



# TOWN OF ELIZABETH

PATRICK G. DAVIDSON, TOWN ADMINISTRATOR

TO: Honorable Mayor, Mayor Pro Tem, and Members of the Board of Trustees  
FROM: Patrick Davidson, Town Administrator  
DATED: August 27, 2024  
SUBJECT: Zoning Change Application for Elizabeth 86/Legacy Village PUD

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## BACKGROUND

In 2018, the Board of Trustees approved the Elizabeth 86/Legacy Village Planned Unit Development (PUD). This PUD contains one, 5.2-acre parcel, located at the southwest corner of Highway 86 and Hinds Street in Elizabeth. The tract is zoned Commercial Mixed Use (CMU) and the owner has sought to rezone it as Regional Commercial (RC). The referral agencies provided no objections and Staff recommended approval without limitation.

The Commission voted against the amendment [0 in favor, 5 opposed] for reasons discussed herein. During the course of deliberations, positions and comments were made outside of the requirements for rezoning, which may reasonably be viewed as prejudicial to the applicant. The purpose of this memorandum is to identify Staff's concerns and provide a more developed analysis for the Board of Trustees prior to action.

## ANALYSIS

The Elizabeth Municipal Code (EMC) provides the specific criteria to be applied to a zoning amendment. Section 16-1-240(f) states:

f: Approval considerations. The Planning Commission and the Board of Trustees, in review of rezoning requests, shall consider the following factors:

1. A need exists for such proposal.
2. The particular parcel of ground is indeed the correct site for the proposed development.
3. There has been an error in the original zoning; OR
4. There have been significant changes in the areas to warrant a zoning change.
5. Adequate circulation exists, and traffic movement would not be impeded by development; AND
6. Additional municipal service costs will not be incurred, which the Town is not prepared to meet.
7. There are minimal environmental impacts or impacts that can be mitigated.
8. The proposal is consistent with the Town Master Plan maps, goals and policies.
9. There is adequate waste and sewage disposal, water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed use.

See, Elizabeth Municipal Code §16-1-240(f). [Emphasis added for clarity].



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The process of rezoning is quasi-judicial in nature, as it applies to a specific individual, applicant, or property owner, rather than broader based policy. The Planning Commission is constrained and confined to applying §16-1-240(f) to the specific facts and factors placed before them. As this matter is referred to by the Board of Trustees, the Board is then bound to ensure that the decisions of the Planning Commission were not arbitrary, capricious, an abuse of discretion, or motivated by other factors.

During the Planning Commission's deliberations, matters were discussed that may be viewed as outside the scope of Municipal Code §16-1-240(f). Specific concerns include:

**Inferences to Disconnection [De-annexation].** The Commission discussed whether the applicant could disconnect from the Town should the amendment not be approved. The Commission discussed the disconnection of Elizabeth West and its relationship to the applicant. The development issues are unrelated and is not a factor for consideration under §16-1-240(f).

**Advising the Applicant to Build Elsewhere.** The applicant requires a zoning change to allow for emergency services at a medical office and the sale of fuel at the convenience store to be located at this site. The Commission suggested the business plans be modified to alleviate any zoning questions. The Commission proposed other locations outside of the Town of Elizabeth for these businesses. This is not a factor for consideration under §16-1-240(f).

**Demand for Building Plans Before Approval.** The Planning Commission required the applicant to provide specific site plans and/or building plans prior to the approval of the zoning change. This requirement is outside the requirements of §16-1-240(f).

**Environmental Concerns.** The Planning Commission discussed subjective concerns that may exist with having a fuel station in relative proximity to Gold Creek. While §16-1-240(f)(7) does address environmental concerns, the rezoning in and of itself does not pose any environmental challenges.

**Delays in Development.** The Commission discussed concerns with "delays in the development" between the 2018 approval of the PUD and the application for the zoning amendment. There are no predetermined timelines in which a zoning amendment may take place. Additionally, §16-1-240(f)(3) and (4) discuss "significant changes in the area" as sufficient to potentially warrant a zoning amendment. Such language would indicate delays may form the actual basis for zoning amendments. Regardless, the timing of an amendment, in and of itself, is not a basis for a denial under EMC §16-1-240(f)(4).

**Prejudgment of Authorized Uses.** During the discussions, the Planning Commission stated that certain types of development would be "voted down" in the future. While acting in its quasi-judicial capacity, the Commission cannot propose in advance what may or may not be allowed in the Town of Elizabeth.



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**Subjective Assessment of the Town's Needs.** The Commission discussed whether there was a need for a convenience store and medical facility in Elizabeth. The Commission's subjective analysis of the Town's needs is not a factor under EMC §16-1-240(f).

**Adjacent Development of Convenience Store [Gas Station] Next to Medical Clinic.** Another topic of discussion, which appears to have perhaps had an impact on the vote, was how development occurs in other locations. Error could be assigned to discussions of what has been subjectively viewed in other communities and how it could be interpreted for the Town of Elizabeth.

**Discussion of Other Potential Medical Developments.** Members of the Planning Commission referenced property located at the corner of HWY86 and CR17. The analysis of other locations for development is beyond the scope of EMC §16-1-240(f) and as such the decision process appears to have taken irrelevant information into consideration to the potential detriment of the applicant.

**Ex Parte Contacts.** Lastly, it is unclear if members of the Commission had conversations *with members of the community* regarding the application. In its quasi-judicial role, the individual members of the Commission are to rely solely on the information presented to them and the Elizabeth Municipal Code in reaching a decision. To the extent *any* discussions were held outside of this specific meeting, those matters should have been disclosed.

## **STAFF RECOMMENDATION**

As the initial requirements of §16-1-240(f) are believed to have been met by the applicant, Community Development Staff would recommend that the zoning change be approved as stated. Any concerns previously raised by the Planning Commission were either premature or in error.