

TOWN OF VALDESE BOARD OF ADJUSTMENT  
MINUTES

December 8, 2025, at 5:00 pm, continued to January 5, 2026, at 5:00 pm

Members Present

Keith Huffman, Chair  
Rexanna Lowman  
Melinda Zimmerman  
Heather Ward  
Gary Ogle  
Shannon Radabaugh

Guest Present

Kevin Brown  
Brad Hatfield  
Jennifer Hudson  
Russell Fergusson  
Steve Demiter  
Crystal Davis  
Cindy Stephens  
Jean Marie Cole  
Deborah Sigmon

Staff Present

Todd Herms, Town Manager  
Bo Weichel, Assistant Town Manager  
Jessica Lail, Town Clerk  
Tim Swanson, Town Attorney  
Daniel Odom, WPCOG  
Michael Rapp, Town Planner

Chairman Keith Huffman called the hearing to order at 5:00 pm. Chair Huffman announced general guidelines which were to be followed. Chair Huffman asked individuals present to silence all mobile devices. Chair Huffman announced that those who wished to speak on the dais were to come forward to the lectern when called. Chair Huffman disclosed that each side would be given 15 minutes to make their case and five (5) minutes for rebuttal. Chair Huffman asserted that exhibits would be delivered to the Board as they were presented.

Chair Huffman prompted anyone who had a conflict about the property in question to disclose said conflict at that present time. No conflicts were disclosed.

Chair Huffman announced that the Board had a copy of the Agenda before them. Chair Huffman disclosed that there was one item being presented to be discussed and that a decision would be rendered on that item. Chair Huffman shared that the item under consideration was a Special Use Permit for 800 Pineburr Avenue Southeast, Valdese, North Carolina, for a multi-family development in the B-2 (General Business) Zoning District. Chair Huffman stated that any evidence, and other information, that may be presented to the Board, would be entertained.

Chair Huffman declared the quasi-judicial hearing open at 5:02 pm, and prompted all parties and individuals who wished to speak to come forward for Town Clerk Lail to administer their oath's. Town Attorney Swanson clarified that this was a general call, that if one was going to speak for or against the Special Use Permit they were to come forward and all be sworn in at once; and following the oath's, they were to have a seat.

Town Clerk Jessica Lail prompted individuals to raise their right hand and administered the oath as follows: "Do you solemnly affirm that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God." Those being sworn in responded in the affirmative. A list of individuals which were sworn in follows:

- Daniel Odom
- Jean Marie Cole
- Russell Fergusson
- Kevin Brown
- Steve Demiter
- Brad Hatfield

Chair Huffman asked Mr. Daniel Odom, Western Piedmont Council of Governments Planning Assistant for the Town of Valdese, to come forward and present the evidence regarding the Special Use Permit. Mr. Odom presented as follows:

“Good Afternoon, I would like to begin by certifying that this public hearing has been duly advertised and noticed in accordance with NCGS 160D-406(b) Section 9-3144 and Section 9-3147 of the Town of Valdese Zoning Ordinance, which require that a notice of public hearing be submitted to the property owner, applicant, and all adjacent property owners no more than 25 days and no less than 10 days prior to the date of the hearing, and requires that a notice be prominently posted to the subject property within that same time frame, and requires that a notice of the public hearing be run in a newspaper of general circulation for two consecutive weeks no less than 10 days and no more than 25 days prior to the date of the hearing and would like to submit to the record the affidavit of service, certifying the mailed notice, posting of the property, and legal ad ran in compliance with NCGS 160D-406(b) and Sections 9-3147 and 9-3144 of the Town of Valdese Zoning Ordinance.

I would also like to submit the Staff Report, including the following attachments, to the record.

- Attachment A: Complete Application
- Attachment B: Site Plan
- Attachment C: Zoning Map
- Attachment D: Future Land Use Map
- Attachment E: NCDOT Level of Service Manual
- Attachment F: Probe Data Traffic Analysis and ITE Trip Generation Rates

The subject of this hearing is the Special Use Permit Application submitted by Kevin Brown of East McDowell Street Properties. On June 24, 2024, the applicant requested a Special Use Permit to allow multi-family development in the B-2 Zoning District.

Within the B-2 Zoning District, multi-family development is allowed by issuance of a Special Use Permit. Special Use Permits require a quasi-judicial hearing, that rely on findings of fact to determine whether the proposal meets the standards set forth in the Town of Valdese Zoning Ordinance (Section 9-3147).

These findings of fact can come ONLY from sworn testimony or submitted evidence. A written copy of the Board’s decision shall be made available for the record and distributed to parties who request it.

The Town Council's responsibility in this hearing is to determine if the following findings have been met:

In Order to approve, Council must find

- The Application to be complete
- The hearing has been conducted following the procedures set forth in section 9-3144
- The development will not adversely affect the health, or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

Upon testimony, cross-examination and deliberation the Council should decide as to whether the application meets all three findings listed above. Upon a motion, all findings will have been met to approve the application. Should all findings not be satisfied then Council can render a decision of denial.

The Subject Tract, at 800 Pineburr Ave Southeast, is 14.91 acres of currently vacant and undeveloped property zoned B-2 Business. See attachments C and D in the staff report for visuals. Land use to the South and West is primarily residential, land use to the North and East is zoned for residential and manufacturing.

The proposed development of 20 multifamily units is illustrated in Attachment B: Site plan, and meets the following geometric requirements as set forth by the Town of Valdese Zoning Ordinance:

1. There is no minimum lot size in the B-2 district, so the 14.91-acre lot is compliant.
2. Roadway frontage requirements of 35 feet are met as presented.
3. The Proposed lot coverage is 4.72%, satisfying lot coverage restrictions.
4. The multifamily development, as proposed, meets 10-foot side and rear setbacks, and 40-foot front setback requirements.
5. All units proposed are 38 feet in height, satisfying the maximum building height of 50 feet.
6. The proposed multifamily development proposes 2 10x20 ft parking spaces per unit, exceeding the parking requirement of 1.5 spaces per unit.

The project is accessed via Pineburr Avenue SE. Pineburr Avenue is a 2-lane local roadway, with approximately 10' travel lanes, and a posted speed limit of 25 MPH. The maximum vehicular capacity of Pineburr Avenue is 9300 Vehicles Per Day. 2023 Traffic Data sourced from Probe Data shows an average current volume of 505-531 Vehicles Per Day. (See Attachment E, NCDOT Level of Service Manual and Attachment F, PlacerAI Vehicle Travel Analysis). The Institute of Transportation Engineers Trip Generation Manual estimates the number of trips generated by each unit in a low-rise multifamily building to be 7.52 trips per day. Based on the number of proposed units (20) and the ITE Trip Generation Rate (7.52), the estimated additional vehicles per day generated by the development is 150.4, keeping the proposed development well below the 9,300 vehicle per day capacity of Pineburr Avenue Southeast.

This concludes the staff report and I am happy to answer any questions.”

During Mr. Odom's presentation, the following exhibits were submitted into record and were received without objection from the Town:

- Exhibit One (1) - Affidavit of service, certifying the mailed notice, posting of the property, and legal ad ran in compliance with NCGS 160D-406(b) and Sections 9-3147 and 9-3144 of the Town of Valdese Zoning Ordinance.
- Exhibit Two (2) – Staff Report, which also included the following attachments:
  - Attachment A: Complete Application
  - Attachment B: Site Plan
  - Attachment C: Zoning Map
  - Attachment D: Future Land Use Map
  - Attachment E: NCDOT Level of Service Manual
  - Attachment F: Probe Data Traffic Analysis and ITE Trip Generation Rates

Chair Huffman asked the Board if they had any questions of Mr. Odom. None were provided. Chair Huffman asked if the applicant had any questions of Mr. Odom. Mr. Russell Fergusson, legal representative of the applicant, responded in the negative.

Chair Huffman opened the floor to Mr. Fergusson. Mr. Fergusson stated he was representing the petitioner and applicant, East McDowell Street Properties LLC. Mr. Fergusson thanked the Mayor and Council for their time.

Mr. Fergusson stated that if it was without objection, he would like to open up a PowerPoint presentation to help with some Visuals. Mr. Fergusson then produced a printout of the presentation, as well as a site plan, to be submitted into the record. Mr. Fergusson disclosed that he had originally marked these Exhibits as Exhibits one (1) and two (2). Town Attorney Swanson stated that the Exhibits could be renumbered to Exhibit three (3) and Exhibit four (4). Mr. Fergusson then submitted Exhibit 3, proposed site plan, and Exhibit 4, the PowerPoint presentation. Exhibits Three (3) and Four (4) were submitted without objection from the Town.

Mr. Fergusson voiced that he believed the Town presented the standards and facts correctly, that there were no objections on their part, and that he also agreed with the Town's conclusions. Mr. Fergusson mentioned that he was accompanied by Mr. Brad Hatfield and Mr. Kevin Brown, who were principles of the applicant, that they were present to answer technical questions, and that they had been sworn in if there was something that he could not answer. Mr. Fergusson then noted that the standard talked about not being detrimental, and that he wanted to reset that a little bit to say that the Special Use Permit was all about limiting the scope of development for the large parcel in question, in a way that made sense, would provide benefit to the community, and that would not unduly open a Pandora's box of the remaining 14 acres of the parcel. Mr. Fergusson stated it was unique that the parcel was so large and that the applicant was only requesting the Special Use Permit for a small portion of it, which was about .7 acres out of a total of nearly 15 acres, and that 14 acres would remain undisturbed. Mr. Fergusson specified that he wanted to keep focus on what this project would do, and what the benefits would be, and not what it would not do, which he noted was technically the legal standard. Mr. Fergusson believed that standard had been met, and that he hoped the presentation made that clear.

Mr. Fergusson then displayed a map of the proposed site location. Mr. Fergusson stated that he wished to orient those present so they would know where the proposed site location was, that this was big picture stuff, and an overview of the city. Mr. Fergusson disclosed that the proposed site location was just south of the railway easement, that the lot was marked in yellow, and that one could see the size and uniqueness of said lot. Mr. Fergusson observed that there was an electrical easement running through the lot, that it also abutted a railroad easement, that it went behind some homes, and that it had significant elevation if one were to look from the left to the right.

Mr. Fergusson referenced the Town's Future Land Use Map, where a green circle drew attention to the proposed site in question. Mr. Fergusson stated that this area had been previously identified for residential uses, and that they were proposing the residential use of up to 20 townhomes.

Mr. Fergusson displayed the site plan of the proposed development, where he noted that the development was only proposed for the lower left-hand corner of the site. Mr. Fergusson disclosed that a part of the site plan had special use development notes, which noted six (6) self-imposed restrictions on the site. Mr. Fergusson mentioned that it was well within the Council's power to limit any special use permit, per 160D. Mr. Fergusson expounded on the restrictions, stating it would limit up to a maximum of 20 units, that it included the measurements of the driveways and parking spaces, that all units were limited to 38 feet in height, that lot coverage was limited to 4.72% of the 14.9 acre lot, that land disturbance would be limited to approximately .7 acres, and that the lot would only develop the area with the boxes on it, which represented the housing units. Mr. Fergusson summarized that the proposed development was multi-family, with up to 20 attached town home units that would be for rent at market rates, that it was a normal project, and that it would add valuable housing supply to the Valdese market.

Mr. Fergusson expressed that there was reduced amount of housing supply across America, and certainly in Burke County, when compared to the need, and that this would be something that would only grow as North Carolina, as well as Burke County, continued to grow. Mr. Fergusson then presented excerpts from the State of North Carolina 2024 Housing Gap Analysis by Bowen National Research. Mr. Fergusson highlighted that when one talked about what community benefits were, what land use policies were, and what a governing board was regulating, that it was important to look at the big picture. Mr. Fergusson stated Burke County had a 4.6% vacancy rate, which was on the low end for a healthy capitalist market, that this statistic came from North Carolina funded research from the Bowen National Research Analysis, and that it was utilized by planning departments across the state. Mr. Fergusson stated that part of the aforementioned research looked forward at the years 2024 through 2029 to see what the housing gap would be. Mr. Fergusson noted that the housing gap for Burke County was 1,499 units short from what would be a healthy market. Mr. Fergusson expressed that this subject was once a geeky thing to discuss, but that as the residential supply over the last five (5) years had changed, it had brought personal knowledge for everyone about what a suppressed market looked like, what inflation of housing costs could be, and how impactful they could be on a community. Mr. Fergusson stated that the proposed project was one small piece in the right direction for creating market rate housing for the residents of the City and the County.

Mr. Fergusson expressed that he wanted to end by presenting the special use standard that had already been mentioned by the Town. Mr. Fergusson highlighted that the petition would not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use and that it would not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Mr. Fergusson expanded on the standard, stating that the proposed development was a relatively normal multi-family development, which was being proposed on a very small portion of a large unique lot. Mr. Fergusson added that the proposed development would be fronting the street, that it would be a type of building that had been seen, and that it was not out of the ordinary for a residential development. Mr. Fergusson asserted that, due to business designation of the lot in question, the land use policy of Valdese for residential, and the size and uniqueness of this lot, the proposed development was determined to be the best, and least impactful, way to move forward. Mr. Fergusson highlighted that by doing the special use permit, development, outside of what the code provided, of the remaining 14 acres would be coming back to the Board later on, to be discussed, looked at, whether it would be through a rezoning or another special use permit. Mr. Fergusson stated the UDO that the Council had adopted recently would apply, that building codes would apply, and that the additional restrictions put on the site plan would apply to limit the development to exactly what had been proposed. Mr. Fergusson believed that the proposed development would be a benefit to the community, that he was present with the petitioners' representatives, and that they were happy to answer any questions. Mr. Fergusson thanked the Council for their time.

Chair Huffman asked if there were any questions. Town Attorney Swanson clarified with Mr. Fergusson that as the applicant, they were agreeing to place restrictions on the special use, and that those restrictions were that there would be a maximum of 20 units, that those units had a maximum height of 38 feet, and that the area developed would be .7 acres of the total property. Mr. Fergusson responded in the affirmative.

Chair Huffman prompted those from the public who were wishing to speak to come forward.

Ms. Jean Marie Cole stepped to the podium. Ms. Cole reported that she resided at 705 Bertis Street in Valdese, and that she had been a resident of Valdese for a little over 30 years. Chair Huffman asked Ms. Cole if she was speaking for or against the proposed development. Ms. Cole responded that she was against the proposed development, and that she did not know she had to disclose this. Town Attorney Swanson prompted Clerk Lail that Ms. Cole's time would be allocated to those against the proposed development. Ms. Cole stated that this property had been purchased by the Town as a site for public safety buildings, but that they no longer wanted to use it for that purpose. Ms. Cole continued that the Town could recoup the money back into the fund to build the facility by selling the property. Ms. Cole claimed that if one were to leave out current zoning maps, the property sat in the middle of a neighborhood of single-family homes. Ms. Cole claimed that this development came to the Town with a proposal to purchase the land if they could build a row of 20 adjoining apartments along the one side. Ms. Cole expressed that given the size of the remaining land, that the developer would undoubtedly come back to develop a similar design on the remaining pieces of the land, be it one chunk at a time. Ms. Cole stated that the developer came from the huge City of Charlotte, that this type of development was very common there, but that Valdese was a small town, with a much more rural design, and a wonderful heritage that she would like to preserve. Ms. Cole declared that in the

long run, the Town would end up with another very large apartment complex among the individual homes that met the American dream of a home of our own. Ms. Cole mentioned she had a couple of reservations, one of those reservations had to do with parking. Ms. Cole stated she realized the driveways were 10 feet wide, and that she forgot how many feet long, but that it would accommodate at least two cars, one behind the other. Ms. Cole asserted that if one had ever lived like that they knew it would not work. Ms. Cole continued that there was no provision for any guests to come, which meant they would park along the street. Ms. Cole shared her other concern, which was the Town's tax base. Ms. Cole questioned if it was really what they said they wanted to do or if it just brought another project from the tax assessments that would not be paid for years, and whatever other compromises were made to get the funding to build this. Ms. Cole asked if it even helped the local residents, like the Town's young teachers, firemen, and policemen, to find a place to live that they could afford, or were they again going to have made too much money to live at the proposed development.

Chair Huffman asked Ms. Cole to stipulate evidence to the claims she was making. Ms. Cole responded she did not know she had to bring evidence. Ms. Cole stated the Mill Town housing, in the center of Valdese, had a 10-year period in which they did not have to pay taxes. Ms. Cole stated that the design plan showed the driveways, that they were 10 feet wide, but that she did not know the length. Ms. Cole asserted that she knew that you could park two cars, one behind the other, for the people who were to live there, but that this was a constant juggle, and that this was just a fact of life, if one had ever lived this way. Ms. Cole continued that if one ever had to juggle their cars, because dad got home first, but mom got home late, and then the dad would have to go out first thing in the morning, they would have to juggle their cars. Ms. Cole discussed her comment made in regard to the public safety officers making too much money to reside in the development, referencing back to the Mill Housing right in Downtown Valdese, which was presented to solve the problem of housing the Town's young people, and that when the figures were disclosed it turned out they could not reside in the development as they made too much money. Ms. Cole stated that the previous statement was given at a Council meeting, but that she could not say at which council meeting. Ms. Cole disclosed that this was probably the only thing she could provide as she did not know she had to bring it in writing from somebody. Chair Huffman informed Ms. Cole that her time had expired.

Mr. Steve Demiter stepped forward to the podium. Mr. Demiter reported that he owned the property at 513 Pineburr Avenue Southeast in Valdese. Mr. Demiter stated he would like to start off by giving information so that the Council could understand why he had qualifications to testify. Mr. Demiter specified that he did not only own the property, but had tremendous knowledge about the property, along with the entire neighborhood and its history. Mr. Demiter noted that there was probably only one other person that had close to his level of knowledge, which was Councilman Ogle. Mr. Demiter continued that he and Mr. Ogle played, explored, and had been all over the property time and time again. Mr. Demiter asserted that the proposed development did not fit with the neighborhood. Mr. Demiter shared that seven tenths of an acre was the size of the property that his current house was on, which could mean up to 60 individuals living in a space where he had one house. Mr. Demiter noted that the previous statement should be kept in mind as the Council went through proceedings. Mr. Demiter stated the other thing he would like to address was, based upon the evidence presented, and if this evidence had changed someone must inform him, that the sale of the property was contingent upon the approval of the special use permit. Mr. Demiter asserted that to him, this was a conflict of interest, and that not only was it a conflict, it was something he did not think the Council was doing

justice to for the Citizens of Valdese. Mr. Demiter reiterated that the Council had a conflict, that the Council had a responsibility, not as individuals, but that they were serving as judge and jury to make a decision. Mr. Demiter noted that Town Attorney Swanson was getting ready to make a comment. Town Attorney Swanson asked Mr. Demiter for a second for discussion. Mr. Demiter stated that his time must stop. Town Attorney Swanson stated the time would stop.

Town Attorney Swanson asked Mr. Demiter if he was making an objection based on conflict, that the objection must be addressed. Mr. Demiter confirmed he was making that objection along with some others. Town Attorney Swanson stated that Chair Huffman would need to rule on the objection. Town Attorney Swanson clarified the objection Mr. Demiter was making, where he asked if it was based on a condition of the contract where the sale would only go through if the special use was granted. Mr. Demiter responded in the affirmative. Town Attorney Swanson clarified that the aforementioned contract was amended and that the condition was removed prior to the hearing, then asking if Mr. Demiter had any other basis for the objection. Mr. Demiter responded that he did not, but that he wished it would have been made available earlier, that the whole process had been as if the Town was keeping information secret. Mr. Demiter stated that the information which was presented would have been great for citizens to have. Town Attorney Swanson asked if Mr. Demiter had any other objections. Mr. Demiter responded that he did not, if that issue had been addressed.

Town Attorney Swanson questioned Mr. Demiter if he had received a copy of the contract, asking if he had called earlier that day. Mr. Demiter responded that he had received a copy of the contract, around the time he walked in, and that he had not had a chance to review it and discuss it with his attorney. Town Attorney Swanson stated that there was an objection and that the nature of the objection was heard, so that now the objection would need to be ruled on, once it had been ruled on Mr. Demiter could continue and his time would resume. Chair Huffman overruled the objection.

Mr. Demiter moved to discuss the traffic analysis. Mr. Demiter provided that he did not agree or disagree with the traffic analysis information that was submitted, but that it was evident that the analysis was not done by someone who drove on that road. Mr. Demiter claimed that they had not seen other safety factors, as he was addressing issues that the special use permit required. Mr. Demiter stated the special use permit required that the proposed development would not adversely affect the health/safety of persons residing and working in the neighborhood. Mr. Demiter noted if one had driven that road, which all of the Council had, that each one of them had drifted towards the inside lane, when heading west, due to the poor construction of the curve at Henry Street. Mr. Demiter mentioned that Mr. Ogle could attest to this as he was present with him when an incident had occurred. Mr. Demiter asserted that this was a safety hazard that needed to be addressed and considered before the granting of the Special Use Permit.

Mr. Demiter noted another factor that must be considered, which was the safety of individuals in that area. Mr. Demiter referred to pedestrian traffic, with vehicular traffic already being bad as it was even though there were just 500 cars. Mr. Demiter stated he would like to see the 9,000 on that road one day. Mr. Demiter continued that as bad as the traffic was, there was no safe place for individuals to walk. Mr. Demiter claimed that the sidewalk from the Pineburr Mill property must be extended down beyond the proposed location of development, to afford safety to the citizens to walk that roadway, as



there was currently no place to walk. Mr. Demiter reported that there was a fence on the subject property and that one could not walk due to it, and that certainly there needed to be something so that citizens had the opportunity to walk Pineburr.

Mr. Demiter stated that the next thing that must be considered was the site plan. Mr. Demiter asked the Council to imagine 20 driveways within a 200 foot or so distance. Mr. Demiter asserted that there needed to be additional parking for guests, as Ms. Cole addressed, as individuals could not have more than one guest car parked in their driveway. Mr. Demiter continued that the parking of guests would be across the street because there would be no place in front of their apartments, with 20 driveways, for them to park. Mr. Demiter stated that the other thing that must be considered was that once the parking was across the street, that one should consider the complaints from neighbors and individuals that were to come, and that soon there would be a no parking restriction on Pineburr Avenue. Mr. Demiter believed that the developer could, and the Town could require them to, provide and install adequate parking spaces for the proposed developments' residents and guests, so that there would not be 20 driveway entrances, there would be one (1). Mr. Demiter continued that there could be ample space for visitors to park, for cars to turn around, and that there should be landscaping on the property, instead of the property fronting directly onto Pineburr Avenue. Mr. Demiter expressed that Valdese was famous for its Downtown area and the landscaping that had been done, and that this landscaping needed to come out into the neighborhoods.

Mr. Demiter stated that while he was reviewing information, there was no information regarding the water supply or the water pressure in the notice. Mr. Demiter reported that Pineburr Mill, during its heyday, used less water than the proposed apartments or condos that would be developed in that facility when it was occupied. Mr. Demiter asserted that Pineburr Mill was not a die house, that it only used water for restrooms, water fountains, and washing hands, and that Mr. Ogle could attest to this.

Chair Huffman notified Mr. Demiter that his time had expired. Mr. Demiter responded that he thought there would be 15 minutes for and 15 minutes against. Town Attorney Swanson asked Town Clerk Lail to identify where the time limit was at. Town Clerk Lail responded that there were 5 minutes remaining for those against the proposed development.

Mr. Demiter questioned why the current Pineburr Neighborhood should suffer the loss of water pressure and so forth, due to the poor planning that had been done for the proposed development. Mr. Demiter noted that the Special Use Permit was for the proposed area only. Mr. Demiter considered that a slippery slope, that once the Special Use Permit was granted, the applicant would come back and back and back. Mr. Demiter believed it was imperative that there was a complete plan that could be viewed and approved before the Town started piecemeal zoning. Mr. Demiter expressed that piecemeal zoning would not lead to any type of contiguous improvement for the property in question, that it would only be piecemeal, as the word implied.

Mr. Demiter stated he also wanted the Town to consider that the property had a better use, that he thought that individuals from the previous Council put the current Council in this situation, and that it was a bad situation. Mr. Demiter echoed Ms. Cole's statement, that citizens in the neighborhood would have preferred to have the fire department there, which was no longer, rather than the proposed

development. Mr. Demiter asserted that the proposed development did not fit within the neighborhood.

Mr. Demiter indicated that Habitat for Humanity homes, individual residential homes, and homes which were built by local school construction would have been a better fit. Mr. Demiter claimed that everyone knew that individuals who had home ownership had a greater tendency to take care of their property than those who rented property.

Mr. Demiter stated that this was a quasi-judicial hearing, and that he believed that he had presented enough facts to the Council to raise what he would call reasonable doubt in the minds of the Council about approving the Special Use Permit. Mr. Demiter believed that if the Council moved to approve the proposed development, that they were sending a message to the Citizens of Valdese that they were wasting their time when trying to talk about improvements in their area, versus the money gained from selling property. Mr. Demiter asked the Council to consider all the facts, deny the Special Use Permit, and thanked the Council for their time.

Chair Huffman questioned if the applicant had any questions for Mr. Demiter. Town Attorney Swanson clarified that this would be the applicant's opportunity to cross-examine the witness. No questions were provided by the applicant.

Town Attorney Swanson questioned how much time was left for the against allocation. Town Clerk Lail responded that there was 2 minutes and 12 seconds remaining.

Mr. Demiter stated that he failed to submit his Exhibit. Chair Huffman asked if there were any objections to the submission of Mr. Demiter's Exhibit. Mr. Fergusson stated they would not object, but they would put forth the qualification that it only be considered for its factual components. Town Attorney Swanson asked Mr. Demiter how the Exhibit should be characterized. Mr. Demiter responded that it should be titled Oppositions and Suggestions to Improve the Safety. Town Attorney Swanson stated that the Exhibit would be identified as Exhibit Five (5), Mr. Demiter's Opposition.

Chair Huffman asked if there was anyone else present that wished to speak against the proposed development. Ms. Deborah Sigmon stepped forward to the podium. Chair Huffman asked Ms. Sigmon if she had been sworn in. Ms. Sigmon responded in the negative. Town Clerk Lail administered the oath as follows: "Do you solemnly affirm that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God." Ms. Sigmon responded in the affirmative.

Ms. Sigmon reported that she lived directly across from the property that was under consideration. Ms. Sigmon stated her biggest question, and biggest fear, was theft. Ms. Sigmon questioned how the Town would ensure that an increase in theft would not occur. Ms. Sigmon shared that her house, individually, had been hit five (5) times, that her property, her Jeep, and her driveway, had property stolen out of them. Ms. Sigmon continued stating her whole house was hit, that everything was taken out of her building, and that she could go on and on.

Ms. Sigmon expressed that she was very concerned with the increase in traffic of individuals who would be coming to visit the residents of the proposed townhomes. Ms. Sigmon stated that there was already enough traffic on the road, that enough people were walking by. Ms. Sigmon noted that even a garden flag that she had put out was stolen, that someone had walked by and taken it. Ms. Sigmon asserted that she needed to know how the Town would ensure the safety of the personal property of the residents directly around the proposed townhomes.

Ms. Sigmon indicated that she was also concerned about the proposed 38-foot height of the buildings, that she had privacy concerns as people looked out their top window. Ms. Sigmon asked if those individuals would be able to see over her fence. Ms. Sigmon concluded that this was a concern that she would like the Council to consider.

Mr. Fergusson stepped up to the podium. Town Attorney Swanson prompted Town Clerk Lail to reset the timer to allow for a five (5) minute rebuttal period. Mr. Fergusson expressed that residents' concerns were always valid, that there was a lot that was said that had validity to it, and that he was not present to try and challenge the validity, but that he did want to make a few points about things. Mr. Fergusson stated that a lot of the concerns were outside of what a developer could control and do. Mr. Fergusson continued that concerns of safety, road safety, and theft safety, were things that were outside the scope of the proposed development. Mr. Fergusson noted that what was being proposed to be built was up to 20 units. Mr. Fergusson mentioned that the eyes of residence, presence of residents, and increased road traffic, would not be random individuals, that it would be individuals that would be residents in the proposed development, and that they would not want to have their property stolen. Mr. Fergusson asserted that folks could keep an eye on people walking down the road.

Mr. Fergusson addressed concerns with the size of the units and their height, stating that this was a market rate project, that it was not the first townhome project, and that setups like this had arisen as it allowed one to get the price of homes down so that folks who could not afford to buy, could rent. Mr. Fergusson claimed that this would include teachers, other municipal employees, and folks who may not have enough income to put down a deposit on a mortgage, especially due to housing scarcity. Mr. Fergusson asserted that adding units was a supply and demand equation, that it brought housing units to the area, that it provided an opportunity, and that it reduced prices. Mr. Fergusson noted that building costs were also high, and that the efficiencies that came with the townhome setup, such as shared walls, provided efficiencies for utilities, construction, and that ultimately the cost of land acquisition, plus the cost of development, would lead to what the rental rates would be in a for market project.

Mr. Fergusson stated it was important to note that the additional traffic would be neighborhood traffic, that the proposed development was not a commercial use. Mr. Fergusson addressed concerns of what it would be like to rent the property, stating it would be a compact area of residential units, but that they would have 14 acres of vacant property adjacent to them. Mr. Fergusson shared that he grew up next to a half-undeveloped neighborhood, that the vacant area provided nature, and that it would be nice if there were children there playing, in his opinion.

Mr. Fergusson pointed out the height of 38-feet and stated that it was fairly standard to have a 40-foot height limit for residential properties. Mr. Fergusson pointed out the length of the proposed driveways was 40 feet, stating that the proposed two (2) parking spaces were each 20 feet in length. Mr. Fergusson claimed that if one had two (2) F-150s that maybe it would be 2 parking spaces, but if you had three (3) sedans that one may fit three (3), or more, cars in the proposed driveways. Mr. Fergusson stated in regard to privacy concerns, that once one scaled out the proposed site plan, taking the 40-foot length of the driveways, plus the width of the road, and viewed what the sight triangles would be, one would realize that this was no longer a concern. Mr. Fergusson continued that it was not similar to the concern of a high-rise building looming over, when one considered the amount of setback distance. Mr. Fergusson claimed that the sight lines would not change significantly between a second or a third floor.

Mr. Fergusson believed that he had presented the evidence and facts to show that the proposed development would not be detrimental to the community, that it would actually be beneficial to the community. Mr. Fergusson noted by limiting the scope and reducing the amount of construction, by only developing a small section of the property, that it was not the intent to piecemeal the property. Mr. Fergusson stated it was about what was best for the property, and that there was not always an easy solution to figure those things out, that no one could know what was happening tomorrow or ten (10) to twenty (20) years from the present day. Mr. Fergusson asserted that by taking the development one step at a time, one would not create a precedent for the rest of the parcel, which would come to the Board again for further development. Mr. Fergusson noted that at the present moment it was not known what the rest of the development scope would be, that some of the area would not be developable due to elevation and topography. Mr. Fergusson continued that the proposed development was an appropriate step, that it fit within the neighborhood, that the amount of traffic was less than the capacity, and that the result of the development would be up to 20 additional market rate units for the Town of Valdese. Mr. Fergusson identified in their outreach that market rate rental units were a dire need. Mr. Fergusson thanked the Council for their time, and stated he would be happy to answer any questions.

Chair Huffman asked if the Board had any questions. Mr. Ogle asked where the driveways would dump into, if they would dump into Pineburr, or into the other side of Pineburr. Mr. Fergusson responded they would come directly onto Pineburr Avenue Southeast into the public right-of-way. Town Attorney Swanson clarified that cars would back out of the driveways onto Pineburr. Mr. Fergusson responded in the affirmative. Town Attorney Swanson questioned if there was an alternative design to where there could be a buffer area to avoid the aforementioned issue. Mr. Kevin Brown stepped forward to the podium. Mr. Brown shared that a lot of thought had been put into the proposed site plan. Mr. Brown shared that there was a large topographical challenge to the property, stating that those who had walked the property in the past would know that there was a 30 to 40 foot drop off at the rear of the property. Mr. Brown suggested that there was no economical, or realistic, way to come up the aforementioned slope, that economically, the only access that made sense for the proposed development, was through the Pineburr side of the property.

Town Attorney Swanson stated he was not familiar with the topography and clarified that the property was slanting down towards Pineburr. Mr. Brown responded in the negative, that the slope was slanting

away from Pineburr, and that the property went down to a utility easement. Mr. Brown shared that there were large powerlines, as well as the railroad, at the rear of the property, and that it fell a minimum of 30 feet towards the rear. Mr. Brown concluded there was no real way to address the issue from the rear of the property.

Town Attorney Swanson stated from a safety perspective, he could see how cars backing out onto Pineburr could be concerning. Town Attorney Swanson asked if there was a way to push the development back to create more of a parking lot area, or even a drive-in buffer area, as to stop individuals from backing out onto Pineburr. Mr. Ogle asked if the driveways could be put behind the homes instead of dumping onto Pineburr. Mr. Fergusson referred to the proposed site plan. Mr. Fergusson stated if one were to look directly north behind the proposed development, it dropped off. Mr. Fergusson noted that there was a road that came into the left of the property, but that it was 30 feet below the proposed development. Mr. Fergusson stated that it would be an unknown, but not insignificant, cost to move dirt and engineer a way to bridge the elevation gap. Mr. Brown claimed that if one were to push the footprint of the proposed buildings back much further, that the site would then become unbuildable due to the elevation change. Mr. Fergusson expounded that one would not want to build residential on the slope down, as if one went further back, it would start to drop in elevation. Town Attorney Swanson questioned if this would restrict the developer's ability to flip the design and build the driveways at the rear of the properties as the Board had suggested. Mr. Brown responded in the affirmative. Mr. Ogle stated that there was a road behind the proposed development. Mr. Brown agreed, but claimed that topography wise, this road was intended to serve the old mill which was next door. Mr. Brown stated this road did a good job of serving the mill, but that once one came past the mill, one would be fighting, literally, an uphill battle. Mr. Brown stated that if one were to get into the economics of accessing the property from the rear, it would dissuade a developer from pursuing this avenue. Mr. Fergusson added that with market rate projects and the proposed development, having control of one's own driveway was a thing as well, that it was a feature, not a loss. Mr. Brown added that he believed that the driveway gave the proposed development a single-family attached look, versus a parking lot, which he claimed would give the proposed development more of a commercial look.

Mr. Ogle followed up on Mr. Demiter's comment and asked about the proposed developments aesthetics, asking if the developer planned any specific tree planting. Mr. Brown responded in the affirmative, that they, the developers, always did a fair amount of landscaping, and that this was not something which they were opposed to. Mr. Brown stated this typically came at the next step, when they would be working with zoning, but that they had no hesitation that they would put a good amount of landscaping within the proposed development. Town Attorney Swanson stated that the Board understood that landscaping was not a part of this process.

Mr. Fergusson noted that the Unified Development Ordinance would apply to the proposed development, that all requirements would apply to the property, and that they were not waiving any of the aforementioned requirements. Chair Huffman asked the Board if there were any further questions. None were provided.

Town Attorney Swanson stated that rebuttal must now be offered, and that as a group, anyone against the proposed development would have an additional five (5) minutes to speak collectively.

Mr. Demiter expressed that he would like those who knew where he lived to consider less than 7/10 of an acre with a potential of 60 individuals and 20 driveways in that area. Mr. Demiter prompted the Board to think of the safety of pedestrians walking within the area, noting that a sidewalk needed to be constructed. Mr. Demiter shared that there were other things that needed to be addressed. Mr. Demiter asserted that it would have been great if the presented information could have been made available to citizens in the neighborhood so they could have studied it further and have been prepared to site other facts. Mr. Demiter claimed that it seemed as if the proposed development had been held a secret. Mr. Demiter continued that earlier on, when a request was made for information, that it was not available. Mr. Demiter urged the Board to look at the presented information and to ponder about the openness of the present hearing. Mr. Demiter stated he would like the Board to consider the size of the proposed development and the number of people living in such a small area. Mr. Demiter asked if the Board could imagine 60 people living on 7/10 of an acre, with each having two cars. Mr. Demiter asserted that this did not conform to the neighborhood and that it created a difference to the neighborhood. Mr. Demiter noted that the proposed development would create safety issues as well as other problems.

Town Attorney Swanson asked, for the record, when the records were requested, since he had brought up the topic of transparency. Crystal Davis, Mr. Demiter's attorney, asked if she may clear up the aforementioned question. Town Attorney Swanson stated that Ms. Davis was welcome to come to the podium. Ms. Davis shared that when the Special Use Permit first came up, several months ago, that Mr. Demiter had kindly asked for information to be shared. Ms. Davis stated that Mr. Demiter was told he could not speak at the hearing, by whoever was in charge of planning at that present moment in time, and that she did not know this individual's name, but that she did know that she was part of the Western Piedmont Council of Governments. Ms. Davis continued that Mr. Demiter was told he could not speak, that he was told that he had to present facts, and that none of the requested information was shared. Ms. Davis disclosed that she had the aforementioned communication in writing. Ms. Davis said they had to contact Town Manager Herms, who was on vacation at the time.

Town Attorney Swanson asserted that the hearing Ms. Davis was referring to had never been opened. Ms. Davis stated that Mr. Demiter had been told that he would be provided with a copy of the contract, and that he did not receive the contract until 4:29 PM on December 8, 2025, while he was present in the Council Chambers. Town Attorney Swanson clarified that his question was asking when Mr. Demiter requested the contract. Ms. Davis stated that the request was made on December 8, 2025. Town Attorney Swanson asked what time the request was made. Mr. Demiter responded that it was sometime in the afternoon. Mr. Demiter stated he had called the Town offices and was told they did not have a copy. Town Attorney Swanson stated the contract had been produced. Ms. Davis stated at the previous hearing it took an entire week for documents to be produced, and that she could swear to this under oath. Ms. Davis asserted that transparency had been an issue by the Town and by the officers who held these positions. Town Attorney Swanson clarified that as he understood it, a copy of the contract was requested after lunch, on December 8, 2025, and that the contract was received prior to the hearing, on December 8, 2025. Mr. Demiter responded in the affirmative, that he had records of the phone call where the initial request was made to the Town of Valdese Planning Department.

Ms. Davis stated that the first time the hearing was scheduled, when there were written objections by Mr. Demiter, the efforts to gather any information were quashed. Ms. Davis asserted that there had been no transparency, that they had asked about planned unit developments, any proposals, any site plans, or any PowerPoints, and that none of the information was provided. Town Attorney Swanson asked if those requests were submitted as public records requests and then denied. Ms. Davis continued that finally when the hearing was scheduled, which she believed was August 4, 2025. Town Attorney Swanson asked if this was a yes. Ms. Davis stated that Town Attorney Swanson's question may not require a yes or no answer. Town Attorney Swanson stated it was a yes or no question. Ms. Davis continued that before the August 4, 2025 hearing, on Friday, after having asked for a week, some of the information was provided, but that Mr. Demiter was told that other information was not accessible to the public, that it existed, but was not accessible. Town Attorney Swanson reported that it would be helpful if Mr. Demiter could provide his public records requests. Ms. Davis stated the Town already had them and prompted Town Attorney Swanson to talk to his client.

Mr. Fergusson stepped forward to the podium. Mr. Fergusson stated that he would object to statements made by Mr. Demiter and Ms. Davis, that a hearing was held about conflicts. Mr. Fergusson then moved to address Mr. Ogle's previous question. Mr. Brown stepped forward to the podium. Mr. Brown noted that there was a lot of room on the site plan for additional parking, and that they would be happy to put additional parking to the right of the proposed development. Mr. Fergusson asked if the Board would be agreeable to an amendment to the proposed site plan to allow for additional parking, that maybe it could be defined objectively in the hearing. Mr. Brown disclosed that he and Mr. Fergusson sat in front of the site at approximately 4:15 PM, on December 8, 2025, and did not observe a single car while they were there. Mr. Brown believed that the traffic allowed for those types of maneuvers in and out of the property.

Town Attorney Swanson provided to the Board that they had a couple of options and noted the hearing was still open. Town Attorney Swanson stated he did not anticipate that the applicant could amend that document within the time that was left. Town Attorney Swanson provided to the Board that they could continue the hearing, giving the applicant time to make such an amendment, which allowed the applicant to come back and provide additional documentation for their consideration. Town Attorney Swanson specified the Board could also close the hearing, vote, and make their decision on the present day.

Mr. Fergusson asked if parking was allowed by right on the property. Town Attorney Swanson responded that he believed the issue went to potential safety, that this was an issue he had heard in opposition, that the parking area could create safety issues. Town Attorney Swanson stated he was not speaking for the Board, but that they may want to see what the alternate proposal would look like, and see if it addressed the concerns. Town Attorney Swanson provided that the hearing should not be closed, if the intent was to continue the hearing for the purposes of gathering additional information.

Ms. Lowman made a motion to continue the hearing, until January 5, 2026, at 5:00 PM, to give the applicant a chance to update the proposed site plan. Seconded by Mr. Ogle. The vote was unanimous and the motion carried.

Ms. Zimmerman made a motion to adjourn at 6:03 PM. Seconded by Ms. Lowman. The vote was unanimous.

**CONTINUATION OF HEARING – JANUARY 5, 2025 – 5:00 P.M.**

Chairman Keith Huffman resumed the hearing at 5:00 pm. Chair Huffman announced general guidelines which were to be followed. Chair Huffman asked individuals present to silence all mobile devices. Chair Huffman announced that those who wished to speak on the dais were to come forward to the lectern when called. Chair Huffman asserted that exhibits would be delivered to the Board as they were presented.

Chair Huffman prompted anyone who had a conflict about the property in question to disclose said conflict at that present time. No conflicts were disclosed.

Chair Huffman expressed that those who had been previously sworn in, would remain sworn in, and that those who were not must come forward at the appropriate time to be sworn in by Town Clerk Jessica Lail.

Chair Huffman provided that in December, each side had been given an initial 15 minutes to make their case, and five (5) minutes for rebuttal. Chair Huffman stated that as he understood, those time limits had been exhausted. Chair Huffman asserted that moving forward, he would ask the Board to make a motion to vote to extend time limits for both the applicant and opposition by ten (10) minutes.

Ms. Zimmerman made a motion to extend the time limit for both the applicant and opposition by ten (10) minutes. Seconded by Ms. Radabaugh.

Mr. Ogle asked for clarification in regard to the motion. Chair Huffman stated that both parties had been given 15 minutes to present at the December meeting, that those 15 minutes had been exhausted, and that to allow the Board to move forward, that a motion would have to be made to grant both parties 10 minutes to state their case and present new evidence. The vote was unanimous and the motion carried.

Chair Huffman established there was a lot to unpack at the present time, that there was a legal matter, and that he was going to defer to Town Attorney Swanson at the present moment. Town Attorney Swanson understood there was a procedural matter that had to be addressed before the hearing was resumed. Town Attorney Swanson stated that there was an objection made, based on a conflict of interest, asking whoever had made that objection to step forward to the podium.

Mr. Demiter stepped forward to the podium. Town Attorney Swanson asked Mr. Demiter to reintroduce himself. Mr. Demiter disclosed that his name was Steve Dimeter, and that he owned the property across from the Pineburr property which the hearing was about. Town Attorney Swanson shared that an email had been received, entitled proposal for the resolution of conflict of interest, asking Mr. Demiter if this was the document he had submitted. Mr. Demiter responded in the



affirmative. Mr. Demiter disclosed that the reason he had sent the document was that he did not know what the procedure of the hearing would be, that he did not know if he would have an opportunity to present the document, and that this was the reason he had forwarded it to the Council. Town Attorney Swanson clarified that along with the document were two (2) email attachments. Mr. Demiter responded in the affirmative, that there were two emails copies of documents he had received through the Freedom of Information Act. Town Attorney Swanson asked if a copy had been provided to the applicant. Mr. Demiter responded that he did not know.

Town Attorney Swanson assumed that Mr. Demiter would want to submit his objection into the record. Mr. Demiter stated that he planned to. Town Attorney Swanson indicated that it would need to be presented to the Board for Chair Huffman's consideration, which was subject to objection, and that he assumed that the applicant and their attorney would want an opportunity to read the objection before Mr. Demiter presented his argument and before the applicant presented their rebuttal. Town Attorney Swanson asked Mr. Demiter to present his objection into the record. Mr. Demiter stated he had already given copies to Town Clerk Lail for distribution and for evidence. Exhibit Six (6), Proposal for the Resolution of Conflict of Interest, was submitted.

Town Attorney Swanson stated that before this document was to be considered by the Chair, that it needed to be known if there was any objection by the applicant. Town Attorney Swanson gave the applicant and their attorney a moment to study the document. Mr. Demiter asked if he could take a seat. Town Attorney Swanson responded in the affirmative.

Town Attorney Swanson asked Mr. Fergusson if he had finished reviewing the document. Mr. Fergusson responded that there were a lot of pages. Mr. Fergusson shared that there were a broad range of evidence rules for special use hearings. Mr. Fergusson stated that they would object to the document. Mr. Fergusson identified that much of the document seemed to be about the purchase of the property, which was not what the hearing was for. Mr. Fergusson continued that it was not relevant to the special use hearing and not relevant to what the applicant had applied for. Mr. Fergusson stated they would object on that, that he did not believe that it was the appropriate avenue for the conversation. Mr. Fergusson disclosed that they did not receive notice of this document in a timely manner, that it was his first time reviewing the document, and that it was roughly similar to the things that had been mentioned in the previous hearing. Mr. Fergusson reiterated that the document did not have to do with the subject matter of the hearing, so it would be tough to address some of the claims made. Mr. Fergusson indicated that there seemed to be a lot of conjecture in the document, that usually a special use hearing was limited to factual evidence and testimony from experts, and that there seemed to be a lot of opinion driven content in the document. Mr. Fergusson noted that the document was incorrectly referring to contracts that were not in existence.

Town Attorney Swanson summarized that there was a motion, noting an objection, based on a conflict of interest, and that there was an objection to the motion that had been presented. Town Attorney Swanson continued that the Board would have an opportunity to decide whether to sustain or overrule the presented objection.

Chair Huffman stated that the objection had been overruled.

Town Attorney Swanson provided that the hearing would now proceed, allowing both sides to present on the issue of conflict. Town Attorney Swanson noted that since it was Mr. Demiter's objection, he would be heard first.

Mr. Demiter thanked the Mayor and Council Members for their time. Mr. Demiter disclosed that he had submitted a proposal for the resolution of the conflict of interest in question. Mr. Demiter announced he would like to begin by giving a definition, which was fact and not made up, of a conflict of interest. Mr. Demiter read the following:

"A conflict of interest is a situation in which a person or organization is involved in multiple interests, financial or otherwise, and serving one interest could involve working against another. Typically, this relates to situations in which the personal interest of an individual or organization might adversely affect a duty owed to make decisions for the benefit of a third party. The interest is a commitment, obligation, duty or goal associated with a specific social role or practice. By definition a conflict of interest occurs if, within a particular decision making context, an individual, or organization, is subject to two coexisting interests that are in direct conflict with each other."

Mr. Demiter stated that the two interests were that the Town owned the property, and that the Town was making a decision about the property, which was the reason that the buyer had not yet purchased the property at the present time. Mr. Demiter wished to submit the following information: a purchase agreement, which the town had a copy of, the amendment to the purchase agreement, which the Town also had a copy of, the email exchanges of June 4 and 5, 2025, between individuals Tom Johnson, Ashley Young, Bo Weichel, with copies sent to Brad Hatfield, Kevin Brown, Jessica Lail, and Todd Herms, regarding the Pineburr purchase. Mr. Demiter noted that this exchange was attached. Mr. Demiter looked at the email exchange between Russell Fergusson and Tim Swanson, with copies sent to Todd Herms, Jessica Lail, and Kevin Brown, dated October 2, 2025 and September 11, 2025, regarding the 800 Pineburr Special Use Permit presentation and source for housing data. Mr. Demiter stated that the definition of conflict of interest was presented in the document.

Mr. Demiter asserted that based on the evidence submitted, there was an attempt to obscure the Town Council's conflict of interest by technically removing the contingency from the first proposed contract to purchase the property, which was that the special use permit would have to be approved in order for the sale to go through. Mr. Demiter expressed that the conflict of interest was perpetuated in full knowledge of the Town Attorney, as the only reason to extend the due diligence period, until January 15, 2026, was to give more time to the Town Council to hold the hearing on the Special Use Permit. Mr. Demiter noted that in other words, the only reason the buyer had asked for the extension to the due diligence period was to allow for more time for the Town Council to conduct the Special Use Hearing with the explicit conditional language removed from the contract. Mr. Demiter claimed that saying the aforementioned charade had cured the conflict of interest was ridiculous.

Mr. Demiter shared that further questions which may be asked of the buyer, if answered truthfully, may support the conflict of interest issue. Mr. Demiter stated that the buyer has had six (6) months to conduct their due diligence of the Pineburr property, and that despite his request, the Town Manager's

office had not provided him with any information about what the buyers had done during this due diligence period, except that they had asked for an extension of the due diligence period. Mr. Demiter disclosed that he had asked how to have access to the Pineburr property, and that he did not receive an answer, but that he did receive other information that he had made the request for.

Mr. Demiter then disclosed the following questions he had of the buyer: What had the buyer done during the examination period and what was left to be done during the examination period. Mr. Demiter recounted that the examination period began about or on June 25, 2025 and that it ended on January 15, 2026, which was approximately 10 days for the present day. Mr. Demiter asked why the applicant preferred, as indicated by emails, to use the old rules, rather than the new ones, which were to go into effect on January 1, 2026, and that the Town Council would be hearing a presentation at its regular meeting in regard to. Mr. Demiter asked if the buyer would be prepared to immediately move forward with the purchase of the property from the Town of Valdese, on January 15, 2026, irrespective of the special use permit being approved or not.

Mr. Demiter summarized that with that information, he was submitting the following proposal and resolution, and that this was an attempt to do what he thought was not only best for the neighborhood, but also best for the Town Council and the Citizens of Valdese. Mr. Demiter shared that in an effort to resolve the conflict of interest, regarding the special use permit, that the following proposal was offered for resolution. Mr. Demiter asserted that prior to any further hearing, deliberation, and decision, by the Town Council regarding the granting of a special use permit, because of the conflict of interest issue, that a written opinion regarding the conflict of interest be obtained from the Local Government Commission (LGC), the League of Municipalities (NCLM), and the UNC School of Government (UNC SOG). Mr. Demiter continued that the conflict of interest must be investigated by these independent agencies, and their council, and not any attorney involved with the current Special Use Application. Mr. Demiter believed that all of the aforementioned process would be done to ensure openness for not only those that were present at the meeting, but for all citizens. Mr. Demiter wished for the aforementioned agencies to investigate and interview all parties involved, and to review all evidence presented in the quasi-judicial public hearing, regarding the conflict of interest, between the Town of Valdese and the owner of the Pineburr property, including any financial benefits generated by the Town resulting from their conflicts of interests and that no extension of the examination period be granted for the sale in the future. Mr. Demiter expressed that if such written opinion from the LGC, the NCLM, or the UNC SOG, showed that a conflict of interest existed, that the LGC shall prepare guidelines, and a policy for adoption by the Town Council, so that any further question of a conflict of interest in a similar situation, be resolved by the following guidelines and policies as recommended by the LGC.

Mr. Demiter expressed that it was his opinion that inaction on the aforementioned resolution to the conflict of interest question by the Town Council would only strengthen the case that a fair and independent decision could not be made by the Town Council. Mr. Demiter concluded that this was his proposal and that the Council had the attached documents.

Mr. Fergusson stepped forward to the podium. Mr. Fergusson shared that he was reading the aforementioned document for the first time. Mr. Fergusson asserted that he was having trouble

following what the substance of the objection was. Mr. Fergusson noted that it seemed to start with the assumption that there was a conflict present. Mr. Fergusson asserted that no conflict was present, that the Town Council made decisions for the Town, and that this was the way it worked. Mr. Fergusson expressed that North Carolina General Statutes laid out a verbose and lengthy code of laws about how land use was applied in special use hearings, and that none of what he had heard was relevant to that code and that it tended to rewrite that code. Mr. Fergusson stated that he loved the UNC SOG, that he had friends that worked there, and that he was sure they would provide something instructive, but that he could provide the same from his experience. Mr. Fergusson shared that all over Burke County and the State of North Carolina cities and municipalities owned property and that they had to regulate them as they were the regulator authority for planning, land use, code enforcement, law enforcement, etc. Mr. Fergusson asserted that these were not conflicts, they were duties of the state, that it was part of the Council's essential functions to deal with property. Mr. Fergusson stated that the Special Use Hearing was about the use of the Pineburr property, that the use would run with the land, and that the hearing was not about the purchase of the property.

Mr. Fergusson noted there was not a conflict and that this had been discussed previously at two (2) open hearings. Mr. Fergusson then questioned what the standard was for how the Town dealt with property, as he did not hear that. Mr. Fergusson stated that what he heard was any time there was a discussion about land use, one would wait however many months and delay the petitioner. Mr. Fergusson believed that the applicant has rights under the special use hearing framework, that the applicant had followed the rules, made a proper application, and that the application was actually supported by the Planning Department and the regional planning authority which was utilized by the Town. Mr. Fergusson continued that he was not sure how the Town would deal with any of the property that they owned under the standard where one assumes a conflict exists because the Town was there. Mr. Fergusson asserted that this was literally the elected duty of the Council, to determine and to make rulings about what should be done with Town property. Mr. Fergusson stated that he did not hear a standard that was workable and made logical sense, and that he did not hear any facts that led to the determination that there was a conflict of interest. Mr. Fergusson indicated that he would not get into the property discussion, as even though his name was mentioned in some thank you emails, he was not a part of that negotiation. Mr. Fergusson provided that he and the applicant would be happy to answer further questions, but wanted to say that the predominant part of his work was doing land use, and working with towns, cities, and planning departments, and that purchasers of property needed to know what they could do with said property before they bought it. Mr. Fergusson asserted that there was not a universe in which people speculatively did those things. Mr. Fergusson then addressed the question of due diligence, stating that a site plan had been seen, that the site plan was stamped by engineers, and that a fair amount of work and planning went into the site plan. Mr. Fergusson concluded that this was his third (3) visit to the Council Chambers and that he and the applicants had been working to obtain a positive result from the Board.

Town Attorney Swanson stated that since the objection of conflict related to the entire voting body, the Board would have to vote as a body. Town Attorney Swanson asserted that this would be treated as if there was currently a motion to disqualify the whole body from making a decision, based on a conflict of interest. Town Attorney Swanson reported that a decision must be made as to whether or not the motion to disqualify would be sustained or overruled, with the first step being to make a

motion to either sustain, or in other words, to find there was a conflict, or to overrule, which would mean there was no conflict. Town Attorney Swanson continued that the aforementioned process would be followed by a second, and then a vote. Town Attorney Swanson asked if there were any questions.

Ms. Lowman asked Town Attorney Swanson to repeat the process. Town Attorney Swanson stated there was a motion to disqualify on the floor, identifying that the Board, as a body, had a conflict of interest. Town Attorney Swanson indicated that there must either be a motion to sustain the motion, or to overrule the motion, which would be followed by a second and a vote. Ms. Ward asked if there was a conflict, would it then go on to the vote about the UDO. Town Attorney Swanson stated that the matter of the UDO was at the Councils later, regular, meeting, and had nothing to do with the present hearing. Town Attorney Swanson asserted that if a conflict was found, that the body could no longer proceed with the hearing, and the matter would be over. Mr. Ogle stated that he understood what a conflict of interest was, but did not understand what the conflict of interest was in the present hearing. Town Attorney Swanson stated he did not want to recharacterize any arguments, that, as he understood it, the argument against the Board proceeding was that they both own the property and were making a decision about the special use permit, and that the argument for the Board was that there was always a possibility that the Town would own property and as a governing body, have to decide on a special use permit.

Ms. Zimmerman made a motion to overrule the objection and stated that there was no conflict of interest present. Seconded by Ms. Ward.

Ms. Zimmerman stated that their job was to make decisions, that she did not know how one got around that, and that a result she believed the Board had to proceed.

The vote was unanimous to overrule the objection and the motion carried.

Town Attorney Swanson stated that Chair Huffman may proceed with the hearing and assumed he would want to start with the proponents and give them their ten (10) minutes. Chair Huffman responded in the affirmative.

Mr. Fergusson stepped forward to the Podium. Mr. Fergusson recounted that he had provided a presentation at the previous hearing, where they had offered the condition of additional guest parking, and that he would now like to submit for the record a revised site plan which reflected the addition of a guest parking area. Mr. Fergusson shared that the parking area which was outlined was approximate. Mr. Fergusson moved to submit Exhibit Seven (7), the revised site plan, to the record. The exhibit was submitted without objection.

Mr. Fergusson presented the revised site plan. Mr. Fergusson recounted that the standard for the meeting was that the proposed development did not do negative things to the community, did not create safety hazards, and so on. Mr. Fergusson asserted that the proposed development did not create the problems which were set forth in the ordinance. Mr. Fergusson identified that the proposed

development was a residential development for market rate housing, and was a benefit to the community.

Mr. Fergusson highlighted the notes on the site plan. Mr. Fergusson identified the demarcation of a guest parking area, which was to the right of the housing area on the proposed site plan, where he believed the topography would allow for guest parking, also presenting where the approximate access area for this parking area would be.

Mr. Fergusson reminded those present that the proposed development would still have to go through permitting and building approvals before it was built. Mr. Fergusson shared that there were a few changes made to the site plan, due to the addition of the parking area. Mr. Fergusson noted that they had changed the wording to say up to 20 units, that the development may be smaller than 20 units, that the requirements for parking spaces were still there, and that the height restriction was still there and had not changed. Mr. Fergusson stated that they changed the lot coverage as well as the approximate land disturbance due to the addition of the guest parking area. Mr. Fergusson noted that these were approximate numbers, as they did not know how much land would be disturbed until they started grading work.

Mr. Fergusson noted that there was one (1) speaker that needed to be sworn in, which was Ms. Jennifer Hudson, who was going to speak on behalf of the petitioner. Mr. Fergusson reported that as there were questions about property management at the last hearing, Ms. Hudson, who would be the property manager of the proposed development, was present to speak to that matter.

Town Clerk Jessica Lail prompted Ms. Hudson to raise her right hand and administered the oath as follows: "Do you solemnly affirm that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God." Ms. Hudson responded in the affirmative.

Ms. Hudson reported she lived at 412 Faet Street in Valdese, that she was a Realtor, Property Manager, and Chief Relationship Officer for Breeden Real Estate. Ms. Hudson stated that she would be responsible for the management of the proposed development if it were to be approved. Ms. Hudson stated she was speaking in favor of the applicant, that she would present her testimony in an expert capacity, and that she would provide supporting evidence to support the Special Use Permit.

Ms. Hudson disclosed that her firm managed approximately 1,000 doors, which included single-family homes, townhomes, multi-family communities, and commercial properties in Burke and 10 other surrounding counties. Ms. Hudson stated that her firm had established operational standards and applicant screening criteria, which related to safety, health, and maintenance. Ms. Hudson expressed that the key to proper management started with finding excellent tenants.

Ms. Hudson stated she would like to submit to the record Exhibit Eight (8), Tenant Screening Criteria Currently Enforced by Breeden Real Estate. Chair Huffman asked if there were any objections. None were provided.

Ms. Hudson disclosed that Exhibit Eight (8) was a summary of Breeden Real Estate's applicant screening criteria. Ms. Hudson identified key items to note, which were income requirements, along with verification of that income, credit score standards, criminal background checks, rental history verification, and eviction and rental collections history. Ms. Hudson expressed that Breeden Real Estate took every precaution which was legally available to them, to make sure they placed excellent tenants in their properties, not just the property that was being discussed, but every property.

Ms. Hudson shared that once tenants were placed, their focus switched to compliance. Ms. Hudson presented Exhibit Nine (9), Property Management Operational Standards, for the record. Chair Huffman asked if there were any objections. None were provided.

Ms. Hudson identified that this document contained a summary of Breeden Real Estate's management standards and services. Ms. Hudson acknowledged that it was not a complete list, that it was just a summary for her presentation. Ms. Hudson stated that these standards and services included but were not limited to weekly external inspections for their multi-family communities, a 24-hour emergency maintenance response, enforcement of occupancy limits, enforced exterior standards, identification of lease violations and corrective actions and/or penalties, and documented procedures for addressing habitability concerns. Ms. Hudson asserted that these items helped reduce deterioration of the property, that they protected adjacent properties, that they protected public infrastructure, and that they helped maintain a sound and peaceful community.

Ms. Hudson stated that Breeden Real Estate currently managed two (2) multi-family properties in Valdese, along with various duplexes, and other single-family residences. Ms. Hudson noted that if everyone were able to take a field trip, she would submit this as evidence, but that was not possible.

Ms. Hudson pointed out two (2) prominent communities, which she suggested were driven by often, the Rock Creek Apartments, which had just been revitalized by an investor, and the Abbey on Church Street. Ms. Hudson asserted that a simple drive-by of these properties would indicate Breeden Real Estate's ability to manage properties professionally and successfully. Ms. Hudson expounded that based on her experience managing similar developments, this type of use did not create an increased burden on public services beyond what the typical residential use was when operated under professional management. Ms. Hudson thanked the Board for their time.

Mr. Fergusson wished to characterize the comments that had just been given. Mr. Fergusson identified these were concerns that came up in the previous hearing, that they were mostly about security concerns. Mr. Fergusson added that properties managers must have the ability to amend their rules, which was why they were presented in summary.

Mr. Fergusson summarized that this was a good project, that it brought 20 units at market rate to Valdese. Mr. Fergusson recounted that there was a housing shortage for fair market rentals generally across the whole County, the State of North Carolina, and in Burke County, and that he believed the proposed development added value. Mr. Fergusson looked towards the security of the parcel, generally discussing how large vacant parcels were not great for security, but that having residents and neighbors that lived and cared about their belongings and property helped to bring security and

belonging. Mr. Fergusson thanked the Board for their time and stated he was open to questions. None were provided.

Chair Huffman asked if opposing parties had any comments. Mr. Demiter asserted that he did, that the comments of the attorney did not contain only facts. Town Attorney Swanson clarified that Chair Huffman intended to ask if anyone had any questions of the applicant, based on the evidence that was presented. Mr. Demiter stated he had not had a chance to review it. Town Attorney Swanson reported that the opposition could take a few minutes to review the documents submitted by Mr. Fergusson. Town Attorney Swanson stated that the only people that could ask questions of the applicant were parties to the proceeding, and that they had to have standing to be a party.

Mr. Demiter stepped forward to the podium. Mr. Demiter shared that he appreciated the opportunity to review and address the solution which was being presented. Mr. Demiter acknowledged that the presented solution consisted of an adjacent parking area, but that it did not connect the individual driveways, and did not give individuals an alternative to using their driveway. Mr. Demiter asked if the proposed solution would consist of multiple entrances onto Pineburr, rather than a parking lot and a single entrance on to Pineburr. Mr. Fergusson responded in the affirmative, that the measurements were approximate and general, as they were not sure about the implications of the Town's zoning ordinance in relation to the parking area. Mr. Demiter asked if sidewalks would be connecting to the proposed development. Mr. Fergusson stated that there could be. Mr. Demiter stated that this was all he had seen at the present moment.

Town Attorney Swanson stated that this was just the cross-examination of the applicant's case and that next there would be an opportunity for those who wanted to speak in opposition of the applicant.

Ms. Cole stepped to the podium. Ms. Cole reported that she had lived in Valdese for the past 31 years, and that she used Pineburr Avenue three (3) to four (4) times a week, in both directions. Ms. Cole asked if 21 driveways would still be dumped onto Pineburr.

Town Attorney Swanson asked Ms. Cole if she was an adjoining property owner. Ms. Cole responded that she was not an adjoining property owner, but that she used the street. Town Attorney Swanson clarified that with the present proceeding, in order to ask questions of the other side, one had to have standing, which meant you had to own property which adjoined. Town Attorney Swanson continued that Ms. Cole could present evidence, if there was anything she wanted the Board to consider. Ms. Cole stated the presented site plan was the only evidence she had, that this site plan showed all the separate driveways entering onto the street. Ms. Cole stated if she was interpreting the site plan correctly, that was the number one (1) safety hazard.

Town Attorney Swanson asked if anyone else wanted to speak in opposition. Ms. Stephens stepped forward to the podium. Chair Huffman noted that Ms. Stephens must be sworn in. Town Clerk Lail administered the oath as follows: "Do you solemnly affirm that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth, so help you God." Ms. Stephens responded in the affirmative.



Ms. Stephens reported that she lived at 505 Pineburr Avenue Southeast, and that her property would be directly across from the proposed townhomes. Ms. Stephens identified that at the previous meeting, individuals stood up and discussed the positives and negatives of the proposed development, and if that was what the Board wanted her to speak about. Town Attorney Swanson indicated that this was Ms. Stephens opportunity to present whatever she would like to the Board. Ms. Stephens started with the positives. Ms. Stephens stated that she did see a positive with the townhomes, as they were market rate, that individuals who resided there would be paying car taxes, they would be shopping locally, they would have their car maintained, and that these were benefits. Ms. Stephens moved to discuss the negatives. Ms. Stephens heard safety concerns mentioned at the previous meeting, she stated her study was longitudinal, that she had lived at the property for 34 years, and that this was her study. Ms. Stephens asserted that she had a problem with cars backing out onto Pineburr. Ms. Stephens gave the example that UPS, FedEx, and USPS all came into her driveway, and that they then turned around so they could pull out onto Pineburr, not back out.

Ms. Stephens stated she had a question about the study, she wondered if the study was a one-year data set, or a multiple year data set. Town Attorney Swanson asked which study Ms. Stephens was referring to. Ms. Stephens reported that she was discussing the traffic study. Town Attorney Swanson believed this study was prepared by Staff, so that they could potentially speak to that. Ms. Stephens questioned who did the analysis, and noted that Town Attorney Swanson had just answered that question. Town Attorney Swanson clarified that Staff presented it to the Board at the previous meeting. Ms. Stephens asked if there could be a compromise with the parking, so that it could be a little safer coming out onto Pineburr.

Ms. Stephens shared that she had looked at all townhomes and apartments within the Town, and that none of them had parking which went backwards. Ms. Stephens identified the Pineburr Apartments, Lydia Avenue, Aurora, Tron, Pine Crossing, the Meadows, the Village Apartments, and Agape, noting that none of those places had one going backwards. Ms. Stephens stated she was finished, that her list would have gone longer, but that there was a reason none of the aforementioned properties wanted to enter the roadway backwards.

Town Attorney Swanson questioned how much time was left for opposition. Mr. Rapp responded that there was approximately five and a half (5.5) minutes remaining. Town Attorney Swanson identified that Ms. Stephens had a question, and that her question would be addressed. Town Attorney Swanson asked if there was anyone else on the opposition who wished to provide comments. None were provided.

Town Attorney Swanson asked Mr. Rapp to speak to the traffic study. Mr. Rapp disclosed that the Institute of Transportation Engineers (ITE) was used to provide the daily trip rate generated per each dwelling unit. Mr. Rapp reported that the data provided was average annual data, which consisted of a rolling time frame measured 365 days from the past of when the data was pulled. Mr. Rapp continued that the data was pulled from vehicle probe data, which was widely available and used across the transportation planning field. Mr. Rapp stated that the capacity standards were prepared by the North Carolina Department of Transportation (NCDOT).

Town Attorney Swanson believed that everyone speaking for, and in opposition of, the proposed development had an opportunity to speak. Town Attorney Swanson indicated that before the closing of the hearing, the Board would have the opportunity to ask questions about the evidence they had heard. None were provided.

Chair Huffman declared the hearing closed at 5:51 pm.

Chair Huffman entertained a motion on the Board's decision.

Town Attorney Swanson stated this would either be a motion to approve the Special Use Permit, or a motion to deny the Special Use Permit, and that following that there would be a second and discussion.

Ms. Zimmerman made a motion to approve the Special Use Permit. Seconded by Ms. Radabaugh.

Town Attorney Swanson indicated to the Board that they had to evaluate what they had just heard and engage in discussion as to why they were in favor of issuing the Special Use Permit. Town Attorney Swanson brought the Board's attention back to the standard set out by the code of ordinances, stating a special use permit shall be granted if it would not adversely affect the health or safety of persons who resided or worked in the neighborhood of the proposed use and would not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Town Attorney Swanson provided that the Board had heard information on traffic impacts and safety concerns and that they needed to discuss what they had heard and how it fit within the aforementioned standard.

Mr. Ogle shared that back in December he had mentioned facts about parking and the driveways which were proposed to connect to Pineburr individually. Mr. Ogle shared he had also heard the same concerns from Mr. Demiter and Ms. Stephens, and that he thought this was a real concern that everyone should have. Mr. Ogle asked if there could be a compromise, a separate site plan, to get all traffic to go through a single entrance. Mr. Ogle stated he did not know if this was feasible, but that it was a big thing he had heard that night from both Mr. Demiter and Ms. Stephens. Mr. Ogle noted that the safety of the Town's Citizens should be considered. Mr. Ogle mentioned that Ms. Stephens provided information about UPS, FedEx, and USPS exiting her driveway, that if they were to exit at the same time as a resident leaving out of the proposed development, one was looking for an accident. Mr. Ogle identified that there was a large curve in the road on Pineburr near Eldred, which was also a concern. Mr. Ogle stated he was for building the apartments, that he thought the Town needed rental space, but asked if there could be a compromise on the parking emptying directly onto Pineburr.

Town Attorney Swanson stated that compromises could no longer be discussed, that the Board had to decide whether or not the applicant had met the criteria for the special use. Town Attorney Swanson disclosed that the criteria primarily dealt with safety, and that the Board had heard a lot in information on that. Ms. Ward asked if NCDOT would evaluate the area, after the completion of the proposed development, to identify if speed bumps were necessary. Town Attorney Swanson asserted that the time for asking questions was over.

Ms. Zimmerman concluded that the application was completed and thorough. Ms. Zimmerman noted that comments and concerns had been heard from citizens. Ms. Zimmerman believed that some of the comments were emotionally driven, which she understood. Ms. Zimmerman did not believe that all the cars in the proposed development were going to come out of their driveway at the same time of the day. Ms. Zimmerman identified that she did not believe this would pose significant risk. Ms. Zimmerman stated that the safety concern had been addressed through facts and evidence from experts within the area, as presented by staff and the applicant. Ms. Zimmerman asserted that she did not believe the proposed development would adversely affect the health and safety of those in the area.

The vote was unanimous and the motion carried.

Chair Huffman stated that the application had been approved, that he extended his thank you to all that those were present, and that he was now asking for a motion to adjourn.

At 5:58 pm, a motion to adjourn was made by Ms. Zimmerman. Seconded by Ms. Lowman. The vote was unanimous.

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Town Clerk

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Mayor

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