

**AGENDA FOR THE
ENGLEWOOD CITY COUNCIL
STUDY SESSION
MONDAY, NOVEMBER 3, 2014
HAMPDEN HALL**

I. Executive Session

At **5:30 p.m.** in the City Council Conference Room, City Council will discuss a personnel matter pursuant to C.R.S. 24-6-402-4(f)(I).

II. Hash Oil Discussion – 6:00 p.m.

Police Chief John Collins, Sergeant Kelly Martin and Deputy City Clerk Kerry Bush will be present to discuss hash oil.

III. Englewood Small Business Development Corporation – 6:20 p.m.

Community Development Director Alan White and Economic Development Manager Darren Hollingsworth will be present to report on the status and options for the Englewood Small Business Development Corporation.

IV. Bulk Plane Regulation Amendments – 6:40 p.m.

Community Development Director Alan White and Planner II Brook Bell will be present to discuss proposed Bulk Plane Regulation Amendments.

V. Assessment of Tentative Study Session Topics – 7:10 p.m.

Council will discuss the current list of tentative Study Session topics.

VI. City Manager's Choice.

VII. City Attorney's Choice.

MEMORANDUM

TO: Chief Collins
FROM: Sergeant Martin, Mutli-Jurisdictional Arapahoe County Impact Team
DATE: October 9, 2014
SUBJECT: Follow-up to Council Request

Council request: 14-197
Assigned to: Sergeant Martin
Date Assigned: October 9, 2014

Information regarding Hash oil and hash oil hazards

Comments were received via the Nextdoor social network expressing concerns regarding alleged manufacturing of hash oil at 3753 South Lincoln Street. The Multi-Jurisdictional Arapahoe County Impact Team is aware of 3753 S. Lincoln Street and has an active investigation into this residence. On October 8, 2014, investigators responded to that location and contacted the residents. They were not currently manufacturing butane hash oil but evidence suggests that they may have in the recent past. The investigation is ongoing. Additionally, the Englewood IMPACT Team is working with the owner of the home in trying to get compliance in this matter, as well as meeting with neighbors in the area.

Hash oil is the commonly used and manufactured by marijuana enthusiasts. Butane hash oil (BHO) is concentrated THC extracted from marijuana. Butane is a colorless gas with a faint petroleum-like odor. It is shipped as a liquefied gas under its vapor pressure. It is easily ignited and its vapors are heavier than air. Under prolonged exposure to fire or intense heat the containers may rupture violently. It is used as a fuel, an aerosol propellant, in cigarette lighters, and to make other chemicals.

Increased butane hash oil labs are popping up in marijuana tolerant states. Labs are common in the same locations as marijuana grows, commercial operations, in houses, and outside houses and facilities. The manufacturing of hash butane hash oil is illegal unless licensed by the state as a dispensary and becomes a crime as soon as an individual takes the first step in the

production process by placing the marijuana into the tube and introducing the butane. This is a class 3 drug felony. Users of marijuana are seeking maximum THC content from cannabis and Butane Hash Oil increases this THC content. A lot of marijuana is needed to get a high yield of BHO.

The most common form of hash oil is made by passing liquid butane through a tube filled with cannabis plant matter. The low temperature of the liquid butane crystallizes the cannabis resins. As the butane passes through the tube the crystallized resins are trapped in the liquid butane. As the solvent (butane + resins) exits the tube it is caught in a glass container. Butane is a volatile molecule and boils at -1°C ., leaving behind the crystallized resins only, which are collected from the glass container. This form is known as BHO or "Butane Hash Oil."

Because butane is highly flammable this is extremely hazardous. A participant in the manufacturing of BHO could set off an explosion/fire by smoking, pilot light, electric spark. Since butane is heavier than air it will linger in enclosed spaces and can be set off in the basement when it reaches the pilot light.

Englewood has experienced two butane hash oil explosions: one in a shed outside of a residence, and another inside of the residence that resulted in the death of the individual producing the oil.



City of Englewood
ENGLEWOOD LIQUOR AND MEDICAL MARIJUANA LICENSING AUTHORITY
Telephone Poll Minutes
October 1, 2014

1. Consideration of Minutes:

- a) Results of the minutes of the telephone poll meeting of September 17, 2014.

Vote results:

Ayes: Members Michael Buchanan, Jacqueline Edwards, Diane Ostmeier, D. Alexander Wenzel,
Carolyne Wilmoth

Nays: None

The minutes were approved.

2. Renewals

- | | | |
|----|---|---|
| a) | King Soopers #111
3495 S. University Blvd. | 3.2% off-premises Liquor License
Expires November 17, 2014 |
| b) | 7-Eleven 13196B
1277 E. Hampden Ave. | 3.2% off-premises Liquor License
Expires November 6, 2014 |
| c) | Wine Pros at Kent Place
3475 S. University Blvd. | Retail Liquor Store Liquor License
Expires October 1, 2014 |

Vote results:

Ayes: Members Michael Buchanan, Jacqueline Edwards, Diane Ostmeier, D. Alexander Wenzel,
Carolyne Wilmoth

Nays: None

The renewals were approved.

3. Change of Manager

- a) King Soopers #111
3495 S. University Blvd.
Changing from Lee Lucero to Cristina Villa

Vote results:

Ayes: Members Michael Buchanan, Jacqueline Edwards, Diane Ostmeier, D. Alexander Wenzel,
Carolyne Wilmoth

Nays: None

The Change of Manager was approved.

4. Transfer of Ownership and Temporary Permit

- a) Graciela Inc. dba El Tepehuan
3495 S. Broadway

Transferring from Saigon Palace to El Tepehuan
Hotel/Restaurant Liquor License

Vote results:

Ayes: Members Michael Buchanan, Jacqueline Edwards, Diane Ostmeier, D. Alexander Wenzel,
Carolyne Wilmoth

Nays: None

The Transfer of Ownership and temporary Permit were approved.

5. Authority Members Choice

Member Edwards asked City Council, at their September 15, 2014 meeting, about a ban, license or ordinance regarding hash oil. The Englewood Municipal Code 2000 currently has an ordinance which covers explosions, and this would also include those explosions involving hash oil.

EMC 7-6B-12: Explosions. It is unlawful for any person to cause an explosion of powder or other combustible material, in any manner, within the City, without the permission of the City Manager. This section shall not apply to peace officers acting in the discharge of their duty.

The Authority can do nothing and go with the current ordinance, amend the current ordinance, wait to see what the State of Colorado Department of Revenue Marijuana Enforcement decides, or wait to see what the City and County of Denver decides to do regarding hash oil and possibly adopt verbiage similar to theirs for Englewood in the future. (Both the State and the City and County of Denver are currently studying this topic.)

Comments from the Authority included:

Diane Ostmeier: My recommendation is that the council continues with the current ordinance at this time and actually bans the production of hash oil until a very careful study of what is involved with regards to administering this type of production, i.e. code, health and safety, etc. The Council needs to be well educated on the marijuana businesses we have - cultivation, medical and the possible addition of retail (three separate licenses) before adding another license to the mix, and I am not confident that the Council or the Authority are educated enough to make informed decisions at this time. The input I have received from people in our community regarding marijuana is that Englewood cannot make up their minds how they want to proceed. That said, I believe it is best to proceed with caution and try to avoid approving a business and then having to backtrack and put another moratorium in place when there is an outcry from citizens. It is a very reactive way to handle what is a very serious business. The citizens of Englewood voted and we must respect that vote. Therefore, Englewood needs to move forward with the premise that the marijuana businesses need to thrive (they are here to stay) and they need to be able to show that these businesses can be an asset to our community. A lot more time and thought needs to go into how we go about doing that before we make any changes or adding more business types or licenses.

Michael Buchanan: Use the current ordinance in place. Wait to see what the State of Colorado and the City & County of Denver do before making a decision.

Jackie Edwards: the information provided leads me to think the current explosion ordinance is adequate. Waiting to see what the State and Denver come up with makes sense.

Alex Wenzel: Here are my thoughts on 5: I think the explosion ordinance is fine on its own, since it seems to cover hash oil explosions as it is. Reading up a little bit on hash oil explosions (<http://www.wired.com/2013/02/hash-oil-explosion/>) and why folks like to make it, seems to me to be an inherently dangerous activity (most work with explosives is inherently dangerous). I would like to see a ban on home manufacture of BHO, as well as a ban on manufacture and sale by businesses. I feel this way because Colorado is already getting unneeded attention from failure in edible

regulation, which can have a very high amount of THC in just a little bit of food. With BHO, that problem of volume is intensified. That said, if it is going to still be legal in Englewood to manufacture/sell/possess BHO, I would like to see a licensure process for those businesses that want to make it and distribute it to ensure that it's not a "bathtub gin" situation (as mentioned in the linked article above).

Carolyne Wilmoth: No one can seem to regulate marijuana right now so why add to the burden with the hash/hemp oil? It is still in the early stages of marijuana. We can't take on anymore because there is not enough information at this point to make an informed decision. The current code ordinance is sufficient.

* * * * *

/s/ Kerry Bush, MMC

Deputy City Clerk



Memorandum

City Manager's Office

TO: Mayor Penn and Members of City Council

THRU: Michael Flaherty, Deputy City Manager ✓
Alan White, Community Development Director ✓

FROM: Darren Hollingsworth, Economic Development Manager X

DATE: November 3, 2014

SUBJECT: Englewood Small Business Development Corporation – Council Update and Recommendations

The purpose of this memorandum is to provide Council with an update concerning the Englewood Small Business Development Corporation (ESBDC). Staff is seeking direction on the options that will be presented to Council concerning the future participation by the City in the ESBDC.

Background

The ESBDC is a locally funded micro-lender. The Corporation was created by the City, in cooperation with the Greater Englewood Chamber of Commerce (GECC) and the former Englewood Downtown Development Authority (EDDA) in 1992 to provide loans to small businesses. The initial funding was \$200,000, with the City of Englewood contributing \$125,000 (\$62,500 in 1992 and \$62,500 in 1993), the EDDA contributing \$50,000, and GECC proposed to contribute the remaining \$25,000.

At the time of the creation of the ESBDC, there was a perceived view that there was a void of small business loan opportunities. ESBDC was created as a separate entity from the City and was established to serve as an economic development tool to fill that void. The City, through the Community Development Department, has provided staff support for its ongoing operations.

According to the Bylaws of the ESBDC, City Council and the GECC were to jointly appoint five board members. For the past two years the ESBDC has not had a functional board of directors that complies with its Bylaws. The Board has not had a full complement of members since 2010, and the Board is currently comprised of two members only, Jason Whyte, representing the Greater Englewood Chamber of Commerce, and Darren Hollingsworth as the City's representative, whose term has expired, due to Bylaw limitations. (A copy of the ESBDC Bylaws are attached.)

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The Bylaws also call for periodic reports and updates from ESBDC to Council, which includes financial and loan payment information. It has been many years since ESBDC has interacted with Council or GECC to provide an update of activities and account for the City’s initial investment.

ESBDC Assets

ESBDC assets consist of funds in checking accounts and receivables on three loans. The current balance in the two checking accounts with Community Banks of Colorado as of September 30, 2014 totals \$184, 523.00

The chart below is an accounting of the current balances of the three outstanding loans. The balances of the loans takes into account the payments through September, 2014.

ESBDC Loans:

	9/30/13	2014	2014	9/30/14
	Balance	Payments	Accrued Int.	Balances
Loan 1	\$19,513.58	\$3,884.40	\$1,320.85	\$16,950.03
Loan 2a	\$26,057.34	\$2400.00	\$1751.00	\$25,408.34
Loan 2b	\$14,892.08	\$1,600.00	\$943.31	\$14,235.39
	\$60,463.00	\$7,884.40	\$4,015.16	\$56,593.76

(Note: Loans 2a and 2b were to the same business. This business has moved out of Englewood.)

(Note that ESBDC maintains the personal and business financial statements of customers, their business tax returns, and credit reports as provided with the loan application as confidential information.) Total Assets of the Corporation including cash and loans is **\$241,116.76**

ESBDC’s Capacity to Carry out Mission

The lending environment has changed in the last 23 years and a number of lending institutions offer loans to small businesses that traditional financial institutions deem not bankable. (See attached ESBDC Bylaws.) ESBDC is currently not fulfilling a pressing economic development function for the City and without a functioning board of directors, the assets of the Corporation are underutilized. City staff questions the City’s continued support of the ESBDC and its current mission based on the following facts:

- Demand for loans is low. ESBDC has not issued a loan since 2010.
- ESBDC has been a “lender of last resort“, which results in making high-risk loans. The three (3) outstanding loans are not currently in good standing according to the terms of their loan agreements.
- ESBDC lacks experienced staff or the time to dedicate to processing loan applications, follow through on fair lending practices, adequately administer the existing loan portfolio, and provide technical advice to applicants.

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- ESBDC is competing with other lending institutions offering the same product, sometimes at a lower rate and most often with expanded services to assist small businesses. Borrowers have other options for financial assistance and a description of other lenders competing with ESBDC is highlighted below.

Other Lenders

A number of lenders offer loans and technical assistance to businesses. These organizations have the funding and expertise to take on loan requests that would have otherwise been considered by ESBDC. In fact, continuation of the ESBDC simply tends to duplicate services already available. Below is a list of the lenders that provide nontraditional loans or loans that are not able to be funded through traditional banking institutions:

- *Accion* – A non-profit micro-lender that provides technical assistance, financial training and small business loans. Accion provided financial assistance to start up Quacker Gift Store, which later moved to Grand Lake, Colorado.
- *Colorado Enterprise Fund* – Provides loans and technical assistance to small businesses. The new owner of Momma Mia's Pizza at 3531 South Logan Street received a loan to help acquire the business from the previous owner. See attached Denver Post article.
- *Colorado Lending Source* – A nonprofit certified SBA lender that specializes in 504, 7a and Colorado Main Street Loans. The Main Street Loan program provides loans to small businesses to refinance existing debt for small businesses. These loans can range from \$10,000 to \$35,000.
- *Rocky Mountain Micro Finance Institute* -- Is a non-profit organization that provides learning, lending, and coaching to grow community entrepreneurs who build businesses that advance self-sufficiency and self-worth.

Options for Council Consideration

1. Re-establish ESBDC by appointing new members and continue to provide staff support for administrative functions. To be fully functional, administrative support would likely need to be in the form of dedicated staff, either internal or contract personnel, with the appropriate expertise. The cost of this support is difficult to quantify without knowing how active the Board might be in making loans. With the limited cash on hand of \$184,523.00, staff questions whether this arrangement would be sustainable without an infusion of additional financial resources.
2. Re-establish and Recapitalize ESBDC. In addition to appointing new members (#1 above), and providing additional funding to hire ESBDC staff, this option would create a critical mass of funds to be a viable funding source for the small business community. The City and presumably the GECC would be asked to contribute additional funds to hire staff and create a larger pool of available loan funds.

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3. Request Return of Contribution and allow for the dissolution of the ESBDC. If Council determines that ESBDC no longer needs to fill the lending void as it did when originally established, the City could request its initial funding back, plus any accrued earnings. This would lead to the dissolution of ESBDC and the disbursement of its assets back to the contributing organizations based on the pro-rata share of the initial funding. Staff would work with the City Attorney's Office and the existing Board members to determine an appropriate dissolution process, determine the disposition of the current loans and disbursement of funds to the contributing parties.

Staff Recommendation

Staff recommends that the City request return of its initial funding which will allow for the dissolution of the ESBDC. This recommendation is made for the following reasons:

1. No loans have been issued for four years.
2. Loans issued have been high risk. Three loans are currently in default and at least one other previous loan defaulted.
3. Other lenders provide the same service at better rates and with expanded technical assistance services.
4. The loan program is not sustainable given the current assets and need to hire staff with loan processing and administration expertise.
5. The City's portion of the assets could be put to better use, perhaps being directed to the Commercial Catalyst Program.

Staff is seeking a Council review of the staff recommendation and direction on how to proceed.

Attachments: ESBDC Bylaws

Denver Post Article – Black Shirt Brewing credits success to Denver micro-lender

BYLAWS

OF

ENGLEWOOD SMALL BUSINESS DEVELOPMENT CORPORATION

As Amended March, 2004

1.0 **PURPOSE:** The purpose of the Englewood Small Business Development Corporation (ESBD) is to foster the development of small to medium sized businesses in the City of Englewood, thereby increasing employment opportunities, promoting the creation of a diverse and broad tax base, and stimulating economic growth. The Corporation is operated exclusively for nonprofit purposes, and no part of the income or assets of the ESBD Corporation shall be distributed to or inure to the benefit of any individual.

2.0 **DUTIES:** The primary duty of the Englewood Small Business Development Corporation (ESBD) is to establish and administer a revolving loan fund for small to medium sized businesses located in the City of Englewood, including the adoption of policies and procedures for making loans.

3.0 **OFFICES:** The principal office of the ESBD Corporation shall be located within the territorial boundaries of the City of Englewood.

4.0 **BOARD OF DIRECTORS AND THEIR MEETINGS:**

4.1 **General Powers:** The business and affairs of the ESBD Corporation shall be managed by its Board of Directors, in accordance with the Colorado Nonprofit Corporation Act.

4.2 **Number of Directors:** The number of Directors of the ESBD Corporation shall be five. Each Director will serve a two (2) year term of office provided that initially 2 members will be elected for a term of one (1) year and 3 members will be elected for a term of two (2) years. A Director may not serve on the Board for more than 6 consecutive years.

4.3 **Selection of Directors:**

a. Five Directors shall be appointed or elected. Each organization, the Englewood City Council, the Englewood Downtown Development Authority and the Greater Englewood Chamber of Commerce, shall appoint one person to the Board.

b. The three (3) appointees shall serve as a nominating committee and shall name a slate of at least three (3) Englewood business persons willing to serve on the Board of Directors.

- c. Each person serving as a member of the City Council, as a member of the Board of Directors of EDDA, and as a member of the Board of Directors of the Greater Englewood Chamber of Commerce shall cast one (1) vote for two (2) members to be elected at large. Any person serving in more than one (1) capacity shall be limited to one (1) vote. In the event of a tie the appointees will continue voting until the vote is broken.
- d. ****If the Englewood City Council, the Englewood Downtown Development Authority, or the Greater Englewood Chamber of Commerce, shall be dissolved and therefore become unable to appoint a Director or vote for a Director, their rights of that organization to select a Director and to vote for nominated Directors shall not be transferable or assignable, and shall not pass to a successor company, but shall cease upon said dissolution, and in this event the President shall designate any other current Director to serve on the nominating committee, and the Board of Directors of the corporation shall take the place of the dissolved organization, and shall each cast one vote pursuant to section 4.3(c).**
- 4.4 Removal From Office: A Director is subject to removal from the Board, by the Board if he or she misses three (3) consecutive meetings in a row.
- 4.5 Resignation: Any Director may resign at any time by giving written notice to the Board of Directors who will inform the three organizations.
- 4.6 ****Vacancies:** Vacancies will be filled from a slate of at least 2 nominees selected by the Nominating Committee described in section 4.3(b).
- 4.7 Compensation: No Director shall receive compensation for their service as a Director.

5.0 **MEETINGS:**

- 5.1 Regular Meetings: In addition to the annual meeting the Directors will meet as often as needed to take action on loan requirements at least every second month. The Board of Directors may hold these meetings at such times as decided by the Board. Written notice stating the time and place of a meeting shall be delivered not less than ten (10) days before the date of the meeting by the Secretary to each Director.
- 5.2 Quorum: A majority of the members of the Board of Directors will constitute a quorum for the transaction of business at any meeting of the Board, but if less than such majority is present, a majority of the Directors present may adjourn the meeting.

- 5.3 Action of Board in General: No action shall be taken by the Board unless a quorum is present and the action is approved by a majority of those members present.
- 5.4 Meetings Open to the Public: The meetings of the Corporation shall be open to the public. The Board may elect to hold executive sessions of its meetings to consider loans where the information of the applicant may be considered confidential.
- 5.5 Action Without Meeting: Any action which is required to or which may be taken at any meeting of the Board of Directors of the Corporation may be taken without a meeting if the consent in writing, setting forth the action so taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof.
- 5.6 Waiver: Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting and a written waiver of notice or manner of calling any meeting of the Board of Directors signed by the Trustees entitled to such notice, whether before, at or after the time stated herein, shall be the equivalent to giving of such notice. The signatures of the Directors subscribed to the minutes of any meeting shall constitute such written waiver of notice.

6.0 OFFICERS:

- 6.1 Number: The officers of the Corporation shall be the President, a Vice President, a Treasurer, a Secretary and such other officers as may from time to time be appointed by the Board of Directors.
- 6.2 Election and Removal: The President shall be elected from the Directors at the regular annual meeting thereof, and all such other officers shall be elected or appointed by the Board of Directors at such meeting or from time to time as the occasion required. Each officer shall continue in office until his successor shall have been duly elected and qualified, or until he shall have resigned or been removed by the Board of Directors by the affirmative action of a simple majority of the then members of the Board of Directors.
- 6.3 President: The President shall be the Chief Executive Officer of the Corporation and shall have general supervision over its business and affairs subject, however, to the direction and control of the Board of Directors. He/she shall sign and execute in the name of the Corporation all deeds, contracts and other instruments authorized by the Board of Directors, and in general, perform all duties incident to the office of President and such other duties as may from time to time be assigned to him/her by the Board of Directors. No Director shall serve in the capacity of President for more than two consecutive years.
- 6.4 Vice President: At the request of or in the absence or disability of the President, the Vice President shall, in succession, perform all duties of the President and

such other duties as may from time to time be assigned to him by the Board of Directors or by the President. No Director shall serve in the capacity of Vice President for more than two consecutive years.

- 6.5 Secretary: The Secretary shall keep the minutes of all meetings of the Board of Directors, shall be the custodian of the records and of the seal of the Corporation and affix the seal to all documents requiring the same, shall see that all notices are duly given in accordance with the provisions of the Bylaws and as required by law, and that the books, reports, statements, and other documents and records of the Corporation are properly kept and filed, and in general shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him/her by the Board of Directors or the President.
- 6.6 Treasurer: The Treasurer shall have the charge and custody and be responsible for all funds and securities of the Corporation, shall deposit all such funds in the name of the Corporation at such depositories as shall be designated by the Board of Directors, shall keep books of account and records of the financial transactions and condition of the Corporation and shall submit reports thereof monthly, or as the Board may from time to time require and, in general, shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him by the Board of Director or the President.
- 6.7 Compensation: No officer shall receive compensation for their service as an officer.

7.0 **NEGOTIABLE INSTRUMENTS, DEEDS AND CONTRACTS:** All checks, drafts, notes, bonds and orders for payment of the Corporation; all written contracts and agreements to which the Corporation shall be a party; and all other documents necessary for carrying out the business of the Corporation shall unless otherwise directed by the Board, be signed by the President or by any two officers who are different persons. The Board of Directors may, however, authorize any officers to sign any instruments on behalf of the Corporation without a countersignature; may designate other agents of the Corporation who may, in the name of the Corporation, sign such instrument.

8.0 **INDEMNIFICATION OF DIRECTORS:** In addition to the immunity granted to directors under Section 13-21-116(2)(b) of the Colorado Revised Statutes, as amended, no director shall have personal liability to the Corporation or to its members for monetary damages for breach of fiduciary duty as a Director except for (1) any breach of the Director's duty of loyalty to the corporation or to its members; (2) acts or omissions not in good faith or which involve intentional misconducts or a knowing violation of law; (3) acts specified in Section 7-24-111 of the Colorado Revised Statutes, as amended, or (4) any transaction from which the Director derived an improper personal benefit.

9.0 **CONFLICTS OF INTEREST:**

- 9.1 Disclosure: If a “conflict of interest” which is defined as conflict between the private interests of a Director and the official responsibilities of that person as a Director occurs, it is the duty of each Director to conduct themselves in a manner that will prevent the conflict from affecting his or her judgment as a Director. When a Director recognizes a situation in which he/she has a conflict of interest the Director shall disclose that fact to the Board.
- 9.2 Abstention: At the request of the Board of Directors, a Director shall abstain from voting on any matter with respect to which he/she has a conflict of interest. Furthermore, if the Directors decide that it is in the best interest of the Corporation that such Director not participate in matters relating to the conflict, it shall be his or her duty to abstain. Any Director may abstain from voting on or participating in any matter with respect to which he/she feels a conflict of interest.

10.0 CORPORATION FINANCES.

- 10.1 Sources of Funding: The Corporation will be funded by contributions from the City of Englewood, the Englewood Downtown Development Authority and the Greater Englewood Chamber of Commerce, and such other sources as may be obtained.
- 10.2 Financial Reports: Financial statements shall be prepared monthly or more frequently at the discretion of the Board of Directors and shall be made available to the public upon request. Financial reports shall be made at least quarterly to the funding organizations.
- 11.0 DISSOLUTION: If, for any reason the Board determines that it is appropriate to dissolve the Corporation, all assets will be distributed back to the contributing organizations in proportion to their contributions.

12.0 LOAN PROVISIONS:

- 12.1 Percentages Granted to EDDA: No less than twenty-five percent (25%) of the outstanding loans or \$50,000, whichever is less, shall be loaned inside the Englewood Downtown Development Authority District.
- 12.2 Percentage Limitations: No loan which exceeds fifteen percent (15%) of the new capitalization of the fund will be made to any one business organization.
- 12.3 *Loan Criteria: Loans will be interest bearing at rates to be established by the Board. Loan rates may vary depending on the ability of the business to repay the loan. The Board may develop additional criteria and conditions as it determines applicable, including an equity interest in the business. Any equity interest acquired by the Board shall be repurchased by the borrower within three (3) years after original loan maturity. No loans will be made in excess of ten (10) years.

~~***12.4 *A loan premium equal to ten percent (10%) of the face value of the original principal amount shall be assessed by the Englewood Small Business Development Corporation to the borrower(s). Following satisfaction of the original loan obligation, the borrower(s) shall have up to three (3) years to pay this loan premium. Said payments may be made in monthly installments during said three (3) year period, or, said loan premium may be made in a single lump sum payment at the end of the original loan term. Should the borrower(s) desire, said loan premium may be calculated and paid as part of, but in addition to, the monthly payment owing under the original loan obligation. Said loan premium shall be repaid without charge for interest, costs, or other expenses to borrower(s), except for reasonable attorney fees and costs of collection in the event they are incurred with said loan premium obligation.~~

12.4 */***Loan Applications: No loan will be made without a comprehensive business plan and cash flow projections to show how the loan is expected to be repaid. The business must add to the employment and economic base of the community.

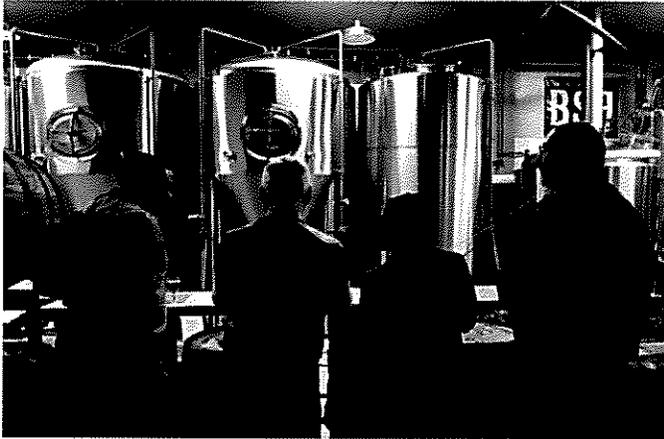
12.5 */***Loan Covenants: A loan cannot exceed four hundred percent (400%) of the net capitalization of the business and/or applicant's individual assets (owner's capital less existing loans). Loan agreements may contain personal guarantees, key man insurance, periodic reporting requirements and any other provisions deemed prudent by the Board to ensure loan repayment.

13.0 ****AMENDMENTS:** These bylaws may be amended by the Board and will require a two-thirds vote to pass. Any proposed amendment to these Bylaws may only be considered at a regular meeting of the Board, and must be presented in writing to each member of the Board at least 30 days prior to said meeting.

- * Paragraphs amended January, 1994
- ** Paragraphs amended December, 2000
- *** Paragraphs amended March, 2004

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Black Shirt Brewing credits success to Denver micro-lender



Members of the Opportunity Finance Network check out Black Shirt Brewing Co. on Thursday. The brewery, in the River North Art District, got off the ground with the help of the Colorado Enterprise Fund.

Branden Miller and his brother Chad and sister-in-law Carissa had run out of money — and almost out of hope — after struggling for two years to launch a brewery and bar in Denver's River North Art District.

Turned down by banks and needing to pay an electrician's bill before they could open, the Millers turned to the Colorado Enterprise Fund for a \$50,000 loan in 2012 for their Black Shirt Brewing Co.

The nearby neighborhood was still sketchy, and the gutted building — the former Johnson and Lord furniture store at 3719 Walnut St. — was in mid-restoration, recalls Alan Ramirez, chief lending officer at the fund.

But the Millers were passionate and focused on exclusively brewing high-quality red ales — a different take in a crowded field.

"They were going to find a way to do this with or without us," he recalls.

Branden and Carissa poured samples of their ale Thursday to CEF employees and a couple dozen members of the Opportunity Finance Network, which this week is holding a Denver convention being attended by 1,100 people.

The network counts 240 organizations that have loaned more than \$30 billion over the past three decades, primarily in disadvantaged communities or to borrowers unable to tap traditional sources of capital, said Stefanie Arck, a spokeswoman with the Philadelphia-based group.

Despite the higher risks involved with community-focused loans, Arck said members report a default rate typical of banks. Ramirez said CEF, a nonprofit lender in the network, has \$10 million in loans out and only a 2 percent default rate.

Ramirez said the typical CEF loan runs from seven to 10 years, with the first two years often interest-only. Interest rates, which can run from 9 percent to 14 percent, are more expensive than traditional financing but cheaper than credit cards.

Lenders such as CEF typically provide education and counseling to borrowers, helping them hammer out business plans, marketing strategy and pricing. The nonprofit lenders often get their money from the large banks that are turning the startups down.

Black Shirt Brewing hit its five-year production target within seven months, and it wasn't long before bankers who came in to sip on its red ale were asking whether the Millers needed a loan.

"Where were you when we needed you?" Carissa asked.

Two years in, the Millers rolled their CEF loan into a traditional bank loan, obtaining a lower interest rate and the money they needed to buy larger vats and a canning line.

The brewery now has a dozen workers, and the nearby block continues a comeback they helped start.

By Aldo Svaldi



CITY OF ENGLEWOOD
COMMUNITY DEVELOPMENT

TO: Mayor Penn and Council Members
THRU: Eric Keck, City Manager
Alan White, Community Development Director ✓
FROM: Brook Bell, Planner II ✓
DATE: November 3, 2014
SUBJECT: Study Session on Unified Development Code Bulk Plane Amendments

BACKGROUND:

Prior to the adoption of the Unified Development Code (UDC) in 2004, residential building mass was regulated primarily by minimum setback, maximum height, and maximum lot coverage standards. With the adoption of the UDC, bulk plane requirements were added to further regulate residential building mass.

The intent of the bulk plane regulations is “to ensure that new residential development, including additions and expansions of existing dwellings, provides adequate light and privacy to neighboring properties. In addition, the bulk plane requirements are intended to assure greater design compatibility in terms of building mass and scale within Englewood neighborhoods”.

The current bulk plane regulations are attached as Exhibit A. The bulk plane creates an invisible tent-like boundary limiting the three dimensional space in which a dwelling structure, including the roof, may occupy (with some exceptions). Figure 16-6(3) illustrates the bulk plane; note that the bulk plane increases in height as a structure’s side setback increases. Exhibit B illustrates the three dimensional boundary created by the bulk plane.

The current bulk plane regulations apply to residential development of 4 units or less in the R-1-A, R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, and MU-R-3-B zone districts. The bulk plane regulations do not apply to residential developments of 5 or more units, or non-residential development, or accessory structures in the zone districts listed above. The bulk plane regulations do not apply to any development in the MU-R-3-C, MU-B-1, MU-B-2, M-1, M-2, M-O-2, I-1, I-2 or TSA zone districts.

As residential development activity in the City of Englewood has increased, some architects, builders, and real estate professionals have stated that the UDC’s bulk plane regulations are too restrictive and hinder new development. This is especially problematic for new duplexes and townhomes on 25 foot wide lots. It should be noted that many cities have bulk plane regulations, including Denver, although their regulations are less restrictive than Englewood’s. The City of Littleton does not have any bulk plane regulations.

PROPOSED CHANGES:

Recently, staff has had more detailed discussions with architects and builders regarding how the current bulk plane regulations affect the design, construction cost, and sale of new residential development and expansions of existing dwellings. The specific issues and proposed changes to the current bulk plane regulations are listed below.

- Beginning Point of Bulk Plane 12 Feet Above Midpoint of Side Property Line – The current bulk plane begins at a point 12 feet above the midpoint of the side property line and continues at a 45 degree angle toward the center of the property. This results in the bulk plane intersecting with the side wall of the house at an elevation of 17 feet for a house with a 5 foot setback. The market for most new homes demands 9 or 10 foot ceilings on the first floor, and 8 or 9 foot ceilings on the second floor.

The current bulk plane does not accommodate these ceiling heights without recessing the first floor joists into the foundation wall and using a low sloping ceiling towards the side wall on the second floor. Exhibits C and D show a new home that was recently approved using these techniques to meet the current bulk plane (see red circles at foundation and second story ceiling on Exhibit D). These construction techniques are not standard and increase costs for a builder. This issue becomes more critical for duplexes and triplexes on 25 foot wide lots where the side units are limited to 20 feet in overall width. The potential loss of functional space in these multi-unit developments has deterred some developers from building in Englewood.

Proposed Change to Beginning Point of Bulk Plane: Increase the beginning point of the bulk plane from 12 feet above the midpoint of the side property line, to a point 17 feet above the midpoint of the side property line; then continue at a 45 degree angle toward the center of the property. This results in the bulk plane intersecting with the side wall of the house at an elevation of 22 feet for a house with a 5 foot setback. This will allow for 9 or 10 foot ceilings on the first floor, and 8 or 9 foot ceilings on the second floor without requiring special construction techniques.

Exhibit E shows the same house as previous exhibits, but with standard construction techniques and 9 foot ceilings on both the first and second floors (see green circles at foundation and second story ceiling on Exhibit E). Note that the house just meets the bulk plane utilizing a 17 foot high beginning point for the bulk plane (see green line for proposed bulk plane). The roof pitch on this house would have to be modified to meet the current 32 foot maximum height in the UDC. There are no proposed changes to the current 32 foot maximum height in the UDC.

- Applicability of Bulk Plane in Different Zone Districts – Currently the bulk plane applies to residential development of 4 units or less in the R-1-A, R-1-B, R-1-C, R-2-A, R-2-B, MU-R-3-A, and MU-R-3-B zone districts. The R-1-A zone requires a minimum of 75 feet of lot width and minimum 7 foot side setbacks. The R-1-B zone requires a minimum 60 feet of lot width and minimum 5 foot side setbacks.

The R-1-A and R-1-B zone districts are intended to be less dense with wider lots and in some cases wider side setbacks than the other residential zone districts. These wider lots with increased setbacks are not impacted by the current bulk plane regulations as much as the other residential zone districts.

Proposed Change: Staff proposes to change the bulk plane only in the R-1-C, R-2-A, R-2-B, MU-R-3-A, and MU-R-3-B zone districts. No change is proposed in the R-1-A and R-1-B zone districts. The current UDC bulk plane that begins at a point 12 feet above the midpoint of the side property line is consistent with Denver's "suburban house" regulations. Neighborhoods in Denver such as Platt Park, Washington Park, and Observatory Park (which are similar in density to many of Englewood's neighborhoods) fall under the "urban house" zoning. Denver neighborhoods such as Wellshire, University Hills, and Southern Hills fall under the "suburban house" zoning. The character of the City of Englewood's R-1-A and R-1-B is more suburban and as such, staff recommends maintaining the current UDC bulk plane that begins at a point 12 feet above the midpoint of the side property line for the R-1-A and R-1-B zone districts.

- Method of Measuring Grade - Currently the bulk plane is measured from the existing grade (or ground elevation) at the midpoint of each side property line. If the existing grade at the midpoint on one side property line is different than the other side property line, then the resulting bulk planes are asymmetrical when viewed from the front of the lot. When this occurs, most architects end up having to comply with the more restrictive of the two bulk planes to avoid having an elevation change in the floor of the house from side to side. Changing floor elevations adds construction costs and can compromise the internal layout of the home.

Proposed Change to Method of Measuring Grade: Use the average existing grade of the midpoints of the side property lines to establish a base plane for both bulk planes.

- Method of Measuring Maximum Side Wall Height - The maximum side wall height is currently measured at the point where the bottom of the soffit or eave intersects the side wall of the house. This approach penalizes certain roof framing profiles while rewarding others without regard to the intent of the bulk plane. The red line on Exhibit F illustrates how the maximum side wall height is currently measured.

Proposed Change to Method of Measuring Maximum Side Wall Height: Staff proposes to measure the side wall height at the point where the side wall of the house intersects the top roof framing member (roof sheathing). The green line on Exhibit F illustrates this recommended change. This approach is better aligned with the intent of the bulk plane and treats various roof framing profiles more equitably. A clarification for parapet walls (a short protective wall above a flat roof) will also be made that requires the top of the parapet wall to meet the bulk plane. Lastly, an exception for rooftop patio railings will be added so that a railing may extend into the bulk plane a maximum of 42 inches provided it is at least 75% open or transparent.

ATTACHMENTS: Exhibit A - F

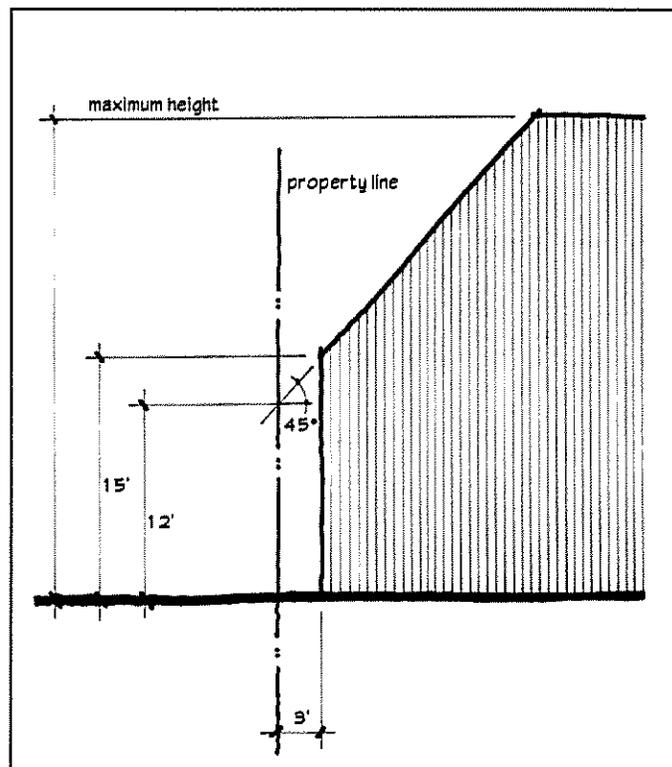
G. *Bulk Plane Requirements.*

1. Intent. The bulk plane requirements in this subsection are intended to ensure that new residential development, including additions and expansions of existing dwellings, provides adequate light and privacy to neighboring properties. In addition, the bulk plane requirements are intended to assure greater design compatibility in terms of building mass and scale within Englewood neighborhoods.
2. Applicability and Exceptions.
 - a. *Applicability.* Except as exempt by this subsection, the bulk plane requirements in this subsection shall apply to:
 - (1) All new residential development subject to the Residential Design Standards and Guidelines in Section 16-6-10.B. EMC;
 - (2) All new residential development on legal, nonconforming lots that have lot widths less than the minimum required by the applicable zone district; and
 - (3) All new residential development on small lots.
 - b. *Exceptions.*
 - (1) The bulk plane requirements in this subsection shall not apply to new residential development in the MU-B-1, MU-B-2, M-1, M-2, M-O-2 or TSA districts. The bulk plane requirements in this subsection shall not apply to structures or portions of structures exempt from the maximum height limits, as specified in subsection 16-6-1.E.1 EMC.
 - (2) Dormers with window(s) may partially protrude through the bulk plane defined below for a maximum cumulative length of fifteen (15) linear feet, measured horizontally at the point of intersection with the bulk plane, and provided the vertical height of a dormer window does not extend above the height of the ridgeline of the roof surface from which the dormer protrudes.
 - (3) Eaves may extend up to twenty-four inches (24") into the bulk plane, provided it does not project further into a side setback than the maximum projection allowed by 16-6-1:F5b(1). The extension shall be measured horizontally from the building wall to the furthest extent of the eave.
 - (4) Gutters may extend into the bulk plane, regardless of whether the

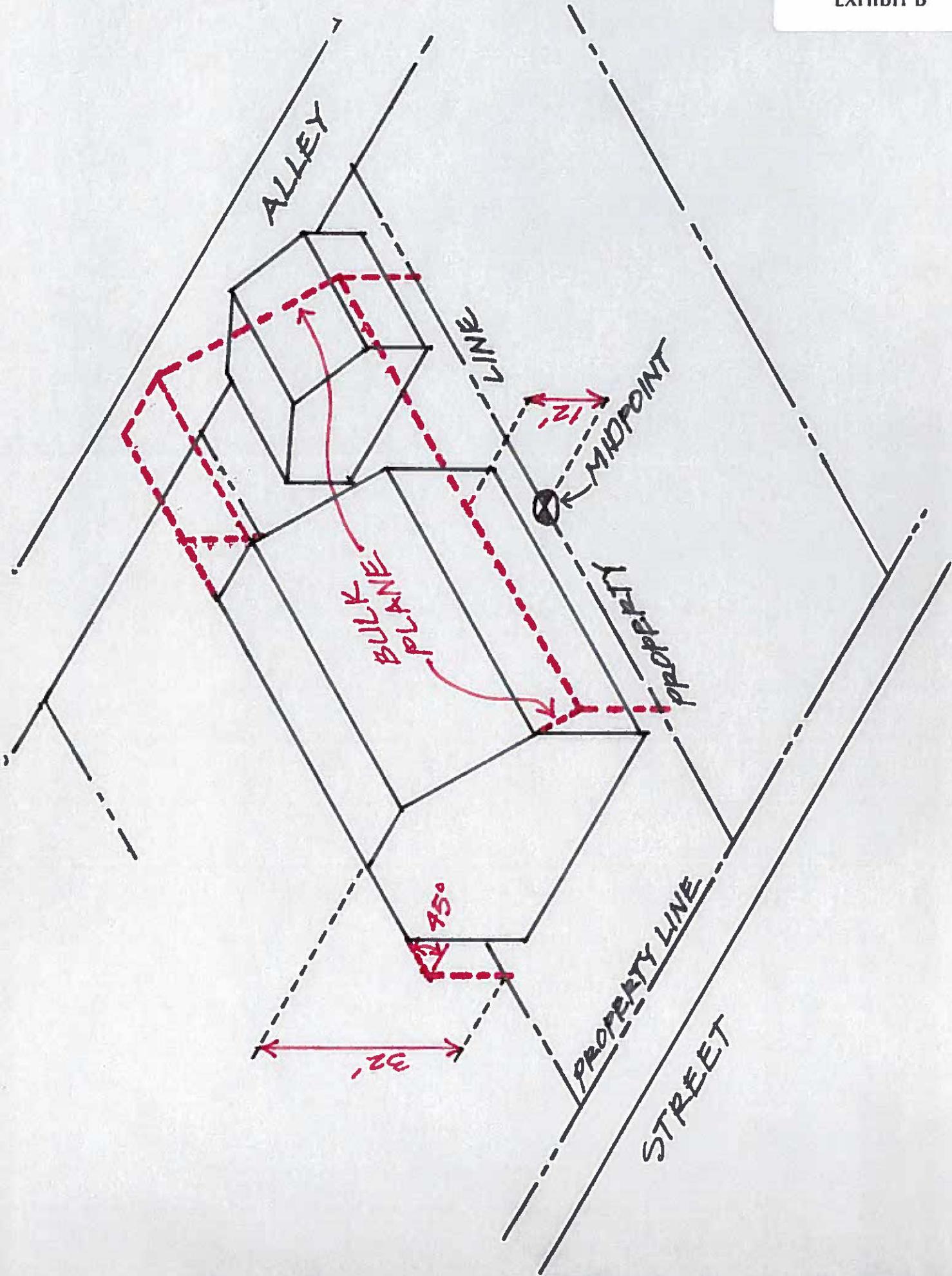
eave projects into the bulk plane.

3. Bulk Plane Requirements. Except as specifically excepted in subsection G.2, above, no part of any structure subject to these bulk plane requirements (including air conditioner, elevator penthouses, and other mechanical equipment) shall project through the following defined bulk planes, which define a building envelope for the subject lot:
 - a. A horizontal line that is located directly above the side lot line and which passes through a point twelve feet (12') above the midpoint of such side lot line; and
 - b. The intersecting lines that extend over the lot at a pitch of 12:12 (45-degree angle) from the horizontal lines defined in paragraph (a) above.

Figure 16-6(3): Bulk Plane



Commentary to Figure 16-6(3) [above]: The shaded portion of the illustration above depicts the defined bulk plane, which must contain the entire dwelling structure (with limited exceptions for projecting dormers and chimneys). The bulk plane is measured at a forty-five degree (45°) angle from a horizontal line located directly above each side lot line and which passes through a point twelve feet (12') above the midpoint of such side lot line. The fifteen feet (15') vertical height shown in the illustration indicates the point where the bulk plane in this example inclines toward the center of the lot, accounting for a three foot (3') side setback required in several of the residential zone districts.



SCALE: 1/4" = 1'-0"

32' MAX. HGT.

PROPOSED BULK PLANE

EXTG. BULK PLANE

8:12

8:12

8:12

WALL LINE

WALL LINE

8:12

8:12

5:12

8:12

8:12

32' MAX. HT.

BULK PLANE

7/8"

3/4"

BULK PLANE-WALL/ROOF CONNECTION WITHIN

PROPERTY LINE

PROPERTY LINE

17'-6"
17'-0"

12'

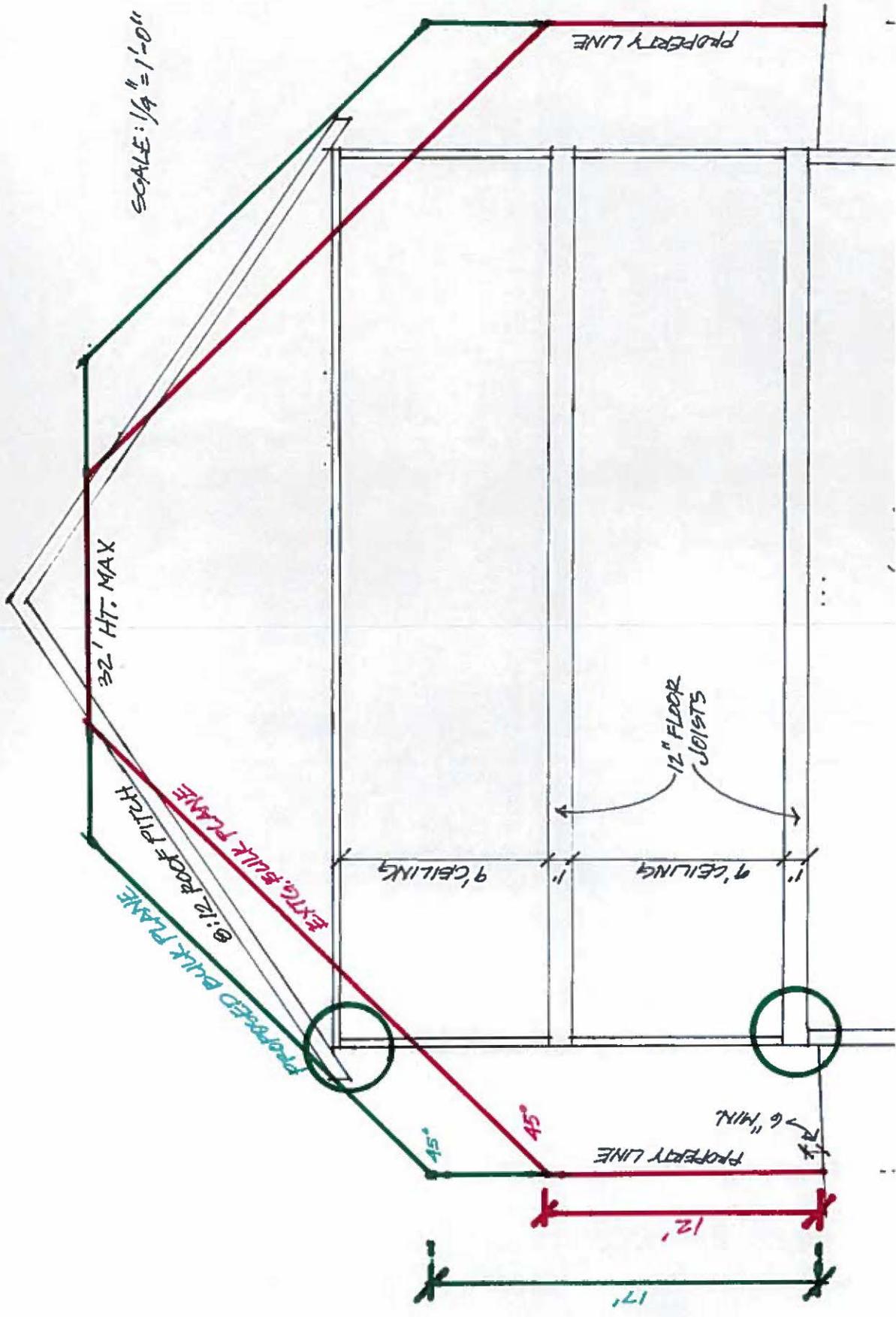
5'-6"

5'-6"

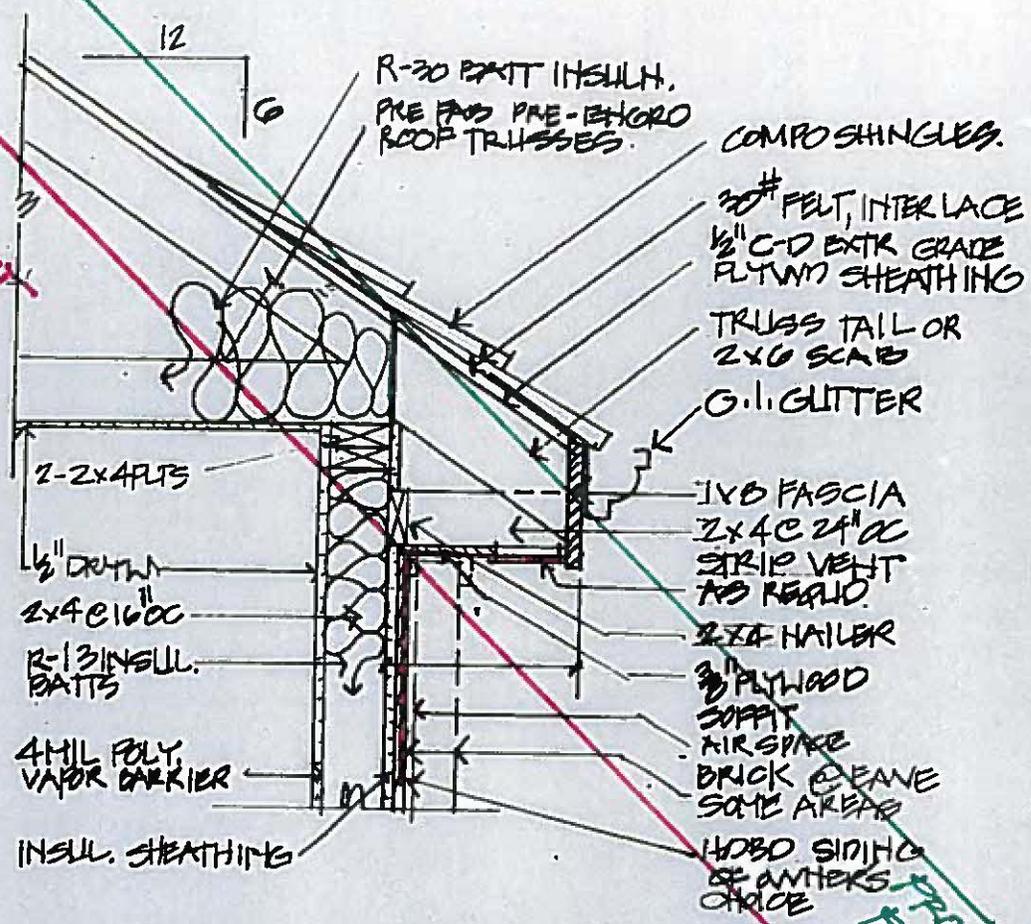
3'

17'-6"
12'

50' WIDE LOT



CURRENT BULK-
PLANE MEASUREMENT



4 EAVE DETAIL
SCALE: 1" = 1'-0"

PROPOSED BULK-
PLANE MEASUREMENT

