZ – 20 – 00008 – 01.

Thanks for your consideration and please let me know if you need additional information prior to the meeting –

Thank you –
Uri Farkas
198 West Gold Rush Trail
Flagstaff, Az
86005

From: Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>
Sent: Friday, November 6, 2020 7:55 AM
To: Uri Farkas <Uri.Farkas@nau.edu>
Subject: RE: Upcoming Planning and Zoning Meeting

Hi Uri-

We are planning to take Aura before the Planning & Zoning Commission on December 9th. The developer should be updating their sign soon. We have not agreed to a city council meeting yet. It will probably not happen until January.

Thanks,

Alaxandra Pucciarelli
Current Planning Manager
Community Development
211 W. Aspen Avenue
Flagstaff, AZ 86001
Phone: (928) 213-2640
Email: apucciarelli@flagstaffaz.gov

From: Uri Farkas <Uri.Farkas@nau.edu>
Sent: Thursday, November 5, 2020 3:12 PM
To: Alaxandra Pucciarelli <APucciarelli@flagstaffaz.gov>
Subject: Upcoming Planning and Zoning Meeting

Hi Alaxandra,

I'm a resident of Ponderosa Trails and wanted to inquire about future Planning and Zoning meetings specifically related to the Aura project by Texas developers, Trinsic.

The sign on High Country Trail still notes a meeting time back in July and I was wondering if their project was slated to go before you and the committee anytime soon.

Thanks for your help and have a great week –
Uri Farkas
198 Gold Rush Trail
Flagstaff, Az
86005

November 30, 2020

Re: Aura Apartments, PZ-20-00008-01

Chairman Zimmerman and Committee,

Thank you all for taking the time to hear input from members of the Flagstaff community regarding the proposed building of the Aura Apartments in the Ponderosa Trails neighborhood. Our family is adamantly opposed to the construction of the apartments and would like to provide some brief context.

1) We are not anti-development in any way. Based on the City of Flagstaff Zoning map, the area to be developed is zoned ER (Estate Residential). We welcome any development following the designated zoning which we feel appropriate for our neighborhood.
2) Trinsic Development, no matter how many times they commit falsehoods, have never communicated with me or a member of my family regarding the development. They have repeatedly said in documents and in the past Planning and Zoning meeting they have "reached our directly to and offered to meet with all home owners on Gold Rush Trail". We have owned our home since June 2018 and have never been contacted in any way.
3) The repeated sales pitch noting a 16 acre development is not accurate. The only land being asked to be developed is 9 acres.
4) The continued sales pitch of "medium density" is not accurate. As a zoning committee, please see the number of units and it's clearly "high density". They are using credits to become "medium density".
5) The number one goal of the Flagstaff Regional Plan is "Identify, preserve, and build on the positive qualities of different places"
    a. We are asking you all please help preserve our neighborhood.
6) The Trinsic sales pitch of "family apartments" is a falsehood based on their number of one and two bedroom units.
7) If approved, the Ponderosa Trails neighborhood near the proposed development will lose home owners and families. It will become rental housing and the demise of a family friendly environment.

Simply put, this is the wrong development at the wrong time in the wrong location. High density housing is critical for thriving communities. The Ponderosa Trails neighborhood is not the right location of this project. Affordable housing is a critical need in Flagstaff. Let's not consider the 20 units of affordable housing in the proposed Aura complex a win for a community when a literal forest will be taken down to accommodate this. Let's all work on a community plan to create affordable housing on a larger scale and not try to jam 20 units into a student housing project. A Texas developer, building a 150 unit eyesore in place of a wooded forest at the entry of a family neighborhood is a mistake. I hope you all take into consideration the information provided and again, thank you for your service to the Flagstaff community.

The Case for Denial

Aura Flagstaff – PZ-20-00008-1

Phil Goldblatt, Resident, Ponderosa Trails HOA

December, 2020

Table of Contents

Summary of this Paper to the Flagstaff P & Z Commissioners

Dear Chairman Zimmerman and P & Z Commissioners:

I realize this paper is quite long and complex. Therefore I sincerely invite any and/or all of you to engage me in discussion if you have questions about anything I have written. And to of course feel free to pass it by the City's or preferably an independent attorney if you wish examination and/or clarification. Additionally, if even after the Public Hearing on "Aura" you wish to evaluate further, please feel free to not tender a vote but to recess if you wish to have more time to investigate and study this and any other issues I have raised re: this rezone.

Probably the first four Sections of this paper are most important to understanding the intent of it. Though I believe all are very relevant to this "Aura Flagstaff" proposal. Here is a short summary of each section for your convenience.

I. **Purpose/Authority of Code** - Our zoning code is "protective" of community character and therefore of the people who live in those communities. One of the MAIN purposes of our Code is to limit scale and density, not inflate it.
Another main purpose is to encourage aesthetically attractive developments that protect adjacent landowners from property devaluation and other adverse impacts.

II. **Community Character** - The impact of "Aura" on the neighborhood is "de facto" high density since it is proposed for 160 units on 9 acres or 17.8 units/acre. Those are the "facts on the ground" and no administrative rule or law can alter that. Because these facts would alter the community character, a Major Regional Plan amendment is required that has not been accomplished.

III. **Improper Designation of Development Site Area** - The two acres claimed by Applicants to be a part of the "development site area" are actually PROHIBITED from development by the conservation easement they would place on them. And they are not a contiguous site upon which any development at all is proposed. Furthermore they are apart from the 9 south side acres (separated by a street and private fence) upon which development **is** proposed. Therefore they must not be used to calculate the allowable baseline density,

the density bonus's, nor the "on-site" resource protection incentive allowable. Other incentives could have been awarded if the developer wanted to place such an easement on additional property. The developer also abrogates his responsibility regarding how he should use this conservation easement to mitigate impact. And significantly our Code itself provides rules of interpretation that show that the more restrictive provision utilized in this paper must be the one that governs and applies.

IV. **Arbitrariness of Plan Interpretation** - The Regional Plan "interpretation" used here to allegedly allow Applicants to apply for Medium Density without any cap on the degree of density bonus incentive is legally arbitrary in that it ignores negative consequences and depends on individual discretion rather than a fair application of the law. The "Suburban Characteristic Density Range" found in the Plan should apply instead. Further it elevates one of the sections of the Code above the main purposes for the Code itself and that is unlawful as well. It sweeps over broadly and therefore must apply to the "protection of forest resources" also but then that would disallow that incentive since it impedes (not furthering) the goals and policies of our Plan.

V. **Aesthetics in Zoning** - This section provides evidence and argument that aesthetics are essential for preserving pleasant residential areas. It also goes on to show that "Aura" lacks several elements contained in our Zoning Code to do just that; preserve and protect the community character from poor aesthetics. It lacks building forward design, location of entrances at the front of the buildings, no screen wall nor trees to screen from High Country Trail, parked cars easily seen from that street, and forward parking lots in front rather than the side and rear of the buildings as recommended by our Code. Lastly, all of the above and the general appearance of high density of this development add to the conclusion that "in a **down** market" it will have a significant negative economic impact on the adjacent single family homes.

VI. **High Density Nuisance** - This section explains why the factors of non-ownership, nuisance party noise and crime will all be present and constitute a private but permanent nuisance to the adjacent single-family homeowners. Best read

this section for more details. Raising small children is naturally an important consideration here.

VII. **Stormwater Analysis** - Reasoning is provided that shows why the "underground chamber" method for collecting storm water and two small culverts can not possibly maintain the flooding along High Country Trail in winter not worse than it is today; which is the standard communicated to me by the Water Services Division of Flagstaff. It also, by the way is inconsistent with one of the Goals and Policies of the Regional Plan, #WR 5.5. This policy discourages many dispersed basins rather than regional detention. I know this development is not regional but the principle is valid and the same.

VIII. **Significance of PTHOA Poll** - The results of the most recent Ponderosa Trails HOA poll on this development are presented and show 89.8% opposed with a margin of error of plus or minus 5.4% at the 99% confidence level. This time these results were corrected for a few homes that sent in more than one vote. But more significant is that no one can say that this development only inconveniences the residents of one or two streets since this whole community is opposed to it and therefore it does not benefit Flagstaff in general.

IX. **The Findings** - This Section presents my analysis of all three Findings. It also concludes that Aura fails them as well. Many reasons are given with substantiation for each reason. Many goals and policies of the Plan are shown inconsistent. The public interest and "..morals, general welfare" are not well served, and the site itself is too small for the number of units they want to build resulting in noncompliance with certain aspects of our Code as well as deficiencies in the type of storm drainage system proposed. The application should be denied.

To: Chairman Zimmerman & Planning & Zoning Commissioners

From: Phil Goldblatt, Resident, Ponderosa Trails HOA

Date: December, 2020

Subject: **LEGAL and LEGAL STYLE ARGUMENTS FOR DENIAL OF REZONE FOR AURA FLAGSTAFF – PZ-20-00008-1**

My neighbors and I will present arguments utilizing both the facts and the law pertaining to this rezone. Herein however I will primarily present the legal and legal type case supporting denial.
But first please see Note #1 on p. 27 below:

I. Subversion of the Main and Explicitly Stated Authority and Purpose of our Zoning Code by Allowing "de Facto" High Density Apartments in a Maximum Medium Density Zone

As you can see for yourself, the below excerpts from our Zoning Code (Code) make it clear that protection of the citizen residents of Flagstaff from development that adversely impacts the general welfare by PRESERVING the desired character of our neighborhoods including Ponderosa Trails is a **major** objective and PURPOSE for our Code.
It is also evident that encouraging "attractive" development is a major goal of our Code. I will have more to say about that later. See Section V. Also please see Sect. II below for why this development is "de facto" high density.

10-10.20.010 Legislative Intent

In adopting this Zoning Code, it is the intent of the City to protect and promote the public health, safety, convenience, and general welfare of the citizens of the City by exercising all powers related to the regulation and use of land and structures within the City that are authorized by the City Charter and Arizona Revised Statutes (A.R.S.).

10-10.20.020 Purpose of Zoning Code

B.1. Land Use Patterns.
f. Limiting the size, scale, and density of new structures and additions to existing structures to preserve the desired character of neighborhoods and the community.
g. Encouraging quality, attractive, and marketable development.

B. 5. Justifiable Expectations and Taxable Value.
b. Protecting landowners from adverse impacts of adjoining developments.
d. Protecting and enhancing real property values.

II. Alteration of the Community Character of our Neighborhood without First Requesting a Major Regional Plan Amendment that would allow Applicants to do so

Please refer to Page III-14 of our Flagstaff Regional Plan and specifically #5. It states in pertinent part as one of the conditions for requiring a Major Regional Plan Amendment:

"In neighborhoods and along commercial corridors more than ¼ mile from an activity center, changes from rural to suburban, or suburban to urban area types."

As you well know in this application and the last one, the Zoning change staff refers to therein would be from ER to HR so the area type would change (in my estimation) from Rural to Urban thus triggering a Major Plan Amendment.

It states in the **Staff Report** dated April 9, 2019 on page 11, under Finding #1, A IIg. that: "Had the developer chosen to rezone the property to the HR zone, this rezoning case would have required a major Regional Plan amendment to proceed." Yes, it IS a separate application but the same principle and technique Applicant used previously is still being applied for this present application. It is self evident in this case that the **IMPACT** of this development is 160 units/9 acres or 17.8 units/acre density that is well into the HR zone. It is "de facto" a high density development. More to say later on this as well.

It is legally impermissible on it's face to create an "administrative alternate reality" by "pretending" that facts on the ground do not matter with regard to density and other breaches of our Code. Even if a formal Major Plan amendment were not required, surely the additional safeguards and requirements must be. Among those that the Applicant/s have not completed are: (*please refer to Sect. 11-10.20.020 of our City Code*)

1) An infrastructure and community services impact analysis that includes: (yes, traffic analysis was already completed)
a) Water/wastewater analysis
b) Police and fire protection analysis
c) School impact analysis
d) Economic development analysis

Surely an economic development analysis would be prescient here in revealing the obvious that in a "down market" the property values of homes along W. Gold Rush Trl. and lower part of S. Wild West Trl. would be diminished more than property surrounding them. Right now we are in an "up" market so it would not make a significant

difference but in a down market it certainly would. This is obvious. Since the housing market is **cyclical**, no one can reasonably expect that those single-family homes will not be negatively affected.
So although understandable in that Applicants would never desire increased expenditure and proof that his development is illegal through creating a "Regulatory Taking", (in violation of ARS 12-1134-1138) (please see Appendix A for why this is likely) that does not make it acceptable. The de facto nature of this development proposal makes it necessary to meet **all** requirements for a Major Plan Amendment.
Additionally, we would agree that no homeowner is assured or can expect that an investment in a home and property will always increase in value, but what he/she should be assured of is that over time, the property values in a down market would not be negatively impacted more than similar homes nearby.
To do otherwise subverts the purpose and authority of our Zoning Code so it **no longer protects the communities of all of Flagstaff** as it is intended to do.

III. Wrongful Designation of the Development Site Area and Calculation of the Baseline Density for "Aura" Leading to Surreptitiously adding a Concealed Density "Bonus" to an Otherwise Unconstrained but Appropriate Pair of Density Bonuses

May I refer you to Section 10-80.20.040 (D) of our Code. The definition of Gross Density. This definition specifies that this term is calculated by using the "Development Site Area" as denominator. In that same section the Development Site Area is defined using the "total area of a development site" excluding all existing dedications for public Rights of Way._Then the "Development Site" definition states in pertinent part "...which constitute **contiguous** lots...on which development is proposed,....." (emphasis mine)

Because the calculation by Applicants of the baseline density INCLUDES 2 acres on the north side of High Country Trail and because those two acres are **NOT part of or a site on which development is proposed** (in fact just the opposite) they therefore can not be included in the "development site area" needed to calculate the allowable gross density.

But equally alarming is that this miscalculated baseline density is then used to further calculate how much density BONUS is awarded for both the Affordability provision and the Sustainability provision. This **artificially inflates the bonus density that is awarded**

because it is in effect adding a multiplier to the calculation that would not otherwise exist.

Furthermore, these same two acres are then also used to supply a significant part of the tree points needed to fulfill the forest resource protection standards even though it is not a part of the Development Site. The reduction of forest resources incentive explicitly specifies at 10-30.20.040 (B1b) and at 10-50.90.030 (B3) & (B4) that the forest resources to be protected are those "on-site". "On-site" can only reasonably refer to the "Development Site" upon which development is proposed according to the definition. Not upon which development is **not** proposed. In fact it is PROHIBITED by the conservation easement.

And lastly here these same two acres are utilized yet again to provide the developer with an incentive that does NOT further the goals and policies of the Regional Plan. (just the opposite; please see CC 1.1, 1.3 and CC 1.5). Please see next Sect. IV for why this is legally invalid and therefore cannot be used.

The mere fact that these two acres ARE used to provide a conservation easement does not mean they can be used "again and again" (or even once) to calculate allowable density or density bonus's that should be already calculated utilizing other standards. Many other jurisdictions award other incentives (such as reduction of development fees, expedited processing, etc.) if a developer provides land elsewhere for a conservation easement, but then our Code needs to authorize the City to award them exactly that incentive. But our Code does not authorize the City to provide that exact incentive. In any case it is legally impermissible for them to award a concealed and extra density bonus or to allow them to use this acreage to meet the forest resource protection standard. The City is not permitted to grant bonuses that are not authorized by our Code.

Furthermore it should be plain to see that the conservation easement Applicants desire to place on the north side two acres **prohibits** development; just the opposite of "site area" upon which development **is** proposed. So it is impermissible to still use those two acres for calculation of baseline density. Again, the mere fact that those two acres are part of the same parcel number does **not nullify** "facts on the ground" that show that this acreage is not contiguous with the acreage that IS proposed for development (i.e. the 9 south side acres) and that a street and fence separate these two acres from the **actual development site**. And that the landowner will continue to treat and use those as he has always done in the past and will continue to keep them private and not open to either the residents of Aura nor to the public. It cannot by any stretch of the imagination be considered as a part of the development site area. The parcel should

be split because it is contiguous with other land that the Auza's own on the north side of High Country Trail. It is really a separate parcel. A parcel number cannot nullify reality.
Incredibly as if this were not enough, the developer violates our Code Sect. 10-30.50.020 (B1) "Responsibilities" (and definition of "public improvements"; i.e.10-30.50.030 (A)) by placing the "**conservation** easement" (which is surely considered an improvement since such easements would normally add to the public good) onto the north side two acres but then refuses to USE IT as strongly implied by B1 above to "mitigate the impact of new land development" but instead uses it to increase density/intensity that exacerbates the impact of this development. And then because it is not available to the public but only the private use of the Auza family, it is not a "public" improvement at all but really a private one that the Auza's have not compensated the City for. Thus the developer shirks his responsibility regarding this so-called "public" improvement.
Additionally our Zoning Codes' own "Rules of Interpretation" at 10-10.30.040 (B1 & C) state that the Codes' standards are the "**minimum** requirements for.....restrictions, uses,..." and that in essence if there are overlapping or contradictory regulations, the provision that is "MORE RESTRICTIVE" **shall govern**, ..so that in **all** cases the **most** restrictive provision shall apply." Since the calculation of baseline density and the subsequent density bonuses and use of the "conservation easement" acreage thrice (once for calculation of baseline density, once for density bonuses and once for meeting the requirement for tree points for preservation of forest resources) are less restrictive than under this paper's viewpoint expressed here above, I conclude then that this interpretation must be the one that governs and applies according to our Code's own rules.

Furthermore, as you will read in the next Section IV, most localities provide a "CAP" on just how much density developers can add to the existing zone that they are applying for over and above the maximum density for that zone. But even in municipalities where there is no cap as here in Flagstaff MOST developers realize that they run into all sorts of issues and opposition regarding **Takings** problems and meeting other Zoning Code standards if they are unreasonable with regard to how much density bonus incentive they avail themselves of. **NOT TRINSIC though**! An actual records search result provided by Larysa Feyti, Records Coordinator for the City shows that over the last 20 years or so there have been NO developers here at all who utilized density bonuses that extended up over 40% into the next higher density range. In other words all of

them have been lower. These Applicants utilize 160 units/99 or 61.6% over and above the otherwise maximum limit for Medium density. And according to what I would consider the correct calculation as explained above it is really 160/81 (9 acres x 9 max units/acre for MR zone) or 97.5% over what should have been maximum medium density.

IV. The Rational' for Permitting no Maximum Cap or Limit to the Degree of Density Bonus Awarded is Legally Arbitrary and Therefore Must be Applied to the Award of Reduction of Forest Resources as well – Or an Alternative Standard Utilized

The interpretation of in particular here page IX-46 of our Regional Plan and the characteristic of "Density Range" stated there was that in essence it was fine to ignore this "Suburban Characteristic Range" in providing density bonuses because the incentives further the goals and policies of the Regional Plan (Plan) since they are given generally for providing affordable housing/sustainability both of which are two (in this case) of the goals/policies of the Plan. So what is the problem?? Here it is.

First off though the legal definition of "arbitrary" is that the decision is based on individual discretion rather than a fair application of the law. This Plan interpretation falls into that category as explained below.

A GENERALLY APPLICABLE PRINCIPLE is being used to **ONLY** apply to a SPECIFIC incentive; namely **Density Bonuses** but **ignores** all the other possible incentives that the City IS authorized to grant and to which such a principle must also be applied if it is applied to the density bonus incentive. Furthermore, it ignores unintended consequences that would violate other protections contained in our Code in the process of applying this one. Examples will follow a bit later. The City has **no authorization** to "wrangle" and finagle such an interpretation into what they think they want to accomplish. It is legally arbitrary on it's face and therefore the City/Applicants would be obstructing protections afforded by our Code to the communities/people in applying such a principle in the manner in which they are attempting to do so here.

One of those other incentives (used here for the Aura proposal), "reduction of forest resources" (used as an incentive since it is relaxing a standard of the Zoning Code) does just the opposite in that it **impedes** the goals and policies of the Regional Plan. In this Aura proposal the applicants are slated to receive an additional allowable reduction of forest resources of 25% or 50% of the remaining

resources after the first 50% is removed. So if this general principle is ok to apply to density bonuses it would not at all be even handed to not also apply it to the other incentives (such as reduction in forest resources) that the City is authorized to grant to incentivize affordable housing. It would not be fair or just and it almost sounds like this "interpretation" was made up "ad hoc" in order to allow something that if completely thought through would never be allowed because of the negative consequences that would surely follow without any codified regulation or means to prevent them. In other words, directly and automatically. The codified regulation must be approved by the people in order for the City to possess the legal authorization and warrant to act. A cap on how much total density bonus is allowable might be one such regulation. Or they could use the Suburban Characteristic Density Range from the Regional Plan. Otherwise they do so outside the rule of law.

But there is even more serious harm to the whole process of evaluating applications for rezone for a specific development. The essence of this Regional Plan "interpretation" as applied to Aura is that it allows and impermissibly "elevates" one or two goals of the Regional Plan above the MAIN intent and legislative purpose and AUTHORITY of the Zoning Code. How can that be??? Here's how. Any PART of a zoning code cannot and must not supersede a main legislative intent and purpose for the entire code itself. Nor can the Plan. That would mean that one part possesses a higher authority than the main purpose for the code or the authority of the Code itself. **Not permissible in any jurisdiction**!! If the people of the City of Flagstaff decide by referendum that the goal of providing more affordable housing units is worthy, then all of us should be willing to have our taxes raised and/or approve bond issues with precisely the goal of building or making land available on which **mostly** more affordable housing is constructed. I.e. 100% or 70% say affordable housing; not 10% or 20%.

And so it does damage to our legislative process because of the "reprioritizing" of objectives without explicit warrant for it by the law and/or the voters. To say it another way, it allows "political" policy to become a part of what should otherwise be sound and even handed application without bias of established ordinances or laws. To do otherwise would be to subvert the intent of our Code to protect the Community Character and to provide justice for the people to which they constantly rely on the City Government. Indeed that is one of the reasons for city governments to exist in the first place. The people expect justice, not privilege.

Additional Clarification – I stated above that I believed the Plan interpretation on density bonuses was "arbitrary" from a legal standpoint. Another reason is that it fails to achieve the purpose for which it was intended. It was intended as stated to "further the goals and policies of the Regional Plan" two of which are affordable housing. However many know that our Plan contains no less than 412 (if I counted correctly) goals and policies. However in this Aura development, in order to allow the additional "density" bonus to exceed the maximum suburban density range as presented in our Plan one also needs to impede at least two other goals and policies of the Plan in order to "make room" for this development by destroying more trees. But that then defeats the purpose for Zoning in the first place and the main goal/s for a **form based** code to preserve "Community Character". (Please see Sects. 10-10.20.020 (B1f,B1a,1e,1g,2b,3a,4f,5a,5b,5d))
It would no longer do so. So the City possesses no discretion to apply such an "interpretation". I only say this because the applicable law here is the Zoning Code. But nowhere to be found is a MAIN "purpose" for our Code listed as "encourage, promote, and create affordable or low income housing". Presumably it could be if the Code were revised to include that purpose. But presently it is allowed but **not** a main purpose for the Code. Yes, that section itself contains the purpose for it but such purpose is not reflected in the main purposes. And the mere fact that such "Affordability Incentives" Section implements the City's IPAH policy does not mean that that policy has priority over the Code or the Code's main purposes. Therefore it should not and must not be impermissibly elevated to a higher priority status.

But now I would also add that "Sustainability" and "Natural Resource" protection and preservation ARE MAIN purposes for our Zoning Code. Please see 10-10.20.020 (B3a & B2b) (protecting forests and ensuring new development conserves natural resources such as forests, ..). This just underscores the point above that "affordability" can not be elevated above the main purpose to preserve and protect forest resources. This shows that protecting forest resources is (at least for our Code) of legally higher priority than providing affordable housing.

Additionally what is also true is that the section of the Code on Affordable Housing itself is not well circumscribed and is convoluted. As mentioned in Sections **II.** and **III.** above it results in logical contradictions regarding lack of correspondence between the actual density facts on the ground and the legal ordinance it is trying to allow. Therefore it bears no relationship to either reality or adherence

to what the Code *would* permit. So it should not be used. And according to Constitutional law it is unreasonable. It is an unreasonable means of furthering the purpose for it. But as the Vanderbilt Law Review article (Vol. 34, April, '81) cited below states: "..the regulation *must be* a reasonable means of furthering that (Constitutional) purpose". (Emphasis & parentheses mine) So the "affordability section" of our Code fails the "reasonableness" standard for adherence to our US Constitution.

Please allow me now to show by example WHY the "affordability section" of our Code is convoluted and unreasonable. Please refer to Table 10-30.20.050A and Section 10-30.70.030 of the Code. Suppose I am a developer and wish to provide 16% of the baseline units of my projects' apartments as affordable under Category 3 but do NOT want to provide any sustainability and do not wish to lower the "household income range" into the Category 1 status. I would be disallowed by our Code to obtain ANY density bonus at all because the two categories are linked and convoluted compared with Category 1 where the two incentives (for affordability and sustainability) are completely separate. I could do it under cat 1 but not under cat 3. So because of the way the category for income range is codified, the two standards are not independent. AND what is also confusing is what the particular category even means in the following sense. Nowhere in the Code (or even the IPAH document) is it explained how the AMI standard is intended to operate in actual practice. For example, if a developer chooses to have his affordable units fall into the cat 1 standard, does that mean that he can charge a rent that is no higher than but equal to 30% of the 80% of the AMI regardless of what the applicants' actual income is (as long as it falls at or below 80% AMI)....OR....does it mean that all applicants who apply and who fall at or below the 80% AMI can pay a rent that is exactly 30% of *whatever* income they earn? It can make a huge difference in revenue for the developer/management company. And is it on a first come first served basis or are there other standards that can place an applicant at a priority for being accepted for such housing? So depending on how this operates in practice, there may be incredibly little difference ....**or** ...a significant difference between cat 1 and cat 3 for the purposes of what rent can be charged. Furthermore if cat 3 INCLUDES **all** of cat 1 in the sense that the rent charged only depends on the applicants income (but not on the 80% or 120% standard) then if most (if not all) of the applicants who apply to a cat 3 development have income that falls below the 80% AMI anyway, there is then little difference at all between the actual effect of choosing cat 1 or cat 3. Confusing, complex and unreasonable since it may constitute minimal reason for such distinctions in the first place.

That makes the ordinance impracticably complicated and lacks straightforwardness in violation of our Code's Purpose stated at 10-10.20.020 A. (..in a form that is ....straightforward, easily understood..) This portion of our Code is not straightforward nor is it easily understood.

And that is also why other jurisdictions (such as the California State Density Bonus Law (SDBL)) include an "upper bound" or limit to just how much their local governments are allowed to "bust into" the next higher density zone in approving a development. The SDBL uses 35% as reasonable. But even more revealing is that it allows any local municipality in California to, if they want, pass an ordinance allowing a different (could be higher or lower) maximum for total of all bonus densities. The crucial point here is that at least they will **have a standard** that is/was approved by the voters of that municipality. Flagstaff has no such standard at all. So our Code then lacks legislative authority to prevent unreasonable bonus densities that then automatically result in negative consequences elsewhere.
But yet there is more. My research has revealed certain things about cities that provide incentives for affordable housing (including Lancaster, PA; Portland, OR; Washington, DC; Cambridge, MA; Denver, CO; Austin, TX; Madison, WI; Dallas, TX; Atlanta, GA; Seattle, WA; Minneapolis, MN; and California as above). Firstly not all use a density incentive bonus; secondly, most of those that do use density bonuses also have an upper limit as to how much it is permissible to exceed the otherwise allowable zoned density maximum; and lastly most of them have other incentives that are even preferred by most developers such as expedited review and fee waivers or reductions. Our IPAH mentions those but they are not codified into our Zoning Code law. A report by the City of Denver for instance (published March, 2020) on "Affordable Housing Zoning Incentive" concluded that: "Density bonuses are not always the most meaningful incentives, the citywide system should explore additional incentives such as expedited review, parking reductions, and other financial incentives. Developers in Denver and many peer cities have expressed that predictability in reviews is a powerful incentive."
I conclude (but not only I) that density bonuses have drawbacks and downsides as well. Another article in "University of Florida Law", 2006 entitled *Incentive Strategies: Density Bonuses, Fee Waivers & Expedited Approvals* states that: "Optional bonuses have drawbacks as well, particularly administrative issues and possible takings problems." So we can surely appreciate that the single-family homes

along W. Gold Rush Trail are appropriately concerned about regulatory takings of their property.

To sum up this section our government is not authorized to allow its decisions to extend outside the rule of law. The upshot of this is that the "PEOPLE" would need to approve what priorities any particular provision of the Code or Plan would have beforehand so that the City could legislatively apply such priorities without them being legally arbitrary and therefore unlawful.

V. Aesthetics are a Valid Consideration in Deciding Whether to Approve or Deny an Application for Rezone

I wish to refer you to Section 10-10.20.020 (1g) of our Code and to the Marquette Law Review article Vol.39, 1955 – "Aesthetics Under the Zoning Power" by Joseph Swietlik and to Vanderbilt Law Review – Vol.34, April 1981 – "Aesthetic Regulation Under the Police Power".

The Marquette article argues strongly in favor of using aesthetics within the scope of the general welfare of the community and therefore within the police power and therefore within the zoning power. It states in pertinent part: "However, if we are to preserve pleasant residential areas today, aesthetic considerations in zoning laws are **essential**." (emphasis mine). It then goes on to address why such considerations are NOT discriminatory. It states that such a situation could only come about with unreasonable administration of the law. And also as stated above regarding the "general welfare". The Vanderbilt article lays out a litmus test to decide whether an aesthetic zoning regulation as an exercise of the police power is valid or not. The standard boils down to whether the regulation serves one of the traditional police power purposes, namely to further the public health, safety, morals, or general welfare. In order to do this the aesthetic regulation should have a significant economic impact. So it must achieve the desired purpose and secondly it must positively have a significant economic impact.

It surely appears to me and neighbors that aesthetics is included in our Code (see 10-10.20.020(1g)) as one of the essential ways to achieve desirable community character and to protect/enhance taxable values and real property values (please see 10-10.20.020(B5a, d). It does this through several provisions. I refer you to Sect. 10-30.60.060 (A, C & D) and 10-30.60.070 (A3 and A4) as well as Sect. 10-50.60.040 (D1a) as particularly applicable to the "Aura" development. The first Section refers to "Building Forward Design" and the primary entrance to the building as well as the need for a "Screen Wall" if the building cannot be located next to the

sidewalk. The second section here refers to the most "in front" parking lots needing to be located on the side and rear of the buildings and the need to "screen" parking areas from view of public ways. The third section refers to Screening requirements using landscaping to screen parking areas i.e. chiefly trees.

We can see if we apply the above Zoning elements to the Aura site plan, the first Sections are failed because the layout of the apartment buildings lack "Building Forward Design" and none of the **entrances for the buildings** (with exception of the "Club House") are located at the front of the buildings; they are all on the side and do not face a plaza or pedestrian way. Nor does "Aura" include a Screen Wall designed to serve to screen the development and especially parking lots from High Country Trail. What a contrast to "The Lodge" adjacent to Lake Mary Rd. that includes many tall Ponderosa Pines completely surrounding the development and effectively screening it from BOTH Lake Mary Rd. as well as High Country Trail.

The second Sections are failed in Aura because the most forward parking lots are not located at the side and rear of the buildings. Nor are they "screened" from view from High Country Trail that is indeed a "public way".

The third Sections are also failed in Aura because it appears to us that the amount of landscaping trees are insufficient to screen for the amount of parking spaces provided especially at the front of the development.

To be fair to our City, yes building of screen walls would probably not be allowed underneath the power lines. And tall trees are not allowed for screening underneath the power lines either. However, because of the parking requirement of our Code above and the screening requirement, we question why the developer has **not concluded** that the parcel on which they desire to construct such a large number of units is really not suitable to do so. It is way too small to accommodate such a high number of units while still maintaining adherence to our Zoning Code. But instead of then concluding that a smaller development and lower number of units would need to be proposed, or to develop on a larger different parcel that could easily be rezoned High Density (HR), he has concluded just the opposite to the detriment and strong opposition of the people. In my opinion this is exactly **not** what Flagstaff desires or needs.

Lastly do all of the above have a significant economic impact on the surrounding single family homes? Aesthetically it surely appears to us that they do because as currently designed this development looks more like dormitories on a student campus closely grouped together

than like luxury apartment houses they are advertised as being. In the long term and as I've stated previously in a down market, they will adversely affect property values in violation of Section 10-10.20.020 (B5b & d). Also please refer to an article by Yuqing Pan (March 2016) in "Realtor.com" entitled *The Neighborhood Features That Drag Down Your Home Value—Ranked* in which he compared various features like cemeteries, shooting ranges, and of interest here "high renter concentration". The analysis that Mr. Pan accomplishes in particular shows that this feature reduced home values 13.8% compared with homes in the surrounding area. Aura would be one of the last such apartment developments to be added to the immediate neighborhood and therefore the standards for acceptability because of incompatibility with our Community Character are very high as they should be. We do not wish our Community Character to be compromised.

VI. Why are High Density Apartment Houses Considered a Private but Permanent Nuisance to Adjacent Single Family Homeowners?

May I refer you to the following website: *www.law.cornell.edu/wex/nuisance*, the Legal Information Institute of Cornell Law School. Their definition of a private nuisance is "A private nuisance is when the plaintiff's use and enjoyment of her land is interfered with substantially and unreasonably through a thing or activity."

I believe three indicators can answer this admittedly highly contentious question: "Ownership, party noise and crime".

A very important consideration here is that Aura would not consist of units that are owned nor would they be units that are not high density. They are "de facto" high density. I know my neighbors and I would much rather see condos or town houses or single family homes on this parcel because they are **owned** and therefore the occupants are more likely to act responsibly on average.

Noise as from students or otherwise would constitute a nuisance in that it would be permanent (intermittent but still a concern as long as the development exists) and many neighbors are trying to raise children in their backyards adjacent to this development. Please also note that our City Code Sect. 6-08-001-0005 (C3) defines a "nuisance party" as including "disturbing the peace" and a party that "..causes a disturbance of the quiet enjoyment of private or public property...". With an admittedly large percentage of the residents of "Aura" being students, it is increasingly likely that student parties will occur that are also "nuisance parties". One would need to be naïve to

not believe such would occur frequently if this development is allowed to go forward.

One of my neighbors will submit and present evidence that "calls to the police" are **significantly higher** (more than 2X for the same one year timeframe) in the surrounding apartments than in Ponderosa Trails HOA. The numbers are normalized for the number of units or houses considered since PTHOA contains more "units" than the two apartment developments we considered. So we are not making this up. This indicator gives us an idea of what is going on since these data were obtained directly from Flagstaff Police reports. And families **raising small children** are concerned and would continue to be concerned since this would not go away in a few months. It may even get worse over time.

VII. The Underground "Chamber" Method of Collecting Storm Water Used here by Aura along with Small Culverts is Insufficient to Prevent Greater Accumulation of Water onto High Country Trail than occurs without this Development

Through direct conversation and email with Mr. Doug Slover, Stormwater Project Manager, Water Services Division for the City, I obtained understanding of what standard is used to determine whether or not a drainage system for stormwater is acceptable. The standard provided by Mr. Slover was that it can not be worse than it is right now without any development at all. I consider that (yes) a reasonable and fair standard.

So how is it right now?? From personal experience both I and all folks in Ponderosa Trails and beyond know that in the winter after snow melt and after rain, High Country Trail (HCT) IN THE VICINITY OF THE **CURVE** in the road freezes over at night and becomes very icy and hazardous especially in the morning hours. Vehicles heading towards Lake Mary Rd. can easily slide on this ice and into oncoming traffic in the opposite lane because of centrifugal force. And this is the situation that exists now with all of the land specified for Aura presently consisting of earth with about 2/3rds of it consisting of forest and earth.

The "chamber" method proposed here for Aura means that drains and other channels should attempt to remove as much water from the development after a storm as the earth and trees are presently accomplishing. However, it should be self evident that with all of the concrete and asphalt covering the ground after construction of Aura would be completed, there will still be at least some runoff from

driveways, sidewalks and ground that will not be contained by drainpipes and culverts that do NOT divert onto High Country Trail. Even a cursory inspection of the new Aura site plan shows that two small culverts (I am unaware of the technical name for these) are intended to divert water from the forward ground of this development ONTO High Country Trail adjacent to the "eastside" driveway into/out of Aura. So the question then is whether or not this additional water would be greater than or less than water that could flow onto HCT right now from the earth and trees that is not absorbed by that earth? And also whether that water along with any water that is not captured by drains (heading into the chambers) but flows from that eastside driveway right onto the curved part of HCT would, taken together, be greater or worse than it is right now?

So this analysis understands the fact that right now the only water that DOES make it onto HCT is excess water that the ground immediately adjacent and all the way up the hill that constitutes this parcel is not able to fully absorb. It flows over the sidewalk and onto HCT. However, with this development, it is quite apparent that most of the water that would otherwise be absorbed by the ground will not be and that *some of that* will flow onto HCT. The chambers will not be able to capture all of it. Furthermore, the existence of the two small *culverts* (for want of a better identifier) adjacent to the east driveway in question would then add additional water from the "meadow" and adjacent ground from "underneath" the level of the sidewalk. That means that the amount of water being added to HCT from the culverts along with water from the driveway itself must be greater than what occurs right now because most of the water is absorbed by the ground presently and therefore unavailable to be able to flow onto HCT. And all this in the worst possible place for it along the **curved** portion of HCT where the east most driveway is located on the Aura site plan.

So it is my opinion that there must be more water after heavy rain or snow that causes hazardous conditions on HCT after Aura than there is right now. Therefore Aura fails this reasonable test.

VIII. The Real Significance of the Most Recent Ponderosa Trails HOA email Poll on this Rezone Showing Great Majority Opposed

One of my neighbors as well as submittal from our HOA will show that the results of this poll of all of Ponderosa Trails were that 89.8% of those responding were opposed to the rezone for this development. About 8.6% were in favor of it and 1.6% had no opinion either way. These are the CORRECTED results but the effect is the same.

Out of 639 units in Ponderosa Trails, 303 valid votes responded for a Margin of Error of plus or minus 5.4% at the 99% confidence level. (4.1% at the 95% confidence level).
These results were corrected for several homes that had more than one email address AND submitted more than one vote. And if you read the question that was submitted it tended to favor this application for rezone in that no mention at all of any issues or problems were stated and even said that improvements were made. Still the results overwhelmingly favor denial.
But here's the thing. In evaluating applications of this type the City may often use the rational' that even if a few residents on one or two streets are disadvantaged, if the City as a whole benefits then the application can go forward. This poll shows that it is NOT ONLY the residents of one or two streets who believe this application should be denied but the great majority of a whole neighborhood believes it is not in their best interests to approve this development. So the City should not and really cannot say that Aura would be beneficial for us as a whole. This poll says otherwise.

IX. What about the Findings??

Here's what my analysis of the 3 Findings shows:

Finding #1 – Consistency with the Regional Plan (not optional under ARS 9-500.05B)

One of the main inconsistencies with our Regional Plan is that this proposal totally ignores the explicit Plan designation of the area as Suburban Residential and maximum MEDIUM DENSITY. The Community Character and such things as aesthetics from the street in front of this development do not depend on whether the Developer receives density bonuses or not. Reality is reality regardless of the rules of the Zoning Code and/or Regional Plan. Correspondence assures validity, not words on paper. That is why a Major Regional Plan amendment would have been required if the developer had applied for high density rezoning in the first place.

In addition to the above inconsistency also evidenced by CC 1.1 and CC 1.3 and 1.5 above, we also find this development to be inconsistent with the following goals and policies of the Regional Plan.

E&C 8.1 – Evaluate land use ....for their potential noise impacts. We believe this has not been accomplished. Lots more noise

would emanate from this development; i.e. nuisance parties, etc.

OS 1.4 – Use open space for non-motorized connectivity and enjoy views and quiet. The opposite of what Aura will do.

WR 5.5 – Please see Sect. VII above. Aura uses "numerous small dispersed basins" in essence rather than one larger detention basin as advocated by this policy.

E 2.1,2.2,2.4,2.5 – Although the developer purports to comply with the "sustainability" incentives, virtually **NONE** of the energy needed for Aura will be renewable. Check it out; I am not exaggerating.

CC 3.1, 3.2 – Aura is not respectful of our overall community image nor does it blend their buildings into our existing neighborhood. Please also see Sects. I, II, and V above.

CC 4.6 - Aura does not use landscaping to screen parking and improve aesthetics for this development, just the opposite in fact. Also this **reduces** the economic benefit inconsistent with this policy. Please see Sect. V above.

LU 3.4 - Aura does not utilize appropriate change between neighborhoods or developments in the area. It is "de facto" high density inconsistent with our Plan.

LU 4.2 - In a very **ironic** twist, Aura fails to respect the private property rights of the Auza family because they purchase a conservation easement on the north side two acres that PROHIBITS development but then use it to impermissibly increase density/intensity anyway even tho' the Auza's have not provided anything of value in exchange for those two acres. This promotes rather than discourages bad morals for the Auza's in opposition to sound Euclidean doctrine as the foundation for Zoning in the first place. (i.e. promote health, safety, morals, and general welfare)

NH 6.1 - Even though Aura is an infill project it is not a quality one in that the concentration and design of the buildings are more dormitory style than the luxury apartments they are advertised as being. So they are NOT contextual with the surrounding neighborhood nor do they enhance community character inconsistent with this policy.

Because of all of the above, Aura fails to meet Finding #1.

Finding #2 – Not detrimental to the public interest and Euclidean doctrine and adds to the Public Good

There are many reasons this project is detrimental to the public interest and not in the general welfare of the City of Flagstaff. Section IV above shows that this development uses methods that deprive the people of the equal protection of the Zoning Code and Regional Plan by providing no protection from applying the plain meaning of the Code but allowing the developer to do so in a distorted way. This violates the equal protection clause of the Fourteenth Amendment to our US Constitution. This is a violation on it's face and therefore invalidates any application. It is not in the public interest and damages the public trust the people are supposed to be able to place in our City government.

Furthermore, Sections I and II above show that the Community Character of our neighborhood is compromised by Aura in violation of our Zoning Code and inconsistent with the Regional Plan. This does harm to the general welfare of our community.

In the previous Staff Report dated April 9, 2019 the City called out this same developer for "reading more intense due to the concentration of density" and as having "buildings visible from the street that are 3 stories high and over 100 feet long." (p. 4, sect. v of the previous Staff Report). They also called out the developer for the need to "clear cut and mass grade" the site and to locate open and civic space under the high voltage transmission lines being detrimental to the public interest." (p. 13, under RECOMMENDATIONS of previous Staff Report).

But BOTH of these conditions remain true for this proposal. Therefore Staff must be even handed in also finding them detrimental to the public interest this time around.

Since many requirements of our Zoning Code are not met as shown in Sects. I, III, IV & V above as well, they do not add to the public good and in fact only add to the benefit of the Auza's who would retain total use of the north side two acres and presumably receive greater compensation for 11 acres than for the 9 acres they could have **properly sold** for a compatible and contextual development that could have been completely acceptable with regard to the Code, the Plan and the people.

Generally speaking if the City approves this development even though it violates certain legal doctrines and protections that the Code/Plan would otherwise afford, it does not serve the general welfare of Flagstaff since it undermines our laws that support general Euclidean doctrine for zoning.

Therefore, we conclude Aura fails to meet Finding #2.

Finding #3 – Site is physically suitable in terms of design,..size,....storm drainage, etc. etc.

Here the site upon which Aura would be constructed is not suitable in terms of size for the number of units developer has proposed. This results in the "de facto" density reaching into the HR range to an unacceptable degree thus resulting in inconsistency with our Regional Plan and also results in violations of our Zoning Code for things like the site plan design standards, size, and screening requirements for vehicles in parking spaces, building entrances and screen wall as shown above in Sect. V.

Furthermore Sect. VII above shows that the storm drainage for this site would be insufficient to maintain the "flooding" onto High Country Trail not worse than it is without this development.

So for these reasons we see that Aura fails to meet Finding #3.

The inescapable result is that this application for rezone should be denied!!

Appendix A – Why the Current Housing Boom is Forecast to Decline

On October 8, 2020 an article in the NY Times entitled "With No Stimulus in Sight, Dire Forecast for Economy" addressed the idea that no second stimulus payments were forthcoming and the consequences that may follow. Of particular concern here though are a few statements from this article. One quote says commenting on how much better it was for 2019 "If we don't try to protect those gains, it will take a longer time, a really long time to come back." Another

quote from this article by a George Washington University economist states: "lawmakers should radically expand a tax credit that offsets the costs of retaining employees, along with additional aid for fixed costs like rent." So the pandemic has had major impacts on the economy meaning many more folks can no longer even pay their rent. This does not bode well for developments like Aura that would be 87.5% market rate units. But even more relevant to my discussion where this Appendix is referenced is the idea that a down market is coming and will be significant resulting in losses to adjacent single family homes that will be **greater than** the vast majority of surrounding homes.

Another article in the NY Times dated September 17, 2020 and entitled "Slowing Growth in US Retail Sales Points to an Economic Recovery in Decline" addresses the effect that the pandemic is having on retail sales and the ripple effect that has on the overall economy. It states in this article that: "Economists say the full impact of these types of closings in the consumer economy may not be felt for months, when the after effects of the stimulus measures wear off." It also states that "...many consumers, who have kept making big purchases and renovating their homes, may not have fully realized the economy's fragility, but they inevitably will". So this does not forecast well for the housing market. With so many losing their jobs, they will not be able to afford increasingly high rents.

Another article from the Dallas Federal Reserve Bank entitled "The Impact of the COVID-19 Pandemic on the Demand for Density: Evidence from the U.S. Housing Market" (August 2020) states that: "We find that the pandemic lowers home sales more in neighborhoods with a greater share of telework-compatible jobs nearby, more consumption amenities, higher pre-pandemic home prices, and lower income levels. After holding these observables constant, we still find that housing demand declines more in locations with higher residual density, which suggests that home buyers may be concerned about density per se owing to the fear of viral transmission in crowded places."

So the demand for density is likely to decline in the coming months/years. This last article suggests that the home market affects the rental market as well. This makes sense because many of the very same factors that affect the demand for single family homes also affects the demand for apartments. More folks are working from home and do not need to live close to "center city" to do their jobs. Furthermore, although it is disappointing to contemplate, a significant number of people of working ages have passed away due to the pandemic and that means an automatic contraction in the economy that will be felt for many years to come and directly affects how many people need dwelling units.

Note #1 – Zoning and the Police Power

As most of you know, the Zoning Code falls under the "Police Power" of the state. But it is well documented and established that the Police Power is not absolute. It is circumscribed and limited by the Preamble to our Constitution (Promotion of the General Welfare) and by Article I Sect. 8 of same (provide for... general Welfare). This is where the Euclidean doctrine that circumscribes the Zoning Code originates so that any Zoning Code must provide for the "public health, safety, morals, and general welfare." In this present rezone case, it is the **general welfare** that is most relevant. But the Police Power bears a close relationship to the Public Trust doctrine as well. As quoted from the article below: "....zoning ordinances that control housing density and land uses help limit change, particularly if any change is inconsistent with, and therefore disruptive of, a neighborhood's character." (see p. 7 from below article) The public needs to be able to trust government to uphold protections contained in the Zoning Code. (from Boston College Environmental Affairs Law Review Vol. 28, #4 (2001) "Police Power and the Public Trust:..." by Donna Patalano.)