

**CITY OF CODY**  
**SPECIAL MEETING OF THE PLANNING, ZONING AND ADJUSTMENT BOARD**  
**AGENDA**  
**TUESDAY, JULY 25, 2023 AT 6:00 P.M.**  
**CODY AUDITORIUM, 1240 BECK AVENUE, CODY, WY**

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1. Call the Meeting to order.
2. Roll Call, excused members
3. Pledge of Allegiance
4. Approval of the Agenda for the July 25, 2023 Regular Meeting.
5. Consider correcting the Minutes of the June 15, 2023 Special Meeting, relating to the site plan for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.
6. Consider approval of the Minutes from the June 27, 2023 Regular Meeting.
7. Consider approval of the Minutes from the July 11, 2023 Regular Meeting.
8. Tabled Item: Consideration of the site plan for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. (Consideration is dependent upon outcome of Item #5 above.)
9. Consider amending the findings of the Conditional Use Permit for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.
- 10.P & Z Board Matters (announcements, comments, etc.)
- 11.Council Update
- 12.Staff Items
- 13.Adjourn

The public is invited to attend all Planning, Zoning and Adjustment Board meetings. If you need special accommodations to participate in the meeting, please call the City office at (307) 527-7511 at least 24 hours in advance of the meeting.

**City of Cody**  
**Planning, Zoning, and Adjustment Board Special Meeting**  
**June 15, 2023**

A special meeting of the City of Cody Planning, Zoning and Adjustment Board was held in the Cody Auditorium in Cody, Wyoming on Tuesday, June 15, 2023 at 5:30 pm.

Scot Richard made a motion, second by Dan Schein to go into an Executive Session, pursuant to W.S 16-4-405 (a) (ix). Vote on the motion was unanimous, motion passed.

Carson Rowley called the meeting to order at 6:03 pm.

Carson Rowley went over the public hearing protocol and how the meeting will be ran.

Attorney Scott Kolpitcke spoke on what a is a personnel and private conflict of interest.

Carson Rowley continued his explains on how the meeting will be ran.

Present: Carson Rowley; Dan Schein; Kim Borer; Scott Richard; Matt Moss; Council Liaison Andy Quick; City Attorney Scott Kolpitcke; City Planner Todd Stowell; Fire Marshal Sam Wilde, Public Works Director Phillip Bowman; GIS Analyst Utana Dye, Barb Curless Assistant Finance Director.

Absent: Josh White, Ian Morrison

Caron Rowley led the pledge of allegiance.

Kim Borer made a motion to approve the agenda for June 15, 2023 special meeting seconded by Dan Schein. Vote on the motion was unanimous, motion passed.

Kim Borer made a motion to approve the minutes from the June 13, 2023 regular meeting, seconded by Matt Moss. Vote on the motion was unanimous, motion passed.

City Planner Todd Stowell spoke on the special exemption and the conditional use permit. He presented a picture of the temple site and a visual of what the temple will look like at different perspective. He also showed a map of the show who are in favor is in green and the opposed is in pink. The white is from those who did not resubmit comments.

Public hearing was open at 6:19 p.m. for the Special Exemption and Conditional Use Permit for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

For  
Andrew Jacobsen  
Luke Hopkin  
Jimmie Edward  
Noma Walton-

Brook Grant  
Glenn A. Nielson  
Georgina Hopkins  
Karen Jones  
Yvonne Nielson  
Megan George  
McKennah Buck  
John Bollinger  
Chris Taggart  
Arlene George  
Mark Allphin  
Bethany Holso  
Rod McNair  
Ryan Beardall  
Susan  
Allison Maxwell  
Alicia Torres  
Randy Tolman  
Christien Renee  
Don Maxwell  
Jay Winzenried

Scott Richard made a motion to take short break at 7:22 p.m., second by Kim Borer. Vote on the motion was unanimous. Motion passed.

The meeting reconvened at 7:30 p.m.

Against  
Brandi Nelson  
Carla Egelhoff  
Greg Brooks  
Terry Skinner  
Dan Hammond  
Patrick Petit  
Ty Nelson  
Tim Hopkins  
Connie Hopkins  
Daniel Miller  
Janet Jones  
Randall Franzen  
Jack Hatfield  
Graciela Lparraguirre  
Sharon LaGrant  
Dan Brauser  
Gloria Hedderman  
Felica Canfield  
Fred Schneider  
Mary Morehouse

Deb Wendtland

Public hearing was closed at 8:32 p.m.

City Planner Todd Stowell reviewed the interpretation of building height, as related to the proposed temple at 555 Temple View Lane (located just west of Skyline Drive and north of the Cody Canal, approximately 400 feet north of the intersection of Skyline Drive and Olive Glenn Drive).

Scott Richard made a motion that the board not accept the City Planner's building height interpretation until further discussion and clarification could be had on roof top projections and our codes to avoid unintended consequences and precedent setting down the road that could negatively impact the community. No second on the motion. The motion fails.

Matt Moss made a motion to accept the roof top projection and building height interpretation as presented by the City Planner. No second on the motion. The motion fails.

Matt made a motion on religious structures copula steeple in excess of over 30'.

Dan Schein made a motion second by Kim Borer to table the interpretation of the building height. Scott, Dan, Kim was in favor of the motion. Carson and Matt were opposed to the motion. Vote on the motion failed.

Item B failed for lack of motion.

City Planner Todd Stowell review the Special Exemption application related to building height of the proposed temple of the Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

Kendall Hoopes- Attorney for The Church of Latter-Day Saints, Matthew Burk-Senior project manager, Jeremy Haskell- Principal Architect Joey Krueger- Engineer, Greg Rasmussen Senior Director of the Church. They spoke on behalf of the Temple project.

Matt Moss made a motion, to except the Special Exemption application related to the building height of the propose temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Second on the motion, Motion failed lack of a second.

Matt Moss made a motion, second by Scott Richard to table the Special Exemption application related to the building height of the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Voter on the motion, Scott Richard, Kim Borer, Carson Rowley, Matt Moss were in favor of the motion. Dan Schein was opposed to the motion. Motion passes.

City Planner Todd Stowell review the commercial site plan application for the proposed temple of the Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

Scott Richard made a motion, second from Matt Moss to approve commercial site plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Vote on the motion Scott Richard, Carson Rowley and Matt Moss were in favor of the Vote. Kim Borer was opposed to the motion. Dan Schein abstained from the vote. Motion failed.

Matt Moss made a motion second by Kim Borer to table the commercial site plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Scott Richard, Dan Schein, Kim Borer, and Matt Moss were in favor of the motion. Carson Rowley was opposed to the motion. Motion passed.

Patrick Petit spoke on the fence waiver as an objection to the waiver.

Kim Borer made a motion, second by Matt Moss to approve the fence height waiver for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. The vote on the motion was unanimous, motion passed.

The board took a short break to at 10:05 p.m.

The meeting reconvened at 10:15 p.m.

City Planner Todd Stowell review the Conditional Use Permit application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

Matt Moss made a motion to the approve Conditional Use Permit if we can come to a conclusion on the special exemption for the building height for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Failed.

Matt Moss made a motion, second form Kim Borer to a table the Conditional Use Permit with findings as stated in the staff report as recommend for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Scott Richard, Carson Rowley, and Matt Moss were in favor of the motion. Dan Schein and Kim Borer was opposed to the motion. Motion failed.

Carson Rowley made a motion, second by Kim Borer, to approve the Conditional Use Permit as stated in the staff report with findings and recommendation there in for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane after Scott Kolpitzke advised the board that the building height interpretation and special exemption request would remain separate applications for discussion at a later date. Scott Richard, Kim Borer, Carson Rowley and Matt Moss were in favor of the motion. Dan Schein was opposed to the motion. Motion passed.

P&Z Board Matters (announcements, comments, etc.): none

Kim Borer made a motion, seconded by Dan Schein, to adjourn the meeting. Vote on the motion was unanimous. The meeting was adjourned at 11:21 p.m.

Utana Dye  
GIS Analyst

STATE OF WYOMING       )  
                                      ) ss.  
COUNTY OF PARK        )

IN THE DISTRICT COURT  
  
FIFTH JUDICIAL DISTRICT

**The Church of Jesus Christ of Latter-day Saints,  
a Utah corporation sole,**

Petitioner,

vs.

**City of Cody Planning, Zoning and Adjustment  
Board,**

Respondent.

Civil Case No. \_\_\_\_\_

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**Petition for Review  
(Site Plan)**

Petitioner, The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole (referred to herein as the “Church”), presents this petition for review of agency action taken by the City of Cody Planning, Zoning and Adjustment Board (referred to herein as the “Board”) during a special board meeting held on June 15, 2023 with respect to the Church’s Site Plan for its proposed Temple site. Pursuant to Wyo.R.App.P. 12.06, the Church shows the court as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to review agency action taken by the Board pursuant to Wyo. Stat. Ann. § 16-3-114 and Wyo.R.App.P. 12.01. Venue is proper with this court pursuant to Wyo. Stat. Ann. § 16-3-114(a) because the action taken by the Board took place in Park County, Wyoming.

### **Issues Presented for Review**

2. Whether an affirmative vote by three of the five Board members in attendance at the special board meeting held on June 15, 2023 was sufficient to approve the Site Plan submitted by the Church in connection with the construction of a Temple at proposed 555 Temple View Lane, Cody, Wyoming.

3. Whether the Board erred as a matter of law when it determined that the motion to approve the Site Plan at the June 15, 2023 special board meeting had failed for lack of a majority.

### **Parties**

4. The parties to this case as defined by Wyo. Stat. Ann. § 16-3-101(b)(vi) are the Church of Jesus Christ of Latter-day Saints, a Utah corporation (“Church”), and the City of Cody Planning, Zoning and Adjustment Board (“Board”).

### **Brief Statement of Facts**

5. The Church of Jesus Christ of Latter-day Saints owns a parcel of land in the City of Cody, Wyoming consisting of approximately 4.69 acres. The Church desires to construct a Temple on this location.

6. The Church submitted a Site Plan pertaining to the proposed Temple for review by the Board. The Site Plan and other matters pertaining to the proposed Temple were considered by the Board during a special board meeting held on June 15, 2023.

7. The Board is a seven (7) member board. Five (5) of the seven (7) board members were in attendance at the special board meeting. During the special board meeting

held on June 15, 2023, a motion was made to approve the Church's Site Plan. A majority of the board members in attendance approved the Site Plan. Specifically, three (3) of the board members voted in favor of the motion, one (1) board member voted against the motion, and one (1) board member abstained from voting. However, the Board Chair stated that the motion failed apparently on the mistaken belief that the motion required an affirmative vote from a majority of the full board (at least 4 of the 7 board members). This petition seeks judicial review of the Board's determination and subsequent minutes stating that the motion to approve the Site Plan had failed

8. The applicable ordinance requires only an affirmative vote of a majority of the Planning, Zoning and Adjustment Board members in attendance at said meeting. See Cody Municipal Code § 9-2-3 (providing that an affirmative vote of a majority of the Planning, Zoning and Adjustment Board members in attendance at said meeting). Accordingly, the approval of three members of the board (a majority of those members in attendance) was sufficient to approve the Site Plan.

### **Appendix**

Attached hereto as **Appendix A** is a copy of the minutes of the special board meeting held on June 15, 2023, which contains a summary of the Board's action with respect to the Site Plan.

### **Related Petitions**

There are no known related petitions for judicial review pending.




### Statement Regarding Transcript

Pursuant to Wyo.R.App.P. 12.04(d), the Church hereby provides notice that it has ordered and made arrangements for the payment for a transcript and/or other record of the portion(s) of the above-referenced special board meeting necessary for the appeal.

Dated this 17<sup>th</sup> day of July, 2023.

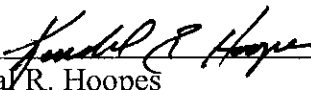
**Yonkee & Toner, LLP**

By:   
Kendal R. Hoopes, WSB No. 6-3422  
319 West Dow  
P. O. Box 6288  
Sheridan, WY 82801-1688  
Telephone No. (307) 674-7451  
Facsimile No. (307) 672-6250  
[krhoopes@yonkeetoner.com](mailto:krhoopes@yonkeetoner.com)  
Attorney for Petitioner

### Certificate of Service

I, Kendal R. Hoopes, hereby certify that on the 17<sup>th</sup> day of July, 2023, I served a true and correct copy of the above and foregoing document by placing the same in the United States mail, postage prepaid, at Sheridan, Wyoming, and duly addressed as follows:

City of Cody Planning, Zoning and Adjustment Board  
1338 Ramsey Avenue  
Cody, WY 82414

  
Kendal R. Hoopes

# **Appendix A**

**City of Cody**  
**Planning, Zoning, and Adjustment Board Special Meeting**  
**June 15, 2023**

A special meeting of the City of Cody Planning, Zoning and Adjustment Board was held in the Cody Auditorium in Cody, Wyoming on Tuesday, June 15, 2023 at 5:30 pm.

Scot Richard made a motion, second by Dan Schein to go into an Executive Session, pursuant to W.S 16-4-405 (a) (ix). Vote on the motion was unanimous, motion passed.

Carson Rowley called the meeting to order at 6:03 pm.

Carson Rowley went over the public hearing protocol and how the meeting will be ran.

Attorney Scott Kolpitzke spoke on what a is a personnel and private conflict of interest.

Carson Rowley continued his explains on how the meeting will be ran.

Present: Carson Rowley; Dan Schein; Kim Borer; Scott Richard; Matt Moss; Council Liaison Andy Quick; City Attorney Scott Kolpitzke; City Planner Todd Stowell; Fire Marshal Sam Wilde, Public Works Director Phillip Bowman; GIS Analyst Utana Dye, Barb Curless Assistant Finance Director.

Absent: Josh White, Ian Morrison

Caron Rowley led the pledge of allegiance.

Kim Borer made a motion to approve the agenda for June 15, 2023 special meeting seconded by Dan Schein. Vote on the motion was unanimous, motion passed.

Kim Borer made a motion to approve the minutes from the June 13, 2023 regular meeting, seconded by Matt Moss. Vote on the motion was unanimous, motion passed.

City Planner Todd Stowell spoke on the special exemption and the conditional use permit. He presented a picture of the temple site and a visual of what the temple will look like at different perspective. He also showed a map of the show who are in favor is in green and the opposed is in pink. The white is from those who did not resubmit comments.

Public hearing was open at 6:19 p.m. for the Special Exemption and Conditional Use Permit for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

For  
Andrew Jacobsen  
Luke Hopkin  
Jimmie Edward  
Noma Walton-

Brook Grant  
Glenn A. Nielson  
Georgina Hopkins  
Karen Jones  
Yvonne Nielson  
Megan George  
McKennah Buck  
John Bollinger  
Chris Taggart  
Arlene George  
Mark Allphin  
Bethany Holso  
Rod McNair  
Ryan Beardall  
Susan  
Allison Maxwell  
Alicia Torres  
Randy Tolman  
Christien Rence  
Don Maxwell  
Jay Winzenried

Scott Richard made a motion to take short break at 7:22 p.m., second by Kim Borer. Vote on the motion was unanimous. Motion passed.

The meeting reconvened at 7:30 p.m.

Against  
Brandi Nelson  
Carla Egelhoff  
Greg Brooks  
Terry Skinner  
Dan Hammond  
Patrick Petit  
Ty Nelson  
Tim Hopkins  
Connie Hopkins  
Daniel Miller  
Janet Jones  
Randall Franzen  
Jack Hatfield  
Graciela Lparraguirre  
Sharon LaGrant  
Dan Brauser  
Gloria Hedderman  
Felica Canfield  
Fred Schneider  
Mary Morehouse

Deb Wendtland

Public hearing was closed at 8:32 p.m.

City Planner Todd Stowell reviewed the interpretation of building height, as related to the proposed temple at 555 Temple View Lane (located just west of Skyline Drive and north of the Cody Canal, approximately 400 feet north of the intersection of Skyline Drive and Olive Glenn Drive).

Scott Richard made a motion that the board not accept the City Planner's building height interpretation until further discussion and clarification could be had on roof top projections and our codes to avoid unintended consequences and precedent setting down the road that could negatively impact the community. No second on the motion. The motion fails.

Matt Moss made a motion to accept the roof top projection and building height interpretation as presented by the City Planner. No second on the motion. The motion fails.

Matt made a motion on religious structures copula steeple in excess of over 30'.

Dan Schein made a motion second by Kim Borer to table the interpretation of the building height. Scott, Dan, Kim was in favor of the motion. Carson and Matt were opposed to the motion. Vote on the motion failed.

Item B failed for lack of motion.

City Planner Todd Stowell review the Special Exemption application related to building height of the proposed temple of the Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

Kendall Hoopes- Attorney for The Church of Latter-Day Saints, Matthew Burk-Senior project manager, Jeremy Haskell- Principal Architect Jocy Krueger- Engineer, Greg Rasmussen Senior Director of the Church. They spoke on behalf of the Temple project.

Matt Moss made a motion, to except the Special Exemption application related to the building height of the propose temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Second on the motion, Motion failed lack of a second.

Matt Moss made a motion, second by Scott Richard to table the Special Exemption application related to the building height of the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Voter on the motion, Scott Richard, Kim Borer, Carson Rowley, Matt Moss were in favor of the motion. Dan Schein was opposed to the motion. Motion passes.

City Planner Todd Stowell review the commercial site plan application for the proposed temple of the Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

Scott Richard made a motion, second from Matt Moss to approve commercial site plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Vote on the motion Scott Richard, Carson Rowley and Matt Moss were in favor of the Vote. Kim Borer was opposed to the motion. Dan Schein abstained from the vote. Motion failed.

Matt Moss made a motion second by Kim Borer to table the commercial site plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Scott Richard, Dan Schein, Kim Borer, and Matt Moss were in favor of the motion. Carson Rowley was opposed to the motion. Motion passed.

Patrick Petit spoke on the fence waiver as an objection to the waiver.

Kim Borer made a motion, second by Matt Moss to approve the fence height waiver for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. The vote on the motion was unanimous, motion passed.

The board took a short break to at 10:05 p.m.

The meeting reconvened at 10:15 p.m.

City Planner Todd Stowell review the Conditional Use Permit application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane.

Matt Moss made a motion to the approve Conditional Use Permit if we can come to a conclusion on the special exemption for the building height for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Failed.

Matt Moss made a motion, second form Kim Borer to a table the Conditional Use Permit with findings as stated in the staff report as recommend for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Scott Richard, Carson Rowley, and Matt Moss were in favor of the motion. Dan Schein and Kim Borer was opposed to the motion. Motion failed.

Carson Rowley made a motion, second by Kim Borer, to approve the Conditional Use Permit as stated in the staff report with findings and recommendation there in for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane after Scott Kolpitke advised the board that the building height interpretation and special exemption request would remain separate applications for discussion at a later date. Scott Richard, Kim Borer, Carson Rowley and Matt Moss were in favor of the motion. Dan Schein was opposed to the motion. Motion passed.

P&Z Board Matters (announcements, comments, etc.): none

Kim Borer made a motion, seconded by Dan Schein, to adjourn the meeting. Vote on the motion was unanimous. The meeting was adjourned at 11:21 p.m.

Utana Dye  
GIS Analyst

**City of Cody**  
**Planning, Zoning, and Adjustment Board Regular Meeting**  
**June 27, 2023**

A regular meeting of the City of Cody Planning, Zoning and Adjustment Board was held in the Cody Auditorium in Cody, Wyoming on Tuesday, June 27, 2023 at 12:00 pm.

Carson Rowley called the meeting to order at 12:00 pm.

Scott Richard made a motion, seconded by Dan Schein, to go into an Executive Session, pursuant to W.S 16-4-405 (a) (ix). Vote on the motion was unanimous, motion passed.

Present: Carson Rowley; Dan Schein; Kim Borer; Scott Richard; Matt Moss; Josh White; City Attorney Scott Kolpitzke; City Planner Todd Stowell; Public Works Director Phillip Bowman; Building Official Sean Collier; Fire Marshall Sam Wilde; GIS Analyst Utana Dye.

Absent: Ian Morrison; Council Liaison Andy Quick.

Carson Rowley led the pledge of allegiance.

Matt Moss made a motion, seconded by Scott Richard, to discuss Item 7B from the last meeting which is the City Planner's interpretation of the code as it pertains to the height of the proposed LDS Temple at 555 Temple View Drive. It would be item 6B on the agenda. Scott Richard, Kim Borer, Matt Moss and Josh White were in favor of the motion. Carson Rowley and Dan Schein were opposed to the motion. Motion passed.

Scott Richard made a motion, seconded by Kim Borer, to approve the agenda for the June 27, 2023 regular meeting. Vote on the motion was unanimous, motion passed.

Scott Richard made a motion, seconded by Josh White, to approve the minutes from the June 15, 2023 special meeting with corrections. Vote on the motion was unanimous, motion passed.

Carson Rowley noted a point of clarification that the Board has closed public comment and presentations on the applications.

Matt Moss made a motion, seconded by Carson Rowley, that the Board finds the propose temple for The Church of Jesus Christ of Latter-Day Saints complies with the Cody Zoning Regulations for maximum number of stores and maximum built height as it: a) Does not exceed two stories, and b) does not exceed 30' in building height as defined by the Cody Zoning Ordinance. Furthermore, the Board rule that as the height requirement has been met, the Special Exemption Application is unnecessary for the Cody Temple proposal. Scott Richard, Dan Schein, Carson Rowley, and Josh White were opposed to the motion. Kim Borer and Matt Moss were in favor or the motion. Motion Failed.

Dan Schein made a motion, seconded by Carson Rowley, to reconsider the Conditional Use Permit finding related to building height -the section under Principle 3.1.F of the Conditional Use Permit would add the language that it is conditional on a Special Exemption on height. Scott Richard, Dan Schein, Carson Rowley, and Josh White were in favor of the motion. Kim Borer and Matt Moss were opposed to the motion. Motion passed.

Dan Schein made a motion, seconded by Kim Borer to table Agenda Item 8, the Consideration of the Findings of Fact of the Conditional Use Permit. Scott Richard, Kim Borer, and Matt Moss were opposed to the motion. Dan Schein, Carson Rowley and Josh White were in favor of the motion. Motion fails.

Kim Borer made a motion, seconded by Josh White, to remove from the table Item 9, the Special Exemption application related to building height to the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane from the table. Vote on the motion was unanimous, motion passed.

Kim Borer made a motion, seconded by Matt Moss, to approve the Special Exemption application related to building height to the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane as presented. Kim Borer and Matt Moss were in favor of the motion. Scott Richard, Dan Schein, Carson Rowley, and Josh White were opposed to the motion. Motion failed.

Matt Moss made a motion to approve the Special Exemption application related to building height to the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane with the condition that the height be up to 70'. Motion failed for lack of a second.

Dan Schein made a motion, seconded by Josh White, to remove from the table the Commercial Site Plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Vote on the motion was unanimous, motion passed.

Scott Richard made a motion, seconded by Carson Rowley to reconsider the Commercial Site plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Scott Richard, Dan Schein, Carson Rowley, Matt Moss and Josh White were in favor of the motion. Kim Borer was opposed to the motion. Motion passed.

Scott Richard made a motion, seconded by Dan Schein, to table the review of the commercial site plan application for the proposed temple of The Church of Jesus Christ of Latter-Day Saints, proposed at 555 Temple View Lane. Vote on the motion was unanimous, motion passed.

New Business: None

P&Z Board Matters (announcements, comments, etc.): Kim Borer made a comment that the mayor and council should review the master plan.

Council Update: None

Staff Items: None



Dan Schein made a motion, seconded by Kim Borer, to adjourn the meeting. Vote on the motion was unanimous. The meeting was adjourned at 2:00 p.m.

*Utana Dye*  
\_\_\_\_\_  
GIS Analyst

DRAFT

**City of Cody**  
**Planning, Zoning, and Adjustment Board Regular Meeting**  
**July 11, 2023**

A regular meeting of the City of Cody Planning, Zoning and Adjustment Board was held in the Cody Auditorium, 1240 Beck Avenue, Cody, Wyoming on Tuesday, July 11, 2023 at 12:00 pm.

Carson Rowley called the meeting to order at 12:03 pm.

Present: Carson Rowley; Dan Schein; Ian Morrison; Kim Borer; Matt Moss; City Attorney Scott Kolpitzke; City Planner Todd Stowell.

Absent: Scott Richard, Josh White.

Kim Borer made a motion, seconded by Matt Moss, that the Board convene the executive session as advertised. Vote on the motion was unanimous. The Board convened in the Cody Club Room and held the executive session, then returned to the main room.

Caron Rowley led everyone in the pledge of allegiance.

Kim Borer made a motion to approve the revised agenda (revision removed all items related to the proposed temple of The Church of Jesus Christ of Latter-Day Saints) for the July 11, 2023 regular meeting, seconded by Ian Morrison. Vote on the motion was unanimous, motion passed.

City Planner Todd Stowell presented the staff report for the preliminary plat of the Kahn Unit Development Subdivision, a 3-lot commercial subdivision of 209 Yellowstone Avenue.

Dave Shultz, the applicant's representative engineer, answered questions from the Board related to the proposed right-of-way and street widths, indicating that he could not speak for the owner on that point, but that the 24-foot street width was what was previously discussed.

Kim Borer made a motion, seconded by Dan Schein, to recommend that the City Council approve the preliminary plat for the proposed Kahn Unit Development Subdivision subject to the conditions listed in the staff report 1-13, and to grant the three variances: To allow use of the updated master plan street section (Local section, with 34' asphalt width) and corresponding reduction in right-of-way width (50 feet, with 5' utility easements to each side); To waive the alley requirement; and, To allow the surface water rights to be transferred to a 3<sup>rd</sup> party. Vote on the motion was unanimous in the affirmative (5-0). Motion passed.

Ian Morrison recused himself from the following item due to a conflict of interest.

City Planner Todd Stowell presented the staff report for the final plat of the Case Minor Subdivision, a 3-lot subdivision at 1420 Meadow Lane Avenue.

The applicant's engineer, Brett Reed answered questions from the Board related to the water right (ADWR) status, and whether there were any concerns with the proposed conditions—all of which they viewed as workable.

Dan Schein made a motion, seconded by Matt Moss, to recommend that the City Council approve the additional variance related to issuance of a building permit on Lot 1; grant the vacation of the waterline easement as depicted on the plat; and, approve the final plat for the Case Minor Subdivision subject to the conditions listed in the staff report (3. a-h). Vote on the motion was unanimous in the affirmative (5-0). Motion passed.

P&Z Board Matters (announcements, comments, etc.):

Dan Schein made a motion, seconded by Kim Borer, to ban the use of personal communication devices during Board meetings. Concern was expressed by planning staff and Board members relating to the need to potentially allow “call in” attendance, and that some have personal notes on their devices that the reference during the meeting. Motion failed 1-4, with Dan Schein voting “aye” and Carson Rowley, Ian Morrison, Kim Borer, and Matt Moss voting “nay”.

Council Updates: None

Staff Items: None

Ian Morrison made a motion, seconded by Kim Borer to adjourn the meeting. Vote on the motion was unanimous. The meeting was adjourned at approximately 1:20 p.m.

Utana Dye  
GIS Analyst

CITY OF CODY PLANNING, ZONING AND ADJUSTMENT BOARD STAFF REPORT			
<b>MEETING DATE:</b>	JULY 11, 2023	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	X
<b>SUBJECT:</b>	CODY WYOMING TEMPLE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS. SITE PLAN REVIEW. FILE NOS: SPR 2023-13	RECOMMENDATION TO COUNCIL:	
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

*THIS REPORT SUPPLEMENTS THE REPORTS PREPARED FOR THE JUNE 15 AND JUNE 27, 2023 MEETINGS.*

#### **SITE PLAN REVIEW:**

There has been some confusion regarding the City code language for the site plan review. This report is simply an attempt to clarify applicable language pertaining to the site plan review.

In almost all cases, the Planning and Zoning Board relies on the following language to conduct site plan reviews:

*All structures within the district shall be architecturally compatible. Architectural and landscaping plans shall be submitted to the Planning and Zoning Commission for approval. Architectural and landscaping details shall be maintained as shown by the approved plans.*

The above language does not exist in any of the residential zoning districts, as it is limited to the commercial and industrial zones. The temple project is in a Rural Residential zone. Therefore, the term "architecturally compatible" is not a specific criterion for the proposed temple. The lack of the above architectural and landscaping language is why staff noted that there is no architectural or landscaping plan review specifically required. However, that may have been confusing, as there is general authority in the building code provisions (not zoning code) of the City of Cody Code, as was quoted in the prior staff reports and noted below:

9-2-3: MEETING WITH PLANNING, ZONING AND ADJUSTMENT BOARD REQUIRED BEFORE BUILDING PERMIT ISSUED:

*Before the issuance of any permit under the International Building Code for commercial buildings situated within the City, the applicant, property owner and*

*occupant shall meet with the Planning, Zoning and Adjustment Board to review the application and plans insofar as they pertain to the exterior of a commercial building and site plan conditions. The issuance of a permit shall be conditioned upon the applicant receiving an affirmative vote of a majority of the Planning, Zoning and Adjustment Board members in attendance at said meeting.*

For the staff recommendation on the site plan, please see the prior staff report.

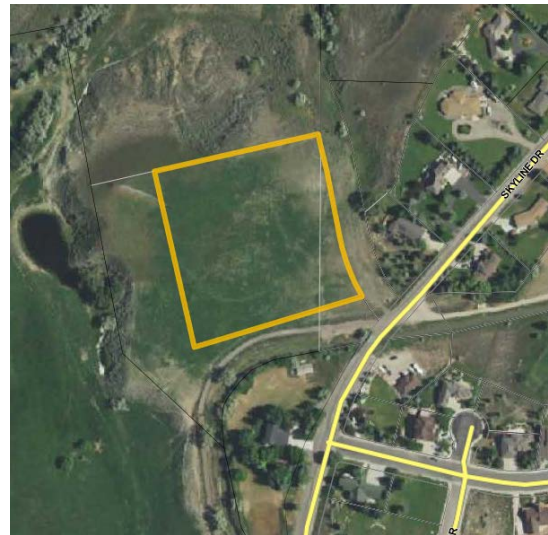
The Board's packet for the July 11, 2023 meeting will include the prior staff reports for the June 27, 2023 meeting and the current Conditional Use Permit findings, for reference as needed.

**CITY OF CODY  
PLANNING, ZONING AND ADJUSTMENT BOARD  
STAFF REPORT**

<b>MEETING DATE:</b>	JUNE 15, 2023	<b>TYPE OF ACTION NEEDED</b>	
<b>AGENDA ITEM:</b>		P&Z BOARD APPROVAL:	X
<b>SUBJECT:</b>	CODY WYOMING TEMPLE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS. FILE NOS: SPR 2023-13, SUP 2023-08 (BOTH CUP AND SE), AND FNC 2023-01	RECOMMENDATION TO COUNCIL:	
<b>PREPARED BY:</b>	TODD STOWELL, CITY PLANNER	DISCUSSION ONLY:	

Project Description:

Haskell Architecture & Engineering, Inc., representing The Church of Jesus Christ of Latter-Day Saints has submitted the Conditional Use, Special Exemption, and Site Plan applications for development of a temple, accessory building, street, and associated improvements on a 4.69-acre parcel (highlighted on map), and an entrance road on adjacent right-of-way. The temple building would be a single-story building of approximately 9,950 square feet with a perimeter wall height of 24 feet, and a steeple that would extend 100'11" above the finished floor elevation. The site plan, landscaping plan, elevation views of the temple, floor plans, drainage plan, and other related items are available on the City website under "Latest News" > "Notice of Public Hearing for Cody Temple Project".



The property is located just west of Skyline Drive and north of the Cody Canal, about 400 feet north of the Olive Glenn Drive intersection (Tract B2 of the Record of Survey showing Boundary Line Adjustment recorded in Plat Cabinet P, Page 197, Records of the Park County Clerk and Recorder). The property would have an address of 555 Temple View Lane, based on the proposed street that would be constructed in conjunction with the project.

Process:

The City Planner serves as a staff resource to the Planning and Zoning Board. The role of the City Planner is to provide the Board with information relating to land use proposals, identify which regulations apply to the project, and make statements, recommendations or suggestions for consideration by the applicant and/or Board, based on the City Planner's experience and training. That information is typically in the form of a staff report, such as this document. The Planning and Zoning Board has the task of analyzing the information, coming to their own conclusions, and issuing either a land use decision on the project, or a recommendation to the governing body (city council), depending on the type of application. The current applications include a Conditional Use Permit application, a Special Exemption request, and a Site Plan for review. The Planning and Zoning Board makes the decisions on each of these applications.

Both the Conditional Use Permit and Special Exemption processes require a public hearing before the Planning and Zoning Board. The June 15, 2023 public hearing and opportunity to comment has been advertised through a notice in the Cody Enterprise newspaper on May 30, 2023, and direct mailing to immediate neighbors within 140' on May 25, 2023. Those within 140 feet of the applicant's private property are identified

on the map by the orange highlighting. The newspaper notice and the direct mailing asked for written comments to be submitted either by Thursday, June 8<sup>th</sup> in order to be included in the Planning and Zoning Board packet, or submitted at the public hearing.

The review of the site plan by the Planning and Zoning Board does not require a public hearing, but is scheduled to occur at the same meeting.



### **STAFF ANALYSIS:**

As a strict rule, I Todd Stowell, avoid writing any portions of staff reports in the “first person” point of view, as doing so ties me personally to the information provided, and the objective nature of my communications can be perceived as compromised if I misstep in any way. However, in this instance I believe it is the only way I can demonstrate the thought processes I have gone through to develop my recommendations on this project from the perspective of the City Planner, how those perspectives are based on laws and on precedents set by the Board, and that the information is not biased by my personal affiliation with the Church of Jesus Christ of Latter-Day Saints. I have been instructed by the City attorney to analyze the applications as I would normally do, for reasons that will later be revealed as needed.

As part of this review, I have read every comment letter and email that has been submitted, researched the zoning history of the area and applicable current regulations, created scale cutouts to visualize the size of the temple from the perspectives of Skyline Drive and Yellowstone Avenue (West Strip), and drove to the Helena Montana temple during the open house to view the newly completed temple and analyze the associated lighting and improvements on my own personal time. This report contains only a fraction of the information I have analyzed.

I should also note that throughout this entire process, even before application, I have not acted on my own—every significant discussion, email and decision has been in conjunction with the City administrator, City attorney, and/or Public Works director being involved.

### **Height Interpretation**

The applicant, Haskell Engineering and Architecture, Inc, representing the property owner, The Church of Jesus Christ of Latter-Day Saints, brought forth the temple project and asked the City what permits they needed to construct a temple. The Cody zoning ordinance specified that a Conditional Use Permit was needed, so that was identified. In addition, as City staff initially looked at the language of the zoning code, we were unsure how the applicable height regulations would apply to such an architecturally complex building, so the City also requested a Special Exemption, in the event it was determined that one was needed. For efficiency we prefer that all applications be submitted and considered at once, rather than to get before the Board and have them determine an additional application was needed. Based on the schedule at that time, doing so required that the normal special exemption notice process be followed, which has occurred. However, before considering the Special Exemption application, staff is requesting from the Board an interpretation of whether the proposed temple complies with the applicable height limits.



In my role as City planner, I will state the regulation, do my best to be sure it is properly understood, and then state my understanding of how it applies to the proposal under review.

The Rural Residential zone, in which the temple is proposed, has two height limits—maximum number of stories, which is two, and maximum building height, which is 30 feet above finished grade. Regarding the maximum number of stories, there is only one floor level in the proposed temple, and as stories are measured from a floor to the ceiling above a floor, the number of stories is one. At one story, the temple building complies with the limit on maximum number of stories.

**10-6-2: TABLE:**

Standard		
		RR
	Maximum number of stories* (excluding basements) and maximum building height*	2 stories and 30' above finished grade

(Footnote: As a side comment, the one story of the temple would generally be less than 12 ½ feet tall, except for that portion of the ceiling and associated roof assembly that is elevated to accommodate the higher ceilings above the Baptistry and Celestial Room, as well as some adjoining mechanical equipment. That elevated portion of the roof remains below the elevation of the parapet wall that extends 24 feet above the floor level of the building.)

Now we must analyze whether the temple complies with the “maximum building height” standard, which is 30 feet.

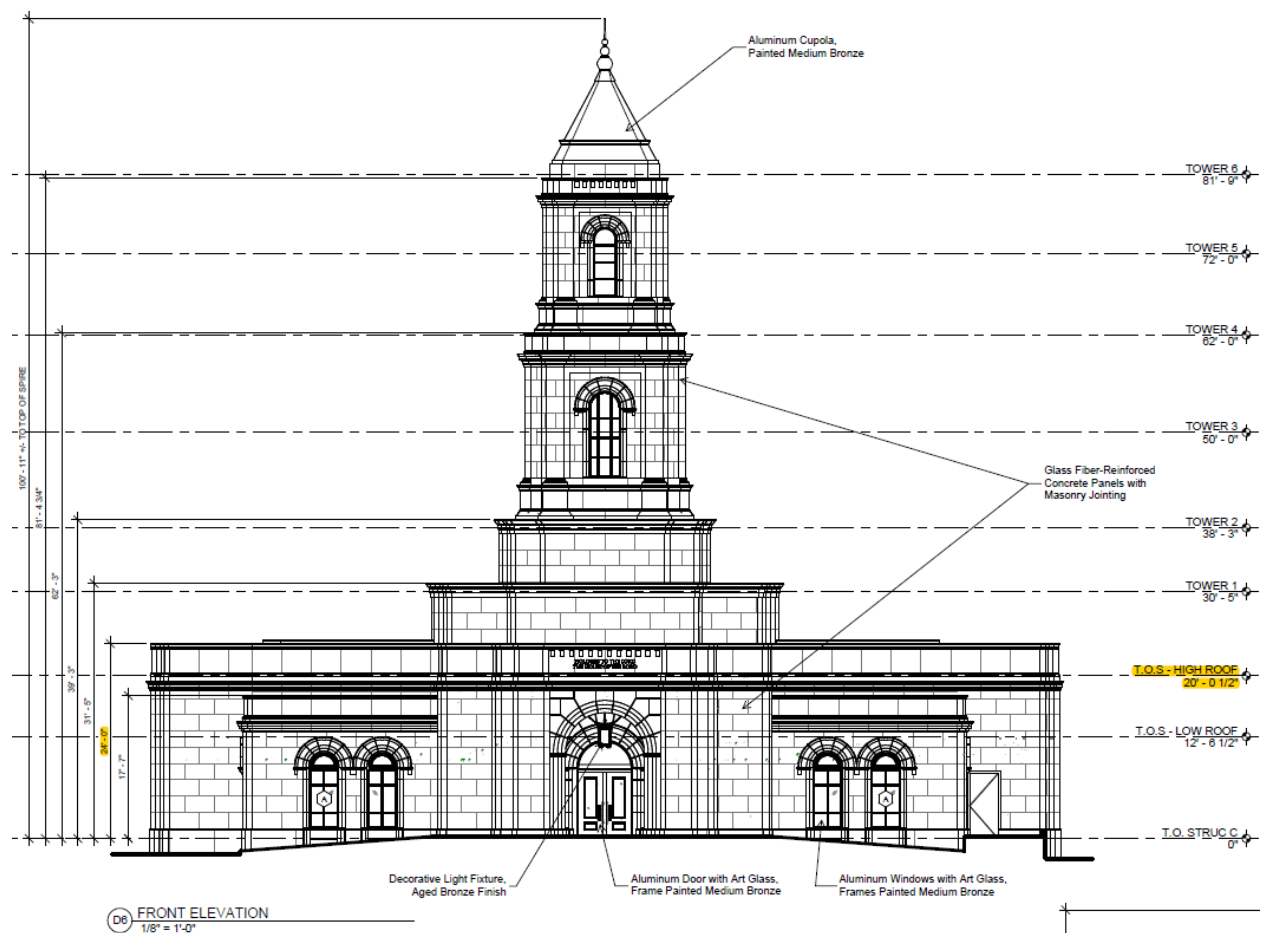
Building height is defined in the Cody zoning code as follows:

*BUILDING HEIGHT: Building height refers to the vertical distance between the average finished grade and either: a) the highest point of the coping of a flat roof; b) the deck line of a mansard roof; or c) the height of a point midway between the eaves of the main roof and the highest ridge line of a gable, hip or gambrel style roof. For structures without a roof, building/structure height is the vertical distance from the average finished grade to the highest point of the structure, except those projections otherwise exempted or specified in this title.*

The following is how I interpret the literal language of that definition.

First, notice that building height is not necessarily the highest point of a building. For example, on sloped roofs building height is measured only to the midpoint between the eave and ridge of the main roof. More than one home in the immediate proximity of the proposed temple can be used to illustrate the point. However, some of the materials that have been circulated relating to the temple project have not taken this into account—likely unintentionally. Correct information is necessary for a proper analysis.

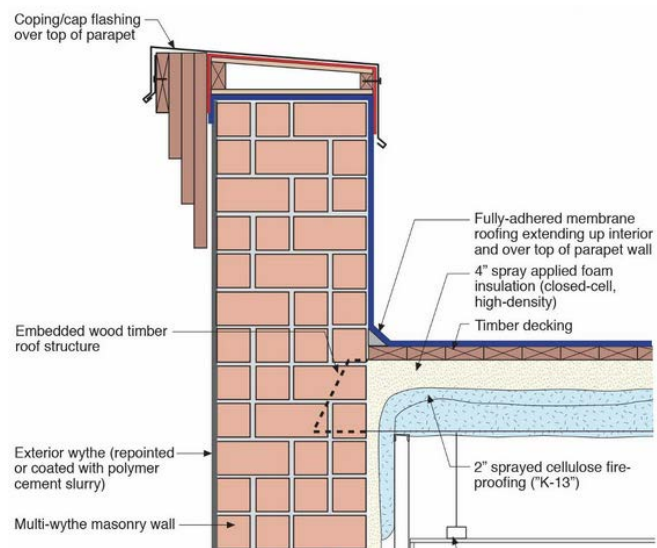
Since the proposed temple has a flat style of roof, section "a" of the building height definition is the applicable standard, which is the vertical distance from finished grade to the highest point of coping of the roof. Initially, I did not have detailed information about the interior ceiling height of the temple, nor what components of the building contained a roof. I needed to determine where the roof(s) were located, so that I could determine what was the associated coping, and therefore determine official building height. To what elevation would the one story extend? Would there be a roof on what visually forms the steeple base? Did the ceiling extend up into the steeple? And if so, how far? These were all factors that could affect the building height calculation.



While I have not seen the building permit set of plans for the Cody temple, the architect has recently stated that the roof and steeple concept used for the Cody temple is almost exactly the same as the Helena temple, differing only in the shape of the steeple. What I discovered while viewing a time-lapse video of the Helena temple construction is that there is no roof or skylight (for those familiar with the Billings

temple skylight) above the flat membrane roof that covers the main level of the building. The panels that visually form the base of the temple steeple are actually suspended by a steel framework above the roof of the temple and are entirely open vertically—rain and snow would fall all the way to the roof of the main level, which is below the 24-foot-tall parapet wall. The steeple base has no roof. The flat roof on the temple is immediately above the ceiling of the occupied space of the main level. No portion of the steeple contains space that is considered habitable or that would be occupied.

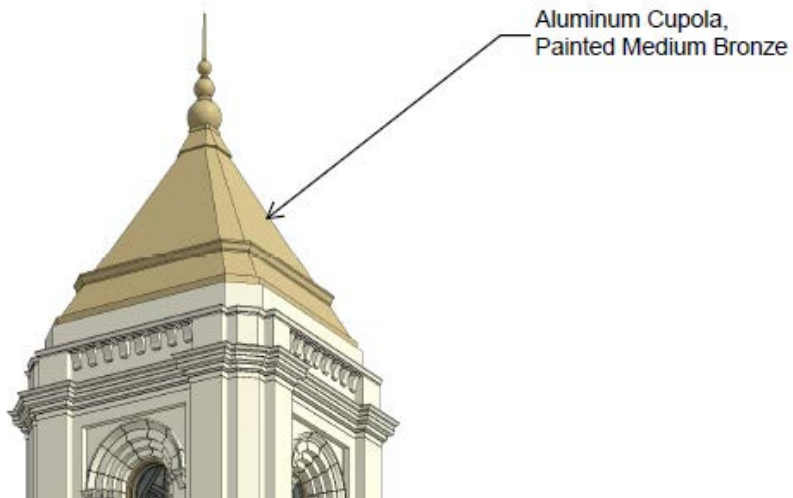
Now that we know the location of the flat roof, the next question for determining “building height” of the temple is “What is the highest point of the coping” associated with that flat roof? Coping is the weatherproof flashing that protects the top of a parapet wall—see insert (*Building Science.com*, accessed 6.2.2023). A parapet is “a low wall along the edge of a bridge, a roof, etc. to stop people from falling.” (*oxfordlearnersdictionaries.com*, accessed 6.1.1023)



In the case of both the Helena and Cody temples, the only parapet walls are found around the perimeters of the buildings—the panels that form the visual base of the steeple are not parapets, as they are suspended above the roof. Therefore, the coping on the 24-foot-tall parapet walls of the proposed temple constitutes “the highest point of the coping” to which building height is measured.



The cupola is technically a component of the steeple, but in the shape of a hip style roof, which may at first suggest that building height should consider the cupola. However, the cupola does not form the “main roof” of the building. Its size is only a small fraction of the flat roof below. As such, part “c” of the building height



definition—shown in context below, is not applicable, due to the cupola not being the main roof.

*BUILDING HEIGHT: Building height refers to the vertical distance between the average finished grade and either: a) the highest point of the coping of a flat roof; b) the deck line of a mansard roof; or c) the height of a point midway between the eaves of the main roof and the highest ridge line of a gable, hip or gambrel style roof...*

The conclusion is that the official building height of the proposed Cody Wyoming temple will be approximately 25-26 feet—the distance from average finished grade to the highest point of coping of the parapet wall of the flat roof, which height complies with the maximum 30-foot building height limit of the Rural Residential zone in which the temple is proposed. The applicant is encouraged to submit documentation for the Cody temple to verify the presumptions upon which this determination is based.

To determine whether the Planning and Zoning Board agrees with this analysis and conclusion, I believe a motion should be made and voted on. The following draft motion is provided for your consideration.

### **Recommended Motion:**

That the Board finds that the proposed Cody Wyoming temple of The Church of Jesus Christ of Latter-Day Saints complies with the Cody zoning regulations for maximum number of stories, and maximum building height, as it;

- a) Does not exceed two stories; and,

- b) Does not exceed 30 feet in “building height” as defined by the Cody zoning ordinance.

Furthermore, the Board rules that as the height requirements are met, the Special Exemption application is unnecessary for the Cody temple proposal.

If the above motion is approved, a staff analysis of the Special Exemption is unnecessary, so the analysis is not provided at this time. If the motion fails, I will provide additional information as needed.

For the Planning and Zoning Board and others that are interested, there are additional comments and information related to the building height interpretation, which may be helpful, in the “Height Interpretation Notes” section attached to this report—page 38.

### **PROJECT ANALYSIS:**

There have been three primary concerns related to the proposed Cody Wyoming temple—traffic, lighting, and building height. Building height has already been analyzed from the technical standpoint, but indirectly it relates to view impacts. Therefore, a discussion of view impacts will occur before getting into the topics of traffic or lighting.

#### **View Impacts:**

Yes, there will be impacts to views. With all development there is change and therefore an impact to someone's view. As properly stated in one of the comment letters on the temple project, there is “substantial case law stating that the purchaser of property does not have the right to a view without an easement or similar deeded right.”

Perhaps I should stop there because legally that is the end of the discussion, but setting aside that legal barrier for a moment, I want to explain a few other items related to views and the Cody Master Plan. Master plans on their own are only a guide and do not have the effect of law. To quote from the Cody Master Plan, “The goals, objectives, and principles found in the Master Plan Frameworks provide guidance for future planning and decision-making in Cody. These statements are not hard-and-fast regulations, but rather statements that reflect the community's aspirations.” The Cody Master Plan does include language relating to efforts to protect scenic views. In the Cody Master Plan there is the following language:

Objective 13.1: *Protect the scenery that contributes to Cody's natural character.*

Principle 13.1.a. *Scenic Views.* Support the County and property owners in efforts to help preserve the scenic landmarks that surround Cody for their natural

beauty-- Heart Mountain, Rattlesnake Mountain, Cedar Mountain, Carter Mountain, McCullough Peaks, Pat O'Hara Mountain, Shoshone River, and other major natural landforms.

Upon careful analysis, you will see that it is the scenic landmarks in the area that are identified as warranting protection—not the right of any individual property owner to see those landmarks.

Those opposing the temple on the basis of view impacts would likely then point to the following section from the Cody Master Plan:

*Principle 3.1.f. Building Heights.* Limit the height of new and remodeled construction to respect the existing or desired character of neighborhoods and districts, maintain a consistent scale of development, and preserve scenic views.

If the Board accepts the building height interpretation in the first part of this report, then the conclusion is that the proposal has complied with not only the building height law, but also this principle. There is no further authority available to limit the height of the temple building, without being subject to a claim of being arbitrary and capricious. The City does not want to be in that position, particularly when the view impacts of otherwise permitted uses of the property could have as much or greater impacts to views than the proposed temple—trees, streetlights, flagpoles, etc.

At this point, staff acknowledges that the applicant has attempted to address any concerns related to steeple height by placing the temple building as far away from the neighboring residences as possible—literally to the inch, while preserving the desired circular design elements surrounding the temple.

Because the steeple is approximately 345 feet from the nearest residential property owned by someone in opposition to the temple steeple (approximately 405' to their house), its visual impacts related to size are greatly diminished by the additional distance provided.



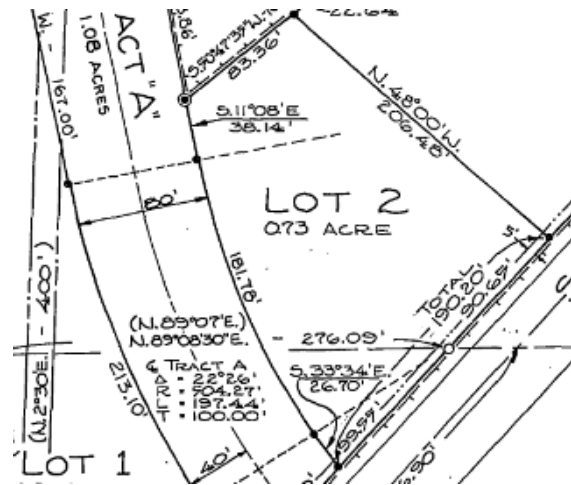


Here are two photos that should be rather accurate in perspective of scale, although they lack the perception of depth that would exist with the structure in the actual location. No zoom was used when taking the photo, and the math comes out rather precise. One photo is of the view from Skyline Drive and the other from Yellowstone Avenue. The math behind the Skyline Drive photo is that the cutout is 2 ft high at a distance of 10 feet, which is proportional to 102 feet high at a distance of 510 feet. For the Moss Orthodontics photo, the cutout is 6 inches high at a distance of 10 feet which is proportional to 102 feet high at 2,040 feet.

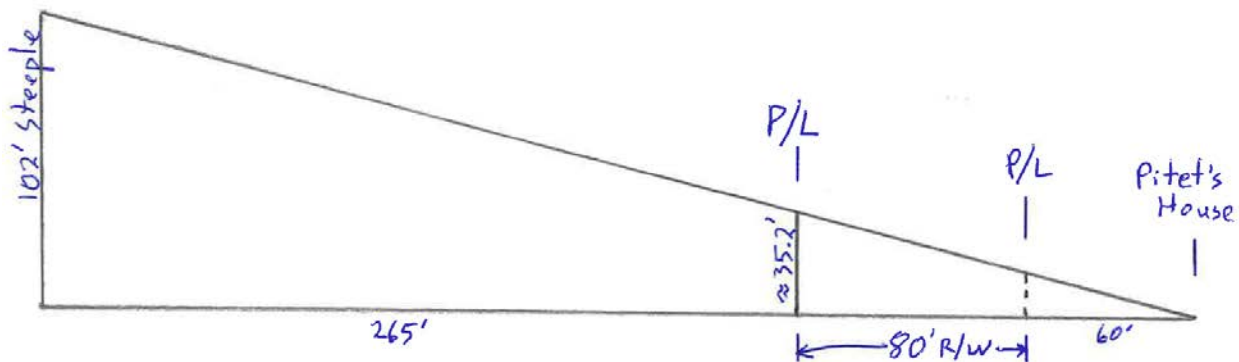




The City right-of-way between the temple property and the closest neighbor in opposition to the east is 80 feet wide. For comparison purposes, a structure or tree approximately 35 feet tall at the east property line of the temple property (140 feet away from the Pitet's house) is calculated to be visually equivalent to the height of the steeple due to the differences in distance between them, when viewed at the closest point of the Pitet's house. [Calculation: 80' R/W distance plus additional 60' to house=140'. 140' is



34.57% of the 405' total distance from the center of the steeple to the house. 34.57% of 102' (steeple height above finished grade) = approx. 35.2 feet).



It appears that the primary objections of the temple height from the immediate neighbors are related to view concerns, and how the temple structure will obstruct views. The City has received no complaints from anyone stating an objection to the trees noted on the landscaping plan. Please refer to the landscaping plan. It includes approximately 276 trees, the vast majority of which have mature (within 20 years or less) heights of 50-70 feet, and growth rates of 18-24 inches per year. I presume the neighbors in opposition would prefer to view trees rather than the steeple, which is entirely fine. However, it is apparent that others would love the opportunity to be able to see the temple steeple. The point is that the perceived view impacts from the steeple are the result of individual personal preferences. Zoning regulations cannot be based solely on personal preferences, unless also based on the concepts of protecting the general public health, safety, welfare, or morals. Thus, we find ourselves back to the original statement, that views are not a property right, and are outside the context of zoning regulation.

*Traffic:*

*Note: The following comments relate to normal operations, once the temple is up and running. During the open house, expect heavy traffic in the area. The City will work with the Church and contractor to see what can be done to minimize traffic impacts during those 2+ weeks.*

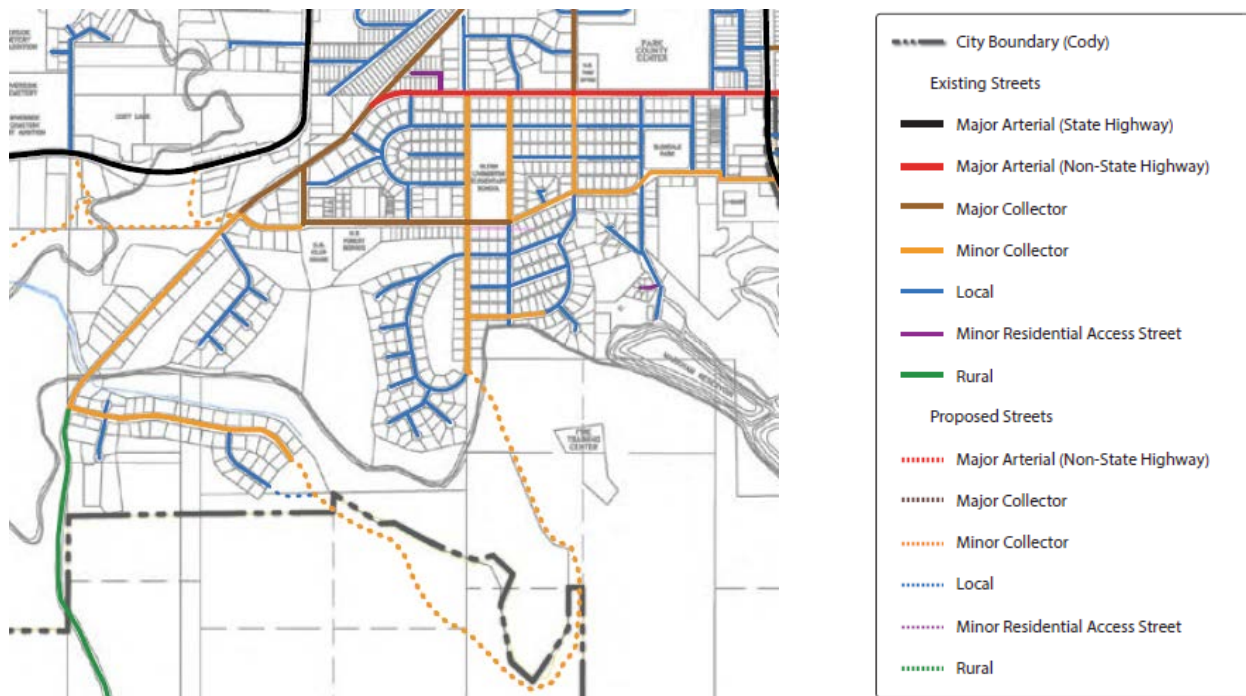
Although not required, the Church hired a professional engineering firm to perform a traffic impact analysis related to the development of the temple. The analysis was part of their due diligence when considering acquisition of the temple property. Knowing that the traffic study was available, the applicants were asked by the City to provide it with the applications as additional information related to the project. The report is attached.

While staff sees some weaknesses in the assumptions utilized in the traffic analysis (e.g. left turns onto 11<sup>th</sup> Street to avoid the Skyline/Stampede/Southfork Avenue intersection, and data collection during the slow time of year—over which they had no control), much of the information is still beneficial and accurate, including anticipated traffic generation days, times, and rates.

The temple, once dedicated, would not be open on Sundays or Mondays. The traffic analysis reasonably identifies the peak morning (AM) and afternoon (PM) hours, as 7:30-8:30 AM and 4:30-5:30 PM. The projected traffic associated with the temple was analyzed for the current conditions, as well as projected conditions in 20 years.

Observations about the projected traffic (see page 10 of the Traffic Impact Study) are that the temple traffic during the AM peak hour would include 24 vehicles entering the property and 8 vehicles exiting, for a total of 32 trips. The temple traffic during the PM peak hour is projected to have 19 vehicles entering the property and 18 vehicles exiting, for a total of 37 trips. As an appointment system is utilized for use of the temple, traffic rates are anticipated to be consistent, without large fluctuations, except perhaps during occasional service projects to help landscape the facility.

The only access to the temple site is from Skyline Drive. The portions of Skyline Drive that lead to the temple site are classified as collector streets (minor and major, see street plan below). With the exception of a 200-foot section on the west side of Skyline Drive immediately north of the proposed entrance that lacks curb and gutter, Skyline Drive is a full width street with curb and gutter and streetlights, and an asphalt width of 42 feet, which currently provides for two traffic lanes and a striped bike/pedestrian lane.



(Side notes: The section of missing curb and gutter is being addressed by the project. The applicant is voluntarily developing construction plans for the missing section of curb and gutter and associated minor widening of the Street. Construction is planned to occur as part of the temple project. As much of the missing segment of curb and gutter is outside of the scope of the temple project, it is primarily the City's responsibility for installation. Why it was not constructed when the street was initially built is not known.

If additional protection for pedestrians or bicyclists using Skyline Drive is desired, the use of traffic delineators, such as shown in this photo would appear to be a viable option, without the expense of adding sidewalk. Current City code specifies that the City Council can require property owners to install sidewalk along their property frontage, upon the City's request, per [7-1-5](#) of the City code. I would think the City would investigate the traffic delineator option before exercising their authority for requiring the property owners to install sidewalks. Note that the City is not asking the temple project to be responsible for any of these off-site improvements. Photo credit: <https://www.develotech.com/en/bicycle-path-flexible-bollard/layout/>)



Collector streets are designed and constructed to accommodate more traffic than a local residential access street. It is my understanding that Skyline Drive was reconstructed by CertainTeed Gypsum in the past to accommodate their haul trucks that used to utilize the street—which is probably why there is not a single pothole.

After reviewing the traffic study, the Public Works Director has stated that the traffic generated from the proposed temple will not cause any significant impacts to the capacity or condition of Skyline Drive. The engineers that performed the traffic study also concluded that, *"Since all study intersections were found to operate acceptably, Fehr & Peers does not recommend any mitigation measures..."*

Even if the traffic impact analysis had shown a significant traffic impact, the following regulatory limitations are noted. First, the City does not have an ordinance, resolution, or policy that specifically requires any project to conduct a traffic analysis. Nor is staff aware of one ever being required for a development within the City, except by WYDOT as part of an analysis for an access directly onto a State highway. WYDOT's threshold for beginning to consider if they will require a traffic study is 50 peak hour trips. The proposed temple is proposed at 37 AM peak hour trips and 40 PM peak hour trips—below the WYDOT threshold. Second, the City has never been politically willing to adopt a traffic mitigation impact fee or policy to require off-site mitigation of traffic impacts. Such an ordinance is typically prepared and proposed by Public Works/Engineering Departments, and must be adopted by the governing body (city council).

For the City to impose any form of traffic mitigation would deviate from the City's prior practice.

Additional traffic considerations and comparisons that the P&Z Board and others may find information is attached at the end of this report as "Traffic Notes"—page 41.

#### Lighting:

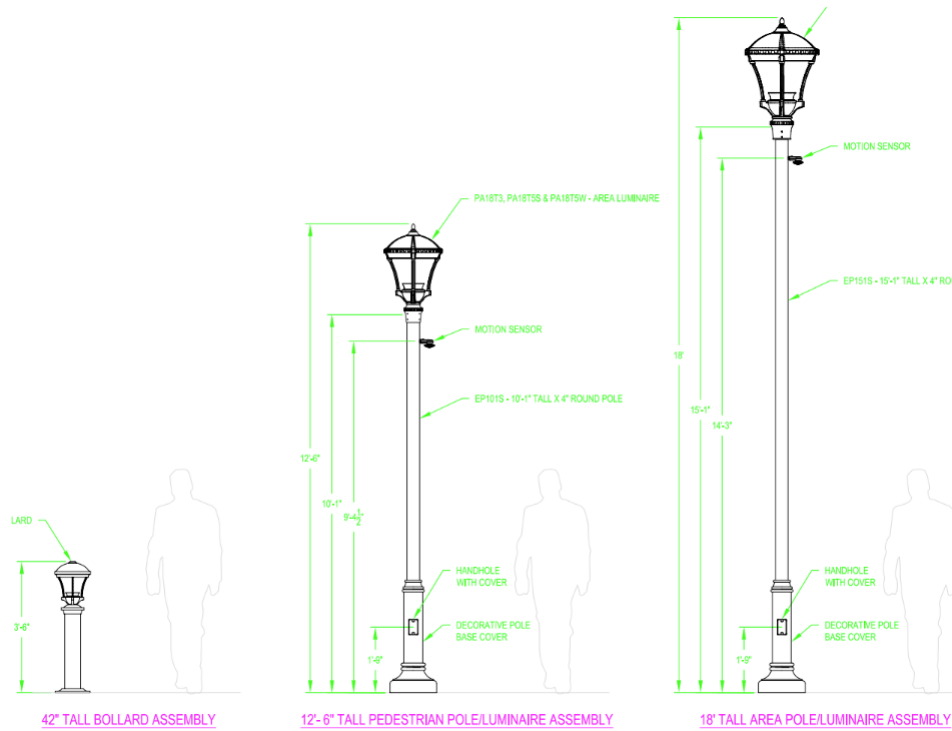
Discussion of the lighting will occur in two separate components—the general site/parking lot lighting, and the architectural lighting of the building itself.

#### Site Lighting:

The site lighting plan has been prepared by an electrical engineering firm with extensive experience. That firm contacted the City to ensure the design would be consistent with past City practice. In that conversation I noted the limited language found in the City zoning code, but relayed the expectation that the plan would utilize full cut-off fixtures (defined as zero intensity at or above 90 degrees, and no > 10% at or above 80 degrees), that the color temperature not exceed 4000 Kelvin (color of moonlight), that the fixture heights be limited due to the surrounding residential area, and that

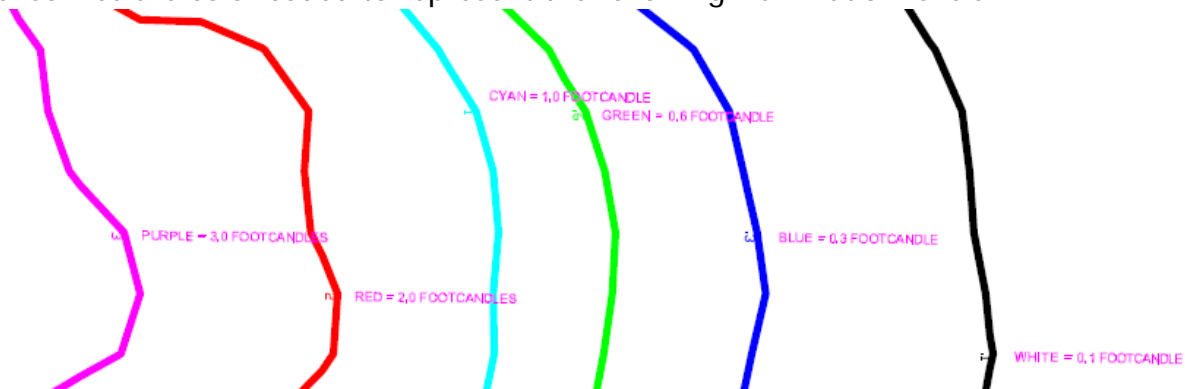
illumination be reduced as much as possible at the perimeter property lines. Since many of the patrons would be elderly with eyesight and physical impairments, it was recognized that the lighting levels may need to be slightly higher to accommodate their needs, but so long as the lighting was strictly contained within the property, it would be consistent with past Planning and Zoning Board direction.

The proposed fixtures, which are full-cutoff style, LED fixtures are depicted here:



As requested by the City, the applicant has voluntarily provided photometric maps of the proposed temple site to demonstrate whether light would be largely contained within the property or not. The maps have been available on the City website with the public hearing notice. You need to download the file in order to be able to zoom in to clearly read it. Photometric maps show how much illumination is calculated to occur at specific locations on the property, based on the specific light fixtures proposed and a horizontal surface. The numbers represent how many footcandles are at each point.

The isolines are color coded to represent the following illumination levels:



The illumination levels at the east property line are below 0.1 footcandles (almost nothing), except for the lighting of the entry road, and that light is reduced to 0.1 levels by the time it reaches the neighbor's lot.

For those that would like to see a real-life comparison of the amount of parking lot lighting proposed, the Hampton Inn parking lot has an average of 2.8 horizontal footcandles of illumination in the parking lot (presuming they followed their lighting plan exactly). The proposed temple parking lot would have an average of 2.18 footcandles, which is almost  $\frac{1}{4}$  less than the Hampton Inn parking lot. Note that the light fixture heights and spacing are not similar between the project—look at the illumination levels on the ground in the parking lot (landscaped areas and entryway are higher). The east parking area of the Hampton Inn site (closer to Walmart) has a more consistent lighting pattern than its south parking area.

Note that it was only recently that information relating to how the site lighting is planned to be managed was made available to the City. The following statements are provided by the lighting engineer for the Cody temple.

"The Site Lighting Fixture Details are as follows...

- All of the Site Lighting Fixtures; the (42" Tall) Bollards, the Short (12'-6" Tall) Poles/Luminaires, and the Tall (18'-0" Tall) Poles/Luminaires **are Full-Cutoff Type**.
- The B.U.G. (Backlight, Uplight, Glare) Ratings for each Fixture Type are listed on the Lighting Fixture Schedule, but I will list them here for quick reference.
  - a. Bollards, Type 3 Distribution = B1-U0-G1
  - b. Bollards, Type 5 Distribution = B2-U0-G1
  - c. 12'-6" Tall Poles/Luminaires, Type 3 Distribution = B1-U0-G2
  - d. 12'-6" Tall Poles/Luminaires, Type 5 Distribution = B3-U0-G1
  - e. 18'-0" Tall Poles/Luminaires, Type 3 Distribution = B2-U0-G2
  - f. 18'-0" Tall Poles/Luminaires, Type 5 Distribution = B4-U0-G2

The thing to note here is that All of the Site Fixtures Produce 0 Uplight and Very Low Glare. The Backlight is determined by the Distribution Type, with Forward Throw Luminaires (Type 2, Type 3, and Type 4) producing less Backlight than Type 5 Luminaires, which produce 360° Illumination.



- Full Cut-Off Type Luminaires with 0 Uplight and Very Low Glare do not emit light at High Angles, so any light that may be present at the edge of the property can easily be curtailed by a Wall or Fence, thus eliminating Light Trespass at, or before the Property Line.

The Site Lighting Control Details are as follows...

- All Site Luminaires are Controlled by an Astronomical Timeclock and a Photocell, with each Pole-Mounted Luminaire having Individual Motion Control.
- It is determined locally (by the TFM) what time the Luminaires turn on and off, and at what time the Luminaires are dimmed to 50%.
- Once the Pole-Mounted Luminaire are dimmed to 50%, or turned off, they can be brought back to 100% illuminance if the Integral Motion Sensor is tripped. This is for Safety and Security Reasons, and this is specified in the Temple Program Document."

In summary, the site lighting and parking lot lighting are consistent with past City authorizations in that the light color does not exceed 4,000K, the light fixtures are full-cutoff in style, and calculations indicate that the light will be almost entirely retained within the property boundaries.

Closing Comment pertaining to Lighting:

Lighting impacts are one of the primary concerns that have been noted, which is understandable. Even I had significant concerns due to what I saw with the parking lot lighting at the Helena temple site. Here is a photo looking down the street immediately south of the Helena temple. Notice the light pollution in the lower portion of the photo caused by the parking lot lighting versus the section of street next to the temple building. I have since confirmed that the design for the Cody temple parking lot lighting is nothing like the parking lot lighting of the Helena location, and that the Cody site will not use those styles of light fixtures.



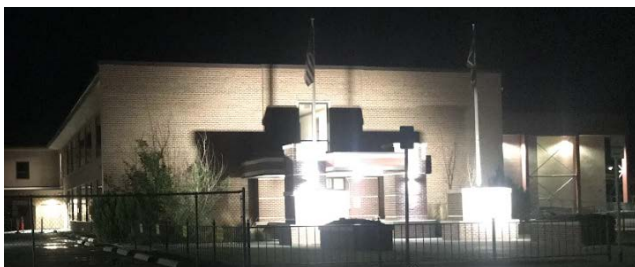
A conclusion that the site lighting plan for the Cody temple is acceptable seems appropriate, but if the Board has reservations, feel free to ask the applicant to explain further. As noted by the lighting engineer, the site lighting (not the building) is dimmed to about 50%--my understanding is that occurs when the patrons leave for the evening,

and then the site lighting is later shut off entirely—my understanding is that occurs as the management and janitorial services finish their work for the night. Those times are likely to change based on demand for use of the temple.

*Architectural Lighting:*

The architectural lighting of the Cody temple is planned to occur in the same manner as the Helena temple. The plan consists of LED spotlights up against the base of the temple, fixtures placed on the lower roofs, and spotlights on poles at a distance from the temple building. As photos exaggerate the difference between light and dark, it is difficult to visualize what that amount of lighting actually looks like. The above photo is not entirely accurate of how the building lighting appeared. The most accurate photos are shown below. The first is at dusk (9:23 pm), and the second at full night (10:17 pm). But even they are not the same as in person, as evidenced by the photos on the following page of museum and school district offices.

There was no glare from any of the spotlights even as I looked directly at them. This appears to be due to individual diffusers for each LED and the material or coating of the lens covers.





(The museum is in a commercial zone; the school district office is in an R-2 residential zone.)

From a regulatory standpoint, it is noted that the authority for regulating site lighting is from the on-site parking section of the zoning ordinance. It simply states:

*"Parking areas for civic, commercial, and industrial uses that will be utilized outside of daylight hours shall be provided with illumination. All parking lot lighting shall be designed and installed such that illumination will be directed away from any neighboring residential properties and shall be directed downward by utilizing full cutoff or fully shielded fixtures."*

The proposed lighting of the temple parking lot meets those requirements.

In most other instances of recent development in the City, all site lighting has been associated with parking facilities and the associated sidewalks, which has allowed me to work with the Planning and Zoning Board to ensure appropriate lighting levels and avoid light pollution issues from civic, commercial, and industrial development. However, other than some non-applicable language in other sections of the zoning and City code, there are no other specific lighting regulations in the Cody development codes applicable to this project. The above language is the only regulation specific to lighting, with the exception of some general authority to regulate glare through the conditional use permit process, which will be addressed later in the report. I did not observe any glare from the building lighting of the Helena temple.

Several public comments have indicated that the proposed temple would violate the City's Dark Sky Ordinance. The City has no such ordinance.

The following photo is of a church in Cody, located in an R-2 zone that borders R-1 zoned properties, simply demonstrates that architectural lighting of churches and their steeples is a common and normally accepted practice, which is not regulated by current zoning codes. Like other photos in this report, the light is exaggerated, so it is not an accurate representation of the amount of lighting. Furthermore, I mean absolutely no offense to those associated with the church shown, as all that I am saying is that from a regulatory standpoint it is entirely acceptable.



Having covered the primary stated concerns for the temple project, the staff report will now continue with other components of the site plan review, before getting to the conditional use permit considerations.

### **SITE PLAN REVIEW COMMENTS:**

The authority for site plan review is stated as follows:

#### **9-2-3: MEETING WITH PLANNING, ZONING AND ADJUSTMENT BOARD REQUIRED BEFORE BUILDING PERMIT ISSUED:**

*Before the issuance of any permit under the International Building Code for commercial buildings situated within the City, the applicant, property owner and occupant shall meet with the Planning, Zoning and Adjustment Board to review the application and plans insofar as they pertain to the exterior of a commercial building and site plan conditions. The issuance of a permit shall be conditioned upon the applicant receiving an affirmative vote of a majority of the Planning, Zoning and Adjustment Board members in attendance at said meeting.*

The City has consistently considered churches and schools as being subject to the above provision. The following are items typically reviewed as part of that process.

#### **Architecture:**

There is no architectural review required for development within the residential zoning districts, except multi-family housing, which this is not.

#### **Landscaping:**

There is no requirement to provide landscaping for development within residential zoning districts, unless the project is multi-family housing, or in an entry corridor overlay district—neither of which is the case. However, since landscaping is provided, the plan has been reviewed and the following comments are provided.

No trees are authorized in the City right-of-way along the east side of the temple site. Any shrubs, bushes and other woody vegetation placed in the City right-of-way will need to meet the standards of City code [7-4](#) (relates to spacing from utility lines). The landscaping plan will need to be revised accordingly. Grass or other groundcover in that area remains an option. Any disturbed areas beyond the landscaped areas that lack vegetation are to be planted with dryland grass seed, or any better alternative method authorized by Public Works, to help prevent weeds and control erosion.

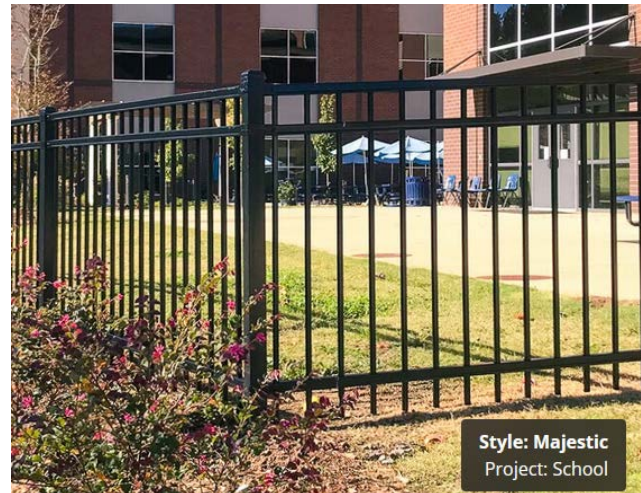
Landscaping in the immediate area around the electrical switch gear cabinet must consider the minimum clearances required. Depending on the size of the cabinet, some of those shrubs shown nearest the cabinet may need to be removed from the plan.

Based on a quick review, the selected plants generally appear suitable for the climate. Some plants may attract deer (e.g. red twig dogwood), which is an issue throughout town. I also wonder if a different fir species would do better than Douglas fir at this site.

#### Fencing:

A 6-foot-tall metal fence of the style shown here is proposed around the perimeter of the temple site. Refer to the site plan for locations. (Photo credit: <https://www.ameristarperimeter.com/us/en/products/ornamental-fence-gates/montage/montage-plus>)

As the property is in a residential zone, fences over 4-feet-tall in the front yard require a fence height waiver from the Planning and Zoning Board. In this instance, the front yard is along the east property line. The planning and zoning board may approve a taller fence when the additional height will not have any adverse impacts to neighboring properties or the public health and safety. Staff does not have any concern with the proposed fence in the front (east) yard, as proposed. Nor have there



been any adverse impacts from the additional height identified, particularly due to the 80-foot-wide right-of-way between the fence and the nearest neighboring property owner. As required in the fence height waiver process, the two adjacent property owners were properly notified on June 6, 2023. The Nielsons stated their support and the Pitets, who own the property across the City right-of-way to the east, have yet to respond. Fence height waivers only require notice to the adjacent landowners, and are not subject to a public hearing.

#### Access:

The proposed access situation is shown on the site plan. A new street, to be known as "Temple View Lane" will be constructed from Skyline Drive, along the south boundary of the temple site, ending in a cul-de-sac bulb. Two accesses to the temple site will be from that new street, as shown. Although the eastern temple access is on City right-of-way, City staff have indicated their preference that that section be privately maintained, to which the applicant has verbally agreed. With the designation of private instead of public, staff recommends a memorandum of understanding, simply outlining that it is a private improvement, with no maintenance responsibility for the City, and that if the right-of-way is ever developed with a public street, the party constructing that street would have the right to remove and/or reconfigure that access as needed, working in good faith with the property owner. Current City staff put the probability of that right-of-way being improved with a public street as extremely close to zero—way too costly

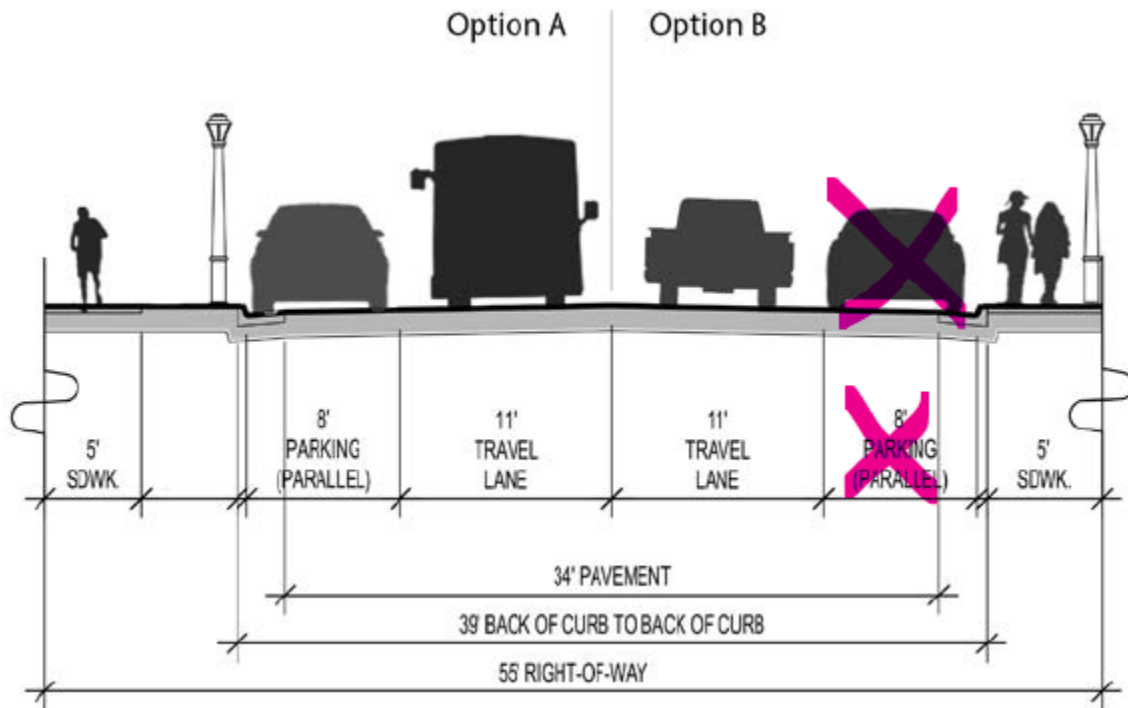
and way too constrained by existing utilities and topography to justify such minimal traffic circulation benefit.

As the temple site has abundant on-site parking, there is no justification for requiring on-street parking along the north side of Temple View Lane. However, width for on-street parking will be provided on the south side of Temple View Lane. Due to safety reasons (e.g. sight distance around the curve of Temple View Lane), there will be no parking in the intersection area of Temple View Lane and Skyline Drive—the street width is not designed in that area to provide parking on either side.

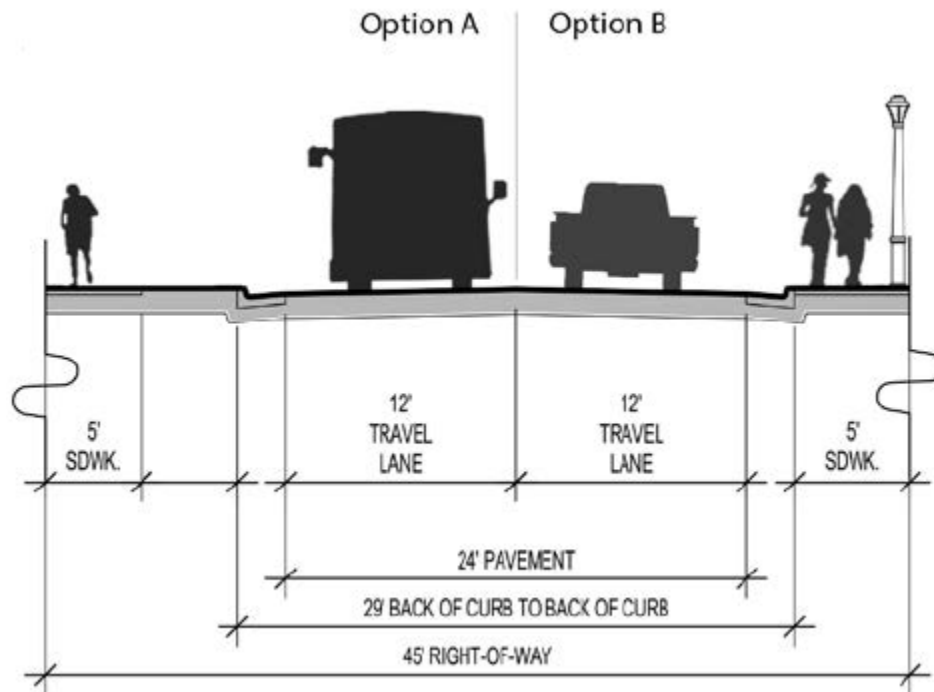
The street profile concepts for Temple View Lane are shown in the master plan, as the Minor Residential Street profile for the “no parking” section, and as the Local Street profile, minus the parking lane on the north side, for the remainder. As the City has allowed in other situations, the cul-de-sac bulb is at an 80-foot diameter based on it being marked and signed for no parking—the large lots that will be located around it will have plenty of room for parking. If desired, additional parking can be required of those large residential lots as part of the subdivision application to create those lots.

Both the Public Works Director and Fire Marshal are agreeable to the street profiles and dimensions proposed.

Local Street Profile:



#### Minor Residential Street Profile:



What has not entirely been worked out is the timing of when Temple View Lane would become a public street. As initially it would only serve the temple, City staff recommends that it remain private for the time being. If and when the adjacent Nielson property is subdivided, the City could consider at that time whether to accept it as a public street. Due to the potential of it becoming a City street, its construction is being designed, inspected, and certified as if it were a public street.

If Temple View Lane is indeed private for the time being, the property owner will need to grant that area as an access and utility easement to both the City and the Nielson property before the City will accept the City utility infrastructure that occupies that area.

#### Parking

The proposed site plan contains 140 parking spaces. All of the parking spaces and drive aisles meet City requirements as far as surfacing, dimensions, slopes, ADA spaces, and lighting. It is noted that 140 spaces are much more than what the City of Cody standards recommend, based on the capacity of the temple building and accessory building. Using City ratios, 140 parking spaces is enough parking for a capacity of 420 persons. Yet, based on proposed seating and the ratio of one space per three seats in the assembly areas that would be occupied at any one time, staff would likely come up with only around 50 spaces required, when using City recommended ratios.

However, the City does not impose maximum limits on parking. The abundance of parking will ensure that during occasional events, such as landscaping projects, that parking will be able to occur for large groups of participants without spilling outside of the temple site. It would also accommodate the occasional RV or vehicle with a trailer.

#### Exterior Lighting

Exterior lighting was discussed previously. However, there is one minor edit needed to the site plan related to exterior lighting. The lamp post shown just northeast of the entry monument sign needs shifted to be outside of the City right-of-way corridor along the east side of the property.

#### Setbacks and Buffers

The RR zoning of the property specifies a front building setback of 35 feet, a side street setback of 30 feet, a side setback from a property line of 15 feet, and a rear setback of 15 feet. The temple building complies with that those setbacks, as well as applicable lot coverage, and other dimensional standards. The ancillary building is right at the rear setback and side street setback, but complies with the building setbacks.

There are no buffer or screening requirements applicable to this project.

#### Grading/Storm Water Plan:

The grading and stormwater plan has been prepared by a professional engineer and meets minimum City requirements specified by the Stormwater Management Policy, and is acceptable to the Public Works Director. Stormwater calculations were appropriately based on an undeveloped condition being converted into a fully developed condition for the portion of the property and associated areas that flows onto the property. Out of an extreme abundance of caution, staff expressed concern with infiltrating the stormwater in the retention area at the north end of the site, due to the historical landslide on a nearby portion of that slope. Adding weight and lubrication (water) to a hillside is just something that generally should be avoided. The applicants amended the stormwater plan to avoid infiltration of the collected stormwater on the temple site, as the system is now designed to retain the stormwater in an underground chamber and then discharge it through a piped system into the historical discharge location of the ravine along the east side of the property. The stormwater plan is based on 100-year, 2-hour storm, as specified by Church policy, which greatly exceeds the City's 10-year or 25-year requirements and does not increase discharge rates or amounts for the 100-year, 2-hour design storm. Refer to Sheet C-141 in the Civil Site Plans file on the City website.

It is noted that the most recent version of the grading plan has removed as much fill from the City right-of-way along the east side of the project as possible, per the City's request. Only the fill necessary for the street remains, and the ground maintains a

conservative 3:1 slope where fill does occur. This change minimizes impacts to utilities caused by additional cover.

The one utility that is still performing some calculations regarding how the fill may affect their utility is the Shoshone Municipal Pipeline (SMP). Their 36-inch-diameter pipeline is likely thin-walled through this location, so special precautions may be needed. The SMP manager indicated their intent to work with the applicant, and the applicant is aware of the issue and intends to address it as needed.

#### Snow Storage

With so much excess parking, snow storage can occur in portions of the parking lot, where it can eventually melt into the stormwater collection system.

#### Utility Services

It is first noted that the sewer and water mains proposed under Temple View Lane relate to the subdivision of the Nielson property, not necessarily the temple project. However, if those lines are installed early enough for the temple to use them, it could allow for some efficiencies in the water lines, and perhaps other utilities.

While City staff (P.W. and Planning) are generally okay with the utilities as proposed, we are open to modifications that may result from the following requirements and suggestions.

- a) The fire marshal states that one additional fire hydrant should be added to the temple site and one at the end of the cul-de sac. The additional hydrant for the temple site is recommended to be in the island near the fire line valving directly east of the temple building.
- b) If desired, the stormwater piping may be able to be reduced by relying more on gutter flow in the street entrance areas. In addition, the pipe to the ravine seems larger than needed.
- c) Black Hills Energy requests additional separation between the proposed natural gas line and the perimeter fence and electrical line. That could involve adjusting things a few feet, or just moving the gas line to the south side of Temple View Lane.

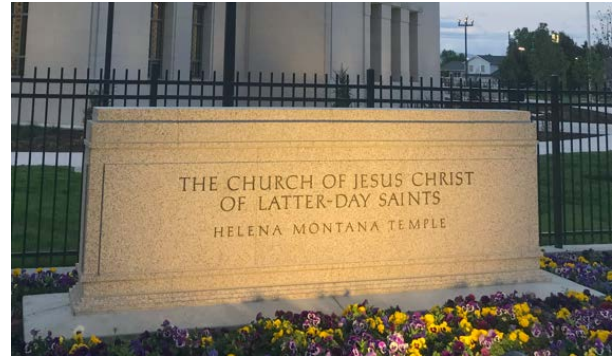
The electrical plan generally appears fine, but is missing the line from the existing fuse cabinet to the proposed transformer next to Skyline Drive. Also, shift the proposed transformer slightly to allow room for a future sidewalk along Skyline Drive (min. 5 feet behind back of curb.)

Additional coordination with 3<sup>rd</sup> party utilities, such as telecommunications is still needed, however the combined route with the electric line is typical.

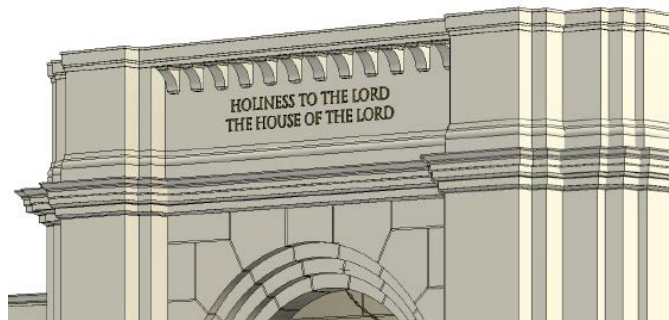


### Signs

The City sign code simply states that all signs for churches must be approved by the Planning and Zoning Board. There are no limits on number, height, or size. At the entrance there would be a monument sign, similar to the Helena temple sign shown here. Staff has no concerns with the sign itself, but would ask that the illumination not be as bright as the Helena sign. Other small directional and convenience signs, such as address numbers, building nameplates, ADA parking signs, etc. would also be installed.



The statement "Holiness to the Lord, the House of the Lord" above the entry of the temple is simply considered constitutionally protected non-commercial free speech.



### Garbage Collection

The applicant has verbally stated that they plan to have garbage collection occur at the cul-de-sac bulb on Temple View Lane. However, details have not yet been provided. A dumpster enclosure would be appreciated, but we do not have a specific requirement for the residential zones, other than for multi-family development.

### OTHER:

#### Erosion Control/SWPPP:

The application contains an erosion control plan, which appears acceptable as far as the containment fencing. A stormwater pollution prevention plan (SWPPP), and perhaps permit is required to meet WY DEQ requirements. The applicant is aware and plans to obtain those authorizations as needed—they are not permits issued by the local jurisdiction.

#### Easements/Right-of-way:

The reconfiguration of the entryway necessitates the property owner obtaining additional access/utility easements and/or right-of-way for the curve in Temple View Lane from the Erica Ashley Nielson Trust. In addition, the stormwater pipe proposed to run to the ravine and discharge on the City right-of-way crosses the Nielson property as well, which will also need an easement. Both parties are aware and plan to execute necessary documents.



It is noted that if and when Temple View Lane becomes a City street, there will need to be a legal acknowledgement from the property owner (Church) of a “right to drain” stormwater from the street through the private stormwater management system on the temple property to the discharge area on City property.

Encroachment permit.

Public Works required an encroachment permit for all work (excavation, landscaping, sidewalk installation, utility installation, etc.) in existing City rights-of-way, to ensure proper insurance and that approved plans are in place for the work. The contractor performing the work is responsible to obtain the encroachment permit(s).

Existing Nielson driveway.

The existing access for the Nielson Driveway will need to be removed or fenced once Temple View Lane is completed, to eliminate the safety issue of two side-by-side approaches. Temple View Lane will be available for use by the Nielsons.

**ATTACHMENTS:**

Application materials—site plan, elevation drawings, drainage report, etc.

**ALTERNATIVES:**

Approve or deny the site plan with or without changes.

**RECOMMENDATION ON THE SITE PLAN**

**(Subject to approval of Conditional Use Permit and Special Exemption, as applicable.)**

(The following are the recommended conditions of approval for the commercial site plan application, presuming the Conditional Use Permit and Special Exemption are approved or determined unnecessary.)

It is recommended that the Planning and Zoning Board approve the fence height waiver, approve the signs, and approve the commercial site plan application, subject to the following conditions.

1. The streets are permitted to remain private for the time being, so long as the area of Temple View Lane is dedicated as an access and utility easement for the City of Cody, and as an access easement for the Erica Ashley Nielson Trust property. Any further private agreements between the property owners are up to them. Although the streets would be private, the water and sewer mains in Temple View Lane would be transferred to the City for operation and maintenance.
2. In order for Temple View Lane to have the option of being accepted as a public street in the future, the engineer must have the design approved by public works, and conduct inspections and testing as if it were a public street.

3. The engineered construction plans for all water lines larger than 2-inches in diameter, the sewer pump station, and the sewer main in Temple View Lane must be authorized by WY DEQ prior to construction. As part of that process the City engineer will review and authorize the plans for the City.
4. Prior to issuance of a building permit, make the following edits to the plans:
  - a. In anticipation of Temple View Lane being a public street, and for safety purposes, add a City standard streetlight at the intersection with Skyline Drive. It will be fed from the transformer that feeds the existing irrigation pumps next to the canal.
  - b. Add provisions for garbage collection to the site plan for review and approval by the sanitation division. A dumpster pad behind the curb of the cul-de-sac is an option. An enclosure (3-sided unless someone is willing to open the gate on pickup days) installed around the pad would be appreciated. Recommended inside dimensions for a two-dumpster enclosure (one for garbage and one for cardboard recycling) are 18.5' long by 6.5' deep.
  - c. If the dumpster enclosure is added as contemplated, the sidewalk must be extended to pass around the back of the dumpster and back up against the curb. (A sidewalk easement would be needed for the portion around the back of the dumpster enclosure at such time that the street became public.)
  - d. Shift the light at the front monument sign off the City right-of-way.
  - e. Add a fire hydrant in the island east of the temple building, closest to the valves.
  - f. Relocate the water meters and the backflow preventer off of the City right-of-way. The area north of the monument sign would seem to work well. Provide details of the meter pits acceptable to Public Works.
  - g. Include a sidewalk ramp where the proposed sidewalk meets Skyline Drive.
  - h. It is recommended that the dry utilities (gas, power, telecommunications) be relocated to the south side of Temple View Lane. Doing so makes them available for the Nielson subdivision, but also avoids several utilities crossings in the City right-of-way along the east side of the temple site, satisfies Black Hills energy on their desired utility separations, and will better match the latest electrical layout plan. Otherwise, shift them as needed to provide the clearances requested. Moving them to the south side would require a 10-foot-wide City utility easement along the south side of Temple View Lane. Also, this and the related electrical work may necessitate relocating the Nielson's private utility lines sooner than currently planned.
  - i. Based on the latest electrical layout designed by the City, adjust the alignment of the intersection with Skyline Drive closer to 90 degrees, in order to provide more room for the electrical boxes that will need to be installed to the south of Temple View Lane, and add fill to the north side of the street to allow the shifted sectionalizing cabinet to be close to street grade. The sectionalizing cabinet will be shifted northwest to the approximate location of the existing fuse cabinet, which will be removed. From that sectionalizing cabinet, new wire will be run to a PM9 switch cabinet (6' by 6') south of Temple View Lane, which will then feed

into a sectionalizing cabinet next to it, before running to a sectionalizing cabinet on the south side of Temple View Lane directly south of the transformer pad, and then to the transformer. The PM9 switch cabinet will also need to be located to utilize the wire that runs to the southwest. The electrical boxes and streetlight in that area should be 6 feet or more from the back of the curb along Skyline Drive to allow the option of a future sidewalk. While the trench along Temple View Lane is open, it would be smart to also install 3' electrical conduit to feed back to the contemplated Nielson lot closest to Skyline, and 1 ½" conduit for future streetlights on the street.

- j. If raw water (irrigation) is anticipated for the Nielson subdivision, the line should be installed under Temple View Lane.
- k. Show the sewer, water, and if applicable raw water mains under Temple View Lane as extending to beyond the cul-de-sac bulb.
- l. Valving of the public water main (under Temple View Lane) needs to be added.
- m. If the lot layout of the Nielson's subdivision is known, taps should be shown and provided as part of the construction of the sewer and water mains.
- n. Provide a location with a more gradual slope off of the north side of the east access to allow utility maintenance vehicles (pickups) wanting to access the City right-of-way the ability to drive off of the paved access, towards the east portion of the City right-of-way.

Additional edits to the plans may be made by the applicant for purposes of increasing efficiency of the utilities or stormwater plan, or addressing in-field changes, if authorized by Public Works. The applicant's engineer plans to make most, if not all, of the above requested edits before the public hearing.

- 5. Prior to issuance of a building permit, obtain all necessary easements from the Erica Ashley Nielson Trust (additional access easement for the curve in Temple View Lane, stormwater pipe easement north of temple site, and an electrical easement for a short segment near the curve in Temple View Lane—or shift the electric line into the R/W).
- 6. Prior to issuance of a building permit, obtain agreement with Shoshone Municipal Pipeline on any plans necessary for protecting the SMP pipeline under the new street improvements, or show that additional protection is not necessary.
- 7. Prior to construction of access improvements in the City right-of-way along the east side of the temple site, enter into a memorandum of understanding with the City, simply outlining that the access on the City right-of-way is a private improvement, with no maintenance responsibility for the City, and that if the right-of-way is ever developed with a public street, the party constructing that street would have the right to remove and/or reconfigure that access as needed, working in good faith with the property owner of the temple site.
- 8. All work within the Skyline Drive and the City right-of-way along the east side of the property requires a street encroachment permit from Public Works. The contractor(s) doing the work is responsible for obtaining the permit(s).

9. Prior to installation of the landscaping, provide an updated landscaping plan that shows the removal/shifting of the trees to be off the City right-of-way, and demonstrates the necessary clearance around the switch gear cabinet.
10. Provide necessary easements within the temple property for the electrical line and switch gear cabinet prior to occupancy of the building.
11. Upon completion, the storm water facilities must be inspected and certified by the applicant's engineer that they were completed according to the approved plans or equivalent, prior to building occupancy.
12. Upon completion of the project, remove or fence/gate the existing approach of the Nielson driveway/canal access off of Skyline Drive. The fence would need to be placed along the right-of-way line, or further from the street.
13. Upon completion of the project ensure that any disturbed areas beyond the landscaped areas that are lacking vegetation are planted with dryland grass seed, or any better alternative method authorized by Public Works, to help prevent weeds and control erosion.
14. Prior to occupancy, provide a Knox (key) box for emergency service/fire department access through the two gates, or other method of emergency entry acceptable to the fire marshal.
15. The project must otherwise comply with the project description, as described in the application and at the Planning and Zoning Board meeting. A building permit must be obtained within five years or this authorization will expire, unless delayed due to legal action, in which case the deadline will be 5 years from the conclusion of the legal action.

### **CONDITIONAL USE PERMIT REVIEW**

The Cody zoning ordinance, like most zoning ordinances, classifies different land uses as either permitted, conditional, or not permitted. These classifications can, and often do, vary by zoning district. The site of the proposed temple is located in one of the most restrictive residential zoning districts of the City, which is called "Rural Residential". The Rural Residential zone is one of three zoning districts in the City that classify churches and houses of worship as "conditional uses", as opposed to "permitted uses". The Cody zoning ordinance states, "*Conditional uses have been determined to have such characteristics that a discretionary, site-specific review by the Planning and Zoning Board is necessary to evaluate whether the particular use, as proposed, is compatible, or can be made compatible, with neighboring land uses and other uses permitted in the zoning district.*"

When determining if compatibility can occur, the concept of mitigation can be applied to components of a project that may have significant measurable impacts to neighboring properties. However, the amount of mitigation need only be sufficient to reduce the significant impact to a reasonable level. Often measures can be developed to minimize,

or “mitigate” those impacts to acceptable levels while still allowing the project to be largely developed as proposed.

Furthermore, any impacts would need to be significant, which is not defined by the zoning code, but would seem to indicate that the impact is either a nuisance type (odors, sounds, dust, etc), a harm to environmental conditions, or directly some other sort of health, safety or general welfare issue. The mitigation concept is identified in the conditioning authority section of Cody’s conditional use permit code only by name, not in detail, yet is a concept I rely on heavily when reviewing all forms of land use proposals.

The following are the Standards of Review for conditional use permits, which typically the Board must consider. The applicant has answered these in their cover letter for their conditional use permit application—see attached. Staff comments on each of the items will follow.

1. *Is the site large enough to accommodate the proposed use and meet all of the dimensional standards and development regulations of the zoning district in which the project is located?*

Comment: Yes. As noted, everything required is able to be accommodated on the property. This requirement is not unique to conditional uses.

2. *Is the use, at the scale or density proposed, compatible with all other uses in the immediate area and with permitted uses that may be established in the area?*

Comment: The applicant provided an answer of “yes”, and indicated that compliance with the minimum standards of the zone is sufficient to demonstrate compatibility. As the proposal does not otherwise have any impacts that are greater than other permitted uses in the zone, staff would agree with the conclusion. Note that other permitted uses in the RR zone include:

- a) Playfields, such as the softball fields towards the east end of Sheridan Avenue, with six, 72-foot-tall light poles with playfield lighting much brighter than that of the proposed temple, and parking capacity of at least 150 spaces. As a permitted use in the RR zone, the ballfield lighting has not required zoning review. In addition, the ballfield lighting violates current height limits of the RR zone, and appears to have been permitted without any official consideration to the height limits in effect at the time of installation (residential zones).
- b) Golf courses, including clubhouses. While the Olive Glenn Golf course and clubhouse is in an R-2 zone, it is in the immediate area, and would be permitted if it were located in the Rural Residential zone in which the temple is proposed. The number of parking spaces at the golf course clubhouse is 90, which is more than the amount of parking that would be required for the temple project. The golf course is open 7-days a week, but the temple only five. It has not only the course, and clubhouse, but a restaurant that is open to the general public as an

accessory use. The reception/restaurant area and "Pioneer Room" have a combined capacity of 191 persons alone, not counting the 50-person capacity of the lobby. The hours of operation of the golf course and clubhouse are likely similar to that of the temple.

- c) Parks. The capacity of parks is difficult to estimate, but even a small park utilized for such events as Yellowstone Fire Association soccer events can easily extend well above a hundred.

3. *Does the proposed use involve activities, processes, materials, equipment, hours of operation, or any other operational characteristics that would be materially detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, dust, glare, odors, hazards, or similar impacts?*

Comment: No excessive production of traffic, noise, smoke, fumes, dust, glare, odors, hazards, or similar impacts have been attributed to the temple proposal. In practice, this is not interpreted to include the construction period, as strict application of this standard would preclude any construction activities of any kind. City code allows construction equipment to operate between the hours of six thirty o'clock (6:30) A.M. and either eight thirty o'clock (8:30) P.M. or one hour after sunset, whichever is later, and specifically states that it does not constitute "unreasonable noise" as regulated by City code [5-2-24](#). Traffic associated with the temple is expected to be roughly equivalent to what would occur if the temple property and immediate Nielson lands were developed as a residential subdivision. This requirement, as applied to the ongoing operations of the temple, is met, as claimed by the applicant.

4. *Does the proposal include provisions for necessary and desired public utilities and facilities such as potable water, fire hydrants, sewer, electrical power, streets, stormwater facilities, and sidewalks/pathways?*

Comment: Yes. The combination of the proposal and the conditions of the associated site plan review ensure that adequate public utilities and facilities will be provided as needed to serve the proposal. All examples listed will be provided on the temple site as part of this project. Existing utilities will also be protected as necessary.

5. *Will the proposed use create excessive additional costs for public facilities and services that would be materially detrimental to the economic welfare of the community?*

Comment: No excessive additional costs for public facilities and services, beyond that of comparable permitted uses, such as residential development, playfields, golf course, and parks, are anticipated. Some public comments have argued that the result of the temple would have enormous benefits to the economic welfare of the community and its citizens due to the associated increase in economic activity alone,

much less the benefits of the application of the spiritual principles taught within the temple.

6. *Will the proposed use result in the destruction, loss or damage of a natural, scenic or historic feature considered to be of significant importance?*

Comment: The site was most recently used as a cow pasture. There are no known natural, scenic, or historic features on the site that are of significant importance.

7. *Is the proposed use consistent with the applicable provisions of the Cody Master Plan?*

Comment: Much has been said about concepts stated in the master plan, and how they should be interpreted. Before addressing the specifics, it has to be remembered, as noted early in this report, that the master plan is a guide, but does not have the status of law. Then, it must be acknowledged that it is possible for different portions of the master plan to conflict with other portions, causing them to have to be considered in their order of importance. The master plan does not specify the level of importance of each principle or goal. That is left to the reader, and in this case the Planning and Zoning Board. Below are items in the master plan that could be considered as applying to this proposal, and which are subject to interpretation and prioritization.

GOAL 1: Cody will maintain its character as an attractive western town that is welcoming to residents and visitors alike.

Objective 1.1: *Advocate and promote attractive and appropriate development of the City.*

*Principle 1.1.a. Community Image.* The future of the tourist-oriented component of the community is heavily dependent on how the City and community meet the expectations of its national and international visitors. So long as the community takes pride in the details, including aesthetics, amenities, and friendly attitudes, it will be attractive and inviting to visitors and residents alike.

*Principle 1.1.b. Landscaping.* Developments in commercial, office, multi-family, and light industrial areas should include quality landscaped areas along major streets and in large parking lots. Initial development plans should include preliminary landscape concepts and address responsibility for maintenance.

*Principle 1.1.c. Suitable Plants.* Encourage the use of landscaping materials appropriate for the climate and specific setting.

*Principle 1.1.d. Architecture.* Encourage quality architecture and design for new commercial, office and multi-family buildings and renovations...

*Principle 1.1.h. Award Great Design.* Creativity on the part of private developers should be rewarded through recognition and support from the community.

*Principle 3.1.b. Existing Neighborhoods.* Protect the existing character in stable residential areas. New residential, office, commercial, or industrial development that

is not in harmony with the existing or desired future character of these neighborhoods should be discouraged.

*Principle 3.1.c. Protect Residential Uses.* Protect residential neighborhoods by transitioning between residential and non-residential land uses through appropriate zoning, development review processes, and buffer methods. In areas where non-residential land uses are located adjacent to or within neighborhoods, require screening or barriers to limit the impacts on residential uses. Buffer methods could include fencing, berms, native vegetation, plantings, trails and recreation areas, and density transitions.

*Principle 3.1.f. Building Heights.* Limit the height of new and remodeled construction to respect the existing or desired character of neighborhoods and districts, maintain a consistent scale of development, and preserve scenic views.

*Principle 3.3.a. Development Review.* Expedite the development review process for developers when development includes a public benefit and meets the goals set forth in this plan.

*Principle 3.3.b. Cooperative Approach.* When working with property owners, developers, and City staff, all parties are expected to maintain a cooperative attitude, promote open communication, and work to identify mutually-beneficial solutions to problems that may arise during the review process.

*Objective 6.4: Provide stormwater management systems that mitigate the impacts of heavy storm and flood events, address the effects of development, and protect the health of the public and the environment.*

*Principle 8.4.a. Opportunities for Civic Engagement.* Include opportunities for meaningful public engagement and feedback in the City of Cody's planning and community development activities.

*Objective 9.1: Support a vibrant, year-round local economy that allows for economic growth while protecting Cody's small-town lifestyle.*

*Principle 13.1.b. Quality of Life.* Support the preservation of Cody's quiet character by limiting noise and lighting impacts where quality of life is important.

*Principle 14.1.f. Street Hierarchy.* Ensure a street system that properly considers and implements the functional classification of each street, such that arterial and major collector streets are maximized for mobility and capacity, and minor collectors and local streets function within their intended limits so that residential streets are protected from excessive volumes of traffic and the intrusion of undesirable cut-through traffic. Avoid situations where undesirable cut-through traffic occurs on minor collectors and local streets.

All of that being said, there are other factors that must be considered. Many have stated that churches, or at least this Church, should be treated no different than any



other land use proposal in the Rural Residential zone, referring to requiring strict compliance with all zoning and development standards. While there are some engineering and minor site plan issues to still work out, strict compliance will be obtained for all items, with the possible exception of a minor waiver to allow a section of fence to be six feet instead of four (discussed later in this report). Remember also, that some components of the temple project greatly exceed what is customarily expected, such as the landscaping and architectural quality.

While some may sharply criticize my interpretation of the application of the conditional use permit criteria to this project, I have done it in what I believe is the most legally justifiable position. A position justifiable not only by the City of Cody laws, but others as well. This entire report has been done in a manner that I believe best complies with the U.S constitution (1st amendment) and federal law relating to religious freedom- specifically the Land Use and Institutionalized Persons Action of 2000 (RLUIPA).

When it comes to land uses, churches and other religious facilities are different. They are unique in that they are granted additional protections under these national laws. RLUIPA is a civil rights law that *"protects individuals and religious assemblies and institutions from discriminatory and unduly burdensome land use regulations"*, as noted in the act. In the case of any conflict, RLUIPA overrides the local land use regulation.

Please note that the applicant did not even mention RLUIPA in their applications. They have submitted all applications as requested by the City and are following the standard processes. It was during the review of the applications that I recalled an act related to land use regulation of religion and went back and found it. It is in the City's and community's interest to ensure that the Board, acting on behalf of the City, does not take action contrary to RLUIPA.

For the face value of RLUIPA, I rely entirely on the *"Statement of the Department of Justice on the Land Use Provisions and Religious Land Use and Institutionalized Persons Act (RLUIPA)"*, as published by the Department of Justice.

For those that want further information about the Act, including the Statement mentioned above, here is a link to the Dept. of Justice page:

<https://www.justice.gov/crt/religious-land-use-and-institutionalized-persons-act>

As is noted in the DOJ Statement on RLUIPA, typically the quickest way to resolve a conflict with RLUIPA is to continue to process an application. For this purpose, the process component of the Conditional Use review has continued.

**ALTERNATIVES:**

Approve, deny, or approve with conditions.

**ATTACHMENTS:**

Application materials, written comments, etc.

**RECOMMENDATION:**

That the Planning and Zoning Board make the following findings:

[Language to be provided by the City attorney, based on Board discussion.]

AND,

Approve the Conditional Use Permit for the Cody Wyoming temple project for The Church of Jesus Christ of Latter-Day Saints, with no conditions of approval.

Height Interpretation Notes:

- a) The adopted building code is consistent with the proposed building height conclusion. Attached are comments from the Cody Building Official and Park County Fire Marshal that conclude that the steeple does not constitute a “story” under the building code, but is a “rooftop projection”, and that rooftop projections are independent of the building height limitations of the building code. The building code allows rooftop projections, including towers and steeples of any height, so long as they are constructed of and supported by noncombustible materials and otherwise meet standards for structural, wind and seismic design. Here are links to the code references cited in their attached comments: [Chapter 5 Section 504](#) and [Chapter 15 Section 1511](#).
- b) The second portion of the “building height” definition that relates to structures without a roof is not applicable to the steeple, as the steeple is part of the temple building, not a separate structure.
- c) The fact that Cody’s zoning ordinance definition of building height does not specify or require items that extend above the roof to be included in determining building height is not uncommon. The concept is there and the practice is relatively common in other zoning codes. For example, see the caption from Cheyenne’s development (zoning) code to the right.
- d) Perhaps a note about the history of building height regulation would provide additional context. The roots of building height regulation are found in the earliest building and zoning codes as a way to address the need to provide adequate light and air. They were developed because the developers of tenement buildings did not consider the need for light and air in their building designs, much less the impact of their buildings to residents of neighboring properties, which led to all sorts of sanitation and health issues. By imposing building heights and building setbacks between buildings and from neighboring property lines, residents could have access to adequate amounts of clean air and sunshine. With the proposed temple steeple being almost 400 feet away from even the nearest neighbor, it is problematic to claim that the height of the

## ARTICLE 1 GENERAL PROVISIONS

The height limitations of this Title, with the exception of the airport height restrictions and unless specified otherwise, shall not apply to church spires, belfries, cupolas, domes not intended for human occupancy, flag poles, light poles, monuments, water towers, transmission towers, smokestacks, chimneys, derricks, antennas and aerials.

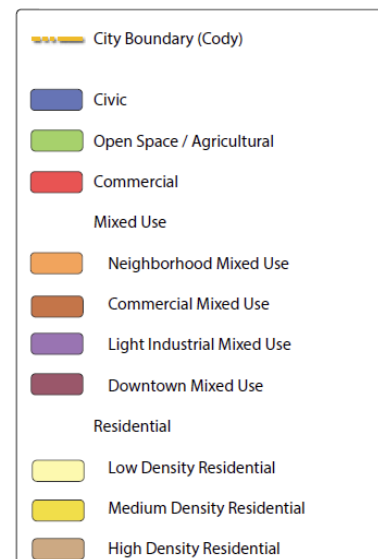
temple spire impacts the ability of any neighboring resident to receive adequate light and air to avoid sanitation and health issues.

- e) Considering the above purpose, building height limits are based on minimum setbacks. For example, in the rural residential zone, side yard setbacks from lot lines are to be at least 15 feet—all other residential zones only have a 5-foot minimum side yard setback. Two structures on neighboring lots, could then be as close as 30 feet. With building height at 30 feet the RR zone defines adequate light and air as being satisfied by only that area above about 45-degrees horizontal, measured from the base of the one house to the height of the other. The combination of the proposed building height and setbacks for the temple are nowhere near that ratio or of that level of impact.
- f) Note that removal of the cupola covering, leaving the underlying steel framework exposed, is an option and would technically eliminate any remaining claim that the cupola must be considered in the building height determination, thereby allowing the steeple to otherwise be constructed exactly as proposed. However, for architectural purposes I do not recommend it as it would introduce a modern architectural style to an otherwise classical design. This point is included solely to demonstrate how it would be better to amend the code as suggested in “c)” above, so as to avoid such trivialities.
- g) The interpretation is consistent with how building height would be measured if the temple had a sloped roof, rather than the flat roof—the steeple would be excluded from the building height calculation, as for sloped roofs, building height is from finished grade to the midpoint of the main sloped roof.
- h) The analysis of building height is based on the strict language of the definition.

### Traffic Notes:

I could stop there, but since I spent time on it, here is a comparison of the proposed situation versus a theoretical situation if the property were developed residentially. The proposed situation includes the temple project and a not-yet submitted 5-lot subdivision by the Nielsons that would border the south and west sides of the temple project—that is why there is a street planned along the south side of the temple site. The proposed situation of the temple project and 5 lots is projected to generate 36 (one-way) vehicles trips during the AM peak hour and 42 vehicle trips during the PM peak hour. (Based on traffic study and “*Trip Generation, ITE Technical Council Committee 6A6*”, 1976.)

If the temple project did not happen, but if a residential development were to occur instead, how would that compare? Based on current construction costs, financing costs, housing demand, and “contractor talk” the focus is on an attainable housing product that is much smaller than the McMansions of twenty years ago. The subdivision that has been filling the fastest over the last two years in the City is Kip Thiel’s “The Landing” subdivision at the east end of town, which is composed of single-family homes on lots of about 6,000 square feet. I do not believe the community has any objection to the housing product that is being produced there. To do that type of development on the subject property would require a rezone to R-2. However, a rezone of this property to R-2 is within the density contemplated by the Low-Density Residential future land use designation of the property in the Master Plan (p.38). Without the temple there, it is safe to presume that the subdivision would utilize the entire portion of the bluff. Using lots that comply with the R-2 standards and the lot widths used in the Landing Subdivision (51’ minimum), the following theoretical subdivision layout was created. It resulted in 42 lots.

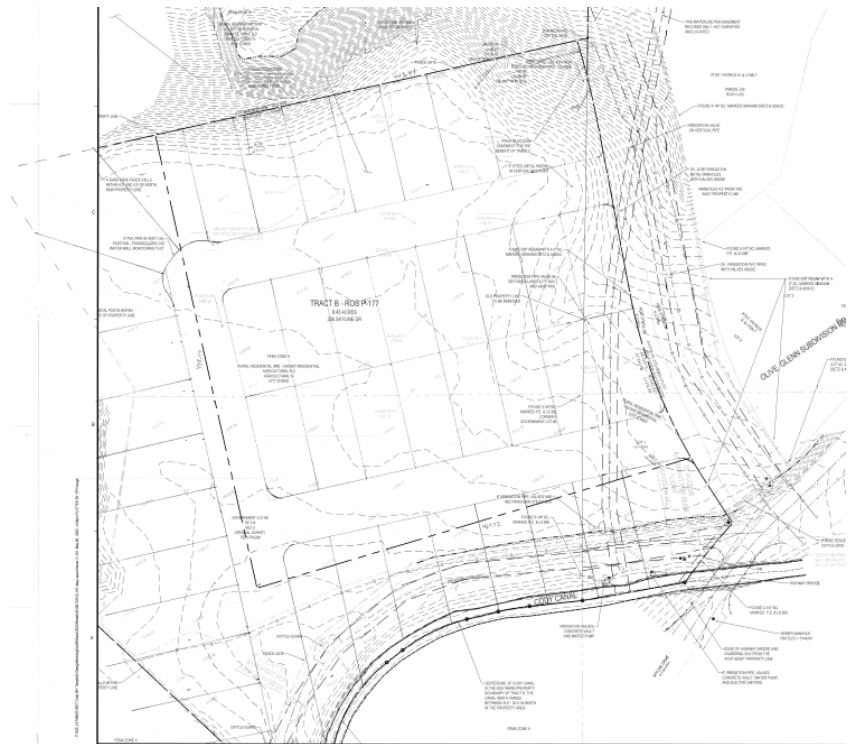


Traffic generation from a 42-lot single-family subdivision is estimated to produce 33.6 (one-way) vehicle trips in the AM peak hour, and 42 vehicle trips in the PM peak hour. In conclusion, the traffic generation from the proposed temple and contemplated 5-lot subdivision is estimated to generate an amount of traffic almost identical to what would be generated from the theoretical 42-lot subdivision, with one exception, the subdivision traffic would occur at that level or higher for 7-days a week, while with the temple and 5-lot subdivision proposal traffic would likely be significantly less the two days the temple is closed. Such an analysis is appropriate when looking at comparable

permitted or conditional uses—it is not a comparison of what is proposed to a situation of “no development”, but to likely alternate development.

The City planner's dream is to largely resolve the traffic situation with Southfork Hill and Canyon Avenue by obtaining enough community support to pass a “penny sales tax” to fund the design and construction of a neighborhood connector street running between Skyline Drive and

Yellowstone Avenue, as depicted on the street plan on page 56 of the Cody master plan. The benefit is regional in scope, so the cost thereof should be as regional as possible as well. By utilizing a “penny sales tax” as the method of funding, approximately 30% of the cost would be funded by visitors from outside of the City.



This report has been completed without me having read the materials submitted by the applicant's attorneys at the end of the day on June 8, 2023, so as to demonstrate that it has not been influenced by them. I have not had a conversation with them about any of the items in this report.

**CITY OF CODY**  
WYOMING

Todd Stowell &lt;todds@codywy.gov&gt;

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## Temple Steeple interpretation

3 messages

**Todd Stowell** <todds@codywy.gov>

Thu, Jun 1, 2023 at 12:12 PM

To: Sam Wilde &lt;sam.wilde@parkcounty-wy.gov&gt;, Sean Collier &lt;scollier@codywy.gov&gt;

Sam and Sean,

While we have verbally discussed this to some extent, can I get a statement from each of you in writing (email or letter) regarding the proposed temple steeple as it relates to how the building and fire code looks at building height, building story, and rooftop projections? It does not have to be long, just to the point.

I went to the Helena Montana temple open house last Friday and Saturday and as part of that watched a time-lapse video of the construction, which clearly showed that the construction of these modular temples includes a membrane roof that is complete and uninterrupted below any of the steeple components, with the exception of the steel pillars that extended to the foundation. The modular blocks included the main level as well as a shorter set of blocks (approx 7-8 feet high) placed over a portion of the main level. The shorter set of blocks are either a mechanical room or perhaps a ceiling extension for a couple of the rooms. The roof membrane covering all of the modular blocks is below the height of the perimeter parapet of the building (24' to parapet). What visually forms the lower portions of the steeple are actually just walls with no roof (rain and snow would fall all the way to the membrane roof below the steeple) and are suspended above the membrane roof by a steel framework. It appeared that someone would be able to access all portions of the roof by walking (or perhaps crawling) under the steeple walls.

Thanks,

**Todd Stowell, AICP**

Community Development Director/City Planner

City of Cody, Wyoming

(307) 527-3472

[www.codywy.gov](http://www.codywy.gov)Community Development Office Hours

7:30-5:00 Monday-Thursday, 7:30-11:30 Friday

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**Sean Collier** <scollier@codywy.gov>

Thu, Jun 1, 2023 at 1:52 PM

To: Todd Stowell &lt;todds@codywy.gov&gt;

Cc: Sam Wilde &lt;sam.wilde@parkcounty-wy.gov&gt;

Todd,

By my interpretation, a tower, steeple, or spire is its own assembly and not part of a story. A story is measured from the upper surface of a floor to the upper surface of a floor or roof next above. As there are no definitions for a tower, steeple, or spire in the IBC, we reference the general definitions and as ordinarily accepted meanings such as the context implies. In some senses a tower, steeple, or spire can be considered as its own portion of the structure. Church towers, steeples, and spires are regulated by the IBC exemption in section 504.3 and section 1511.5.

To add more clarity, I would more closely classify a tower, steeple, or spire as a separate portion of a structure. As long as that portion is built on top of the main "Roof Assembly", is not creating a "Story", and is not open to a floor below. "Rooftop Structure" is separately defined in the IBC (chapter 2) as "a structure erected on top of the roof deck or on top of any part of a building". A tower, steeple, or spire is typically constructed of the same type of construction as the main structure and they are constructed as a separate structure on top of the main structure's roof assembly. A tower, spire, or steeple will meet the same fire rating and weather protection classification as required for the building on top of which it is located. See IBC section 1511.5.2.

[Quoted text hidden]

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**Sean Collier**

Building Official

City of Cody

(307) 899-0930



(307) 527-3476  
ICC ID: 8341080  
[scollier@codywy.gov](mailto:scollier@codywy.gov)

**Business Hours:**

Monday – Thursday: 7:00 am – 5:00 pm

Friday: 7:30 am – 11:30 am

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**Sam Wilde** <Sam.Wilde@parkcounty-wy.gov>

Fri, Jun 2, 2023 at 8:53 AM

To: Sean Collier <scollier@codywy.gov>, Todd Stowell <todds@codywy.gov>

Todd,

I think Sean covered this very well, and after reviewing the code, I agree with his interpretation.

There is nothing specific in the fire code that I could find that addresses steeples or spires, so we have to rely on the IBC. From a fire code standpoint, I don't have any concerns with the proposed steeple.

Sam Wilde

Fire Marshal / Deputy County Fire Warden

Park County Fire District #2

1125 11<sup>th</sup> St.

Cody, WY 82414

(307)-527-8552

[sam.wilde@parkcounty-wy.gov](mailto:sam.wilde@parkcounty-wy.gov)



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*All [City of Cody](#) electronic correspondence and associated file attachments are public records and may be subject to disclosure in the event of a [public records request](#).*

# **CODY PLANNING, ZONING & ADJUSTMENT BOARD**

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## **FINDINGS OF FACT FOR THE CONDITIONAL USE PERMIT FOR THE CODY WYOMING TEMPLE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**

WHEREAS, Haskell Architecture & Engineering, Inc., representing The Church of Jesus Christ of Latter-Day Saints has submitted the Conditional Use, Special Exemption, and Site Plan applications and associated review fees for development of a temple, accessory building, street, and associated improvements on a 4.69-acre parcel (highlighted on map), and an entrance road on adjacent City right-of-way;

WHEREAS, The property is located just west of Skyline Drive and north of the Cody Canal, about 400 feet north of the Olive Glenn Drive intersection (Tract B2 of the Record of Survey showing Boundary Line Adjustment recorded in Plat Cabinet P, Page 197, Records of the Park County Clerk and Recorder); the property would have an address of 555 Temple View Lane;

WHEREAS, The June 15, 2023 public hearing and opportunity to comment on the conditional use permit and special exemption has been advertised through a notice in the Cody Enterprise newspaper on May 30, 2023, and direct mailing to immediate neighbors within 140' of the applicant's private property on May 25, 2023, which meets notice requirements;

WHEREAS, the Board has considered hundreds of comments in the form of emails, letters, phone calls, and further testimony at the advertised public hearing, and considered them within the context of applicable local laws, state and federal law, and the U.S. Constitution.

NOW THEREFORE, THE CODY PLANNING, ZONING, AND ADJUSTMENT BOARD MAKES THE FOLLOWING STATEMENTS AND FINDINGS RELATED TO THE CONDITIONAL USE PERMIT FOR THE CODY WYOMING TEMPLE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS:

The following are the Standards of Review for conditional use permits.

The Board finds that the City of Cody's conditional use permit criteria are met due to the reasons noted, as follows.

***1. Is the site large enough to accommodate the proposed use and meet all of the dimensional standards and development regulations of the zoning district in which the project is located?***

Finding: Everything proposed and required for the temple project is able to be accommodated on the property while complying with all dimensional standards and development regulations of the zoning district. This finding is supported by the following:

- a) The temple building complies with applicable zoning setbacks, as well as applicable lot coverage and other dimensional standards. The ancillary building will also comply with the building setbacks.
- b) All of the parking spaces and drive aisles meet City requirements as far as surfacing, dimensions, slopes, ADA spaces, lighting, and total amount required.
- c) As the temple site has abundant on-site parking, there is no justification for requiring on-street parking along the north side of Temple View Lane.
- d) Both the Public Works Director and Fire Marshal are agreeable to the street profiles and dimensions proposed.

***2. Is the use, at the scale or density proposed, compatible with all other uses in the immediate area and with permitted uses that may be established in the area?***

Finding: The temple proposal does not otherwise impose any impacts (e.g. traffic, lighting, noise) that are greater than other permitted uses in the area, particularly when considering distance from neighboring residences. The facts support a finding that the applicant has met this condition.

In support of the above finding, and as evidence of similar uses determined compatible in the RR zoning district, the following findings are noted.

Finding: Other permitted uses in the RR zone, or in the immediate area include:

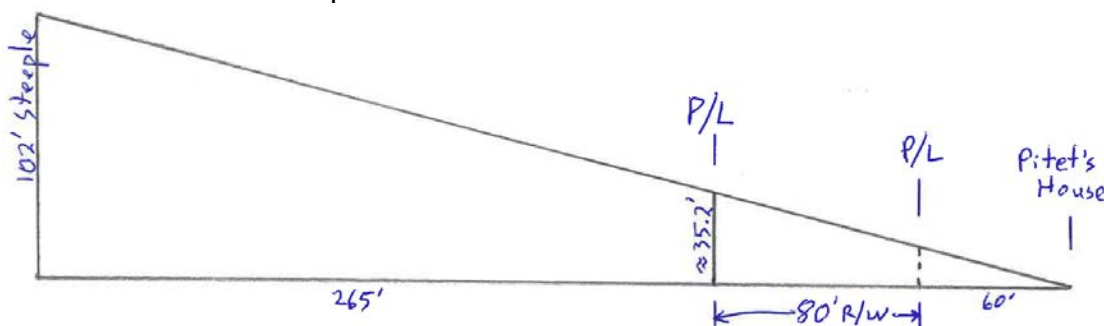
- i) Playfields, such as the softball fields towards the east end of Sheridan Avenue, with six, 72-foot-tall light poles providing playfield lighting much brighter than the lighting of the proposed temple, and parking capacity of at least 150 spaces—again greater than the proposed temple. As a permitted use in the RR zone, the installation of ballfield lighting would not require a zoning review.
- ii) Golf courses, including clubhouses. While the Olive Glenn Golf course and clubhouse is in an R-2 zone, it is in the immediate area, and would also be

permitted if it were located in the Rural Residential zone in which the temple is proposed. Per the County assessor, the Olive Glenn clubhouse is 10,544 square feet, which is larger than the proposed temple building. The number of parking spaces at the golf course clubhouse is 90, which is more than the amount of parking that would be required for the temple project. The golf course is open 7-days a week, but the temple only five. Olive Glenn has not only the course, and clubhouse, but a restaurant and pro shop that are open to the general public as an accessory use. The reception/restaurant area and "Pioneer Room" at the clubhouse have a combined capacity of 191 persons alone, not counting the 50-person capacity of the lobby. The hours of operation of the golf course and clubhouse are likely similar to that of the temple.

- iii) Parks. The capacity of parks is difficult to estimate, but even a small park utilized for such events as Yellowstone Fire Association soccer events can easily extend well above a hundred attendees. The City has 4.5 acres of undeveloped park land/open space in the RR zone, provided as the required public use area contribution for the Chugwater Rims Subdivision, which would be precluded from being developed as a park if parks were prohibited from the RR zoning district.

Finding: When determining if compatibility can occur, the concept of mitigation can be applied to components of a project that may have significant measurable impacts to neighboring properties. However, the amount of mitigation need only be sufficient to reduce the significant impact to a reasonable level. The concept of mitigation has been used in developing the site plan conditions.

Finding: A structure or tree approximately 35 feet tall at the east property line of the temple property (140 feet away from the Pitet's house) is calculated to be visually equivalent to the height of the steeple due to the differences in distance between them, when viewed at the closest point of the Pitet's house.



Finding: The perceived view impacts from the steeple are the result of individual personal preferences (a tree versus a steeple). No evidence has been provided showing the existence of a viewshed easement or a significant impact to public health, safety, welfare, or morals from the loss of view. We find that views impacted by the development of the temple site are do not interfere with or impair existing property

rights, or public health, safety, welfare or morals, and will be compatible with existing uses in the area.

Finding: The proposed illumination levels at the east property line are minimal (below 0.1 footcandles) except for the lighting of the entry road on the City right-of-way, and that light is reduced to 0.1 levels by the time it reaches the neighbor's lot.

Finding: The proposed temple parking lot would have an average of 2.18 footcandles, which is almost  $\frac{1}{4}$  less than the Hampton Inn parking lot (2.8 fc). No known complaints have been received relating to the Hampton Inn parking lot.

Finding: The site lighting and parking lot lighting are consistent with past City authorizations in that the light color does not exceed 4,000K, the light fixtures are full-cutoff in style, and calculations indicate that the light will be almost entirely retained within the property boundaries.

Finding: The authority for regulating site lighting is from the on-site parking section of the zoning ordinance. It simply states: "*Parking areas for civic, commercial, and industrial uses that will be utilized outside of daylight hours shall be provided with illumination. All parking lot lighting shall be designed and installed such that illumination will be directed away from any neighboring residential properties and shall be directed downward by utilizing full cutoff or fully shielded fixtures.*" The proposed lighting of the temple parking lot meets those requirements.

Finding: Although there is no requirement to provide landscaping, the proposed installation of landscaping, as shown on the landscaping plan, increases the compatibility with neighboring existing land uses.

***3. Does the proposed use involve activities, processes, materials, equipment, hours of operation, or any other operational characteristics that would be materially detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, dust, glare, odors, hazards, or similar impacts?***

Finding: No excessive production of traffic, noise, smoke, fumes, dust, glare, odors, hazards, or similar impacts have been attributed to the temple proposal. In practice, this requirement is not applied to the construction period, as the construction period is temporary and an overly-strict interpretation and application of this standard would preclude construction activities of any kind.

Finding: The grading and stormwater plan has been prepared by a professional engineer and meets minimum City requirements specified by the Stormwater Management Policy. The plan is acceptable to the Public Works Director.

Finding: The stormwater plan is based on 100-year, 2-hour storm, as specified by Church policy, which greatly exceeds the City's 10-year or 25-year requirements and does not increase discharge rates or amounts for the 100-year, 2-hour design storm.

Finding: The erosion control plan appears acceptable as far as the containment fencing. A stormwater pollution prevention plan (SWPPP), and perhaps permit is required to meet WY DEQ requirements. The applicant is aware and plans to obtain those authorizations as needed

Finding: With so much excess parking, snow storage can occur in portions of the parking lot, where it can eventually melt into the stormwater collection system.

Finding: The use of roll out containers for garbage collection services has been requested and is acceptable to the sanitation division (Public Works). Rollouts will have less visual impact than dumpsters. Pickup will occur at the cul-de-sac bulb on Temple View Lane, far from any existing neighbors.

Finding: Traffic associated with the temple and the anticipated 5-lot Nielson subdivision is expected to be roughly equivalent to what would occur if the temple property and immediate Nielson lands were fully developed as a residential subdivision—based on the comparison of estimated traffic generation noted in the traffic impact study compared to the theoretical 42-lot subdivision.

Finding: The abundance of parking will ensure that during occasional events, such as landscaping projects, there will be sufficient parking to accommodate large groups of participants without spilling outside of the temple site. It would also accommodate the occasional RV or vehicle with a trailer.

Finding: The applicant has met this conditional use permit requirement, as applied to the ongoing operations of the temple.

***4. Does the proposal include provisions for necessary and desired public utilities and facilities such as potable water, fire hydrants, sewer, electrical power, streets, stormwater facilities, and sidewalks/pathways?***

Finding: Public Works and the 3<sup>rd</sup> party utility providers have indicated that there is sufficient capacity in each of the anticipated utilities to serve this project. The combination of the proposal and the conditions of the associated site plan review ensure that adequate public utilities and facilities will be provided as needed to serve the temple project. All examples listed will be provided on the temple site as part of this project. Existing utilities will also be protected as necessary.

Finding: No clear authority for off-site improvements is stated. However, the applicant is voluntarily developing construction plans for the missing section of curb and gutter

and associated minor widening of Skyline Drive for about 200 feet north of proposed Temple View Lane. Construction is planned to occur as part of the temple project. As much of the missing segment of curb and gutter is outside of the scope of the temple project, it is primarily the City's responsibility for installation.

***5. Will the proposed use create excessive additional costs for public facilities and services that would be materially detrimental to the economic welfare of the community?***

Finding: No excessive additional costs for public facilities and services, beyond that of comparable permitted uses, such as residential development, playfields, golf courses, and parks, are anticipated. For example, Temple View Lane will be private, so there are no City costs related to street construction or maintenance. The sewer, water, power, and other utilities in Temple View Lane would be the City responsibility, but the overall amount of City infrastructure is significantly less than if it were a residential subdivision.

Finding: As the temple site has abundant on-site parking, there is no justification for requiring on-street parking along the north side of Temple View Lane.

Finding: Both the Public Works Director and Fire Marshal are agreeable to the street profiles and dimensions proposed.

Finding: The temple traffic during the AM peak hour is estimated to include 24 vehicles entering the property and 8 vehicles exiting, for a total of 32 trips. The temple traffic during the PM peak hour is projected to have 19 vehicles entering the property and 18 vehicles exiting, for a total of 37 trips.

The traffic generation from the proposed temple and contemplated 5-lot subdivision is estimated to generate an amount of traffic almost identical to what would be generated from a theoretical 42-lot subdivision, with one exception, the subdivision traffic would occur at that level or higher for 7-days a week, while with the temple and 5-lot subdivision proposal traffic would likely be significantly less the two days the temple is closed. Such an analysis is appropriate when looking at comparable permitted or conditional uses—it is not a comparison of what is proposed to a situation of "no development", but to likely alternate development.



Finding: The portions of Skyline Drive that lead to the temple site are classified as collector streets (minor and major).

Finding: After reviewing the traffic study, the Public Works Director has stated that the traffic generated from the proposed temple will not cause any significant impacts to the capacity or condition of Skyline Drive. The engineers that performed the traffic study also concluded that, "Since all study intersections were found to operate acceptably, Fehr & Peers does not recommend any mitigation measures..."

Finding: The City has never adopted a traffic mitigation impact fee or policy to require off-site mitigation of traffic impacts. For the City to impose any form of traffic mitigation would deviate from the City's prior practice.

Finding: If additional protection for pedestrians or bicyclists using Skyline Drive is desired, the use of traffic delineators, such as shown in this photo would appear to be a viable option. As there is not clear authority for off-site improvements, it would be at the City's expense.

***6. Will the proposed use result in the destruction, loss or damage of a natural, scenic or historic feature considered to be of significant importance?***

Finding: The site was most recently used as a cow pasture. There are no known natural, scenic, or historic features on the site that are of significant importance.

***7. Is the proposed use consistent with the applicable provisions of the Cody Master Plan?***

Finding: The master plan is a guide, that does not have the status of law. The Cody master plan itself states that "The goals, objectives, and principles found in the Master Plan Frameworks provide guidance for future planning and decision-making in Cody. These statements are not hard-and-fast regulations, but rather statements that reflect the community's aspirations."

Finding: It is acknowledged that it is possible for different portions of the master plan to conflict with other portions, causing them to have to be considered in their order of importance. Furthermore, the master plan does not specify the level of importance of each principle or goal. However, each of the items from the master plan contained in the staff report have been met, as noted below.

*GOAL 1: Cody will maintain its character as an attractive western town that is welcoming to residents and visitors alike.* Finding: A significant portion of the community views the temple as attractive. The character of the town is found in its people—the teachings given in the temple promote the attractiveness (e.g. well-kept



properties due to the concept of stewardship) and the welcoming attitude for fellow residents and visitors, that is so important.

Objective 1.1: *Advocate and promote attractive and appropriate development of the City.* Finding: Many view the building as attractive. The appropriateness of the development is evidenced through compliance with the other conditional use permit criteria.

*Principle 1.1.a. Community Image. The future of the tourist-oriented component of the community is heavily dependent on how the City and community meet the expectations of its national and international visitors. So long as the community takes pride in the details, including aesthetics, amenities, and friendly attitudes, it will be attractive and inviting to visitors and residents alike.* Finding: Many view the temple and its grounds as aesthetically pleasing. It is an amenity serving the region. The friendly attitudes are promoted by what is taught in the temple.

*Principle 1.1.b. Landscaping. Developments in commercial, office, multi-family, and light industrial areas should include quality landscaped areas along major streets and in large parking lots. Initial development plans should include preliminary landscape concepts and address responsibility for maintenance.* Finding: The temple property will be extensively landscaped.

*Principle 1.1.d. Architecture. Encourage quality architecture and design for new commercial, office and multi-family buildings and renovations...* Finding: The Planning and Zoning Board promotes the utilization of quality building materials and construction. The temple building meets those expectations.

*Principle 1.1.h. Award Great Design. Creativity on the part of private developers should be rewarded through recognition and support from the community.* Finding: Approval of the project would recognize great design.

*Principle 3.1.b. Existing Neighborhoods. Protect the existing character in stable residential areas. New residential, office, commercial, or industrial development that is not in harmony with the existing or desired future character of these neighborhoods should be discouraged.* Finding: The conclusion of the application of the other conditional use permit criteria is that the project is compatible with the neighborhood because the temple has characteristics that do not create any impacts beyond other uses permitted in the existing neighborhood.

*Principle 3.1.c. Protect Residential Uses. Protect residential neighborhoods by transitioning between residential and non-residential land uses through appropriate zoning, development review processes, and buffer methods. In areas where non-residential land uses are located adjacent to or within neighborhoods, require screening or barriers to limit the impacts on residential uses. Buffer methods could include*

*fencing, berms, native vegetation, plantings, trails and recreation areas, and density transitions.* Finding: The temple project provides adequate buffers due to greatly increased setbacks and the extensive landscaping provided within those setbacks.

*Principle 3.1.f. Building Heights. Limit the height of new and remodeled construction to respect the existing or desired character of neighborhoods and districts, maintain a consistent scale of development, and preserve scenic views.* Finding: Conditional on a Special Exemption on height, the temple building complies with the building height limit for the zone in which it is located.

*Principle 3.3.a. Development Review. Expedite the development review process for developers when development includes a public benefit and meets the goals set forth in this plan.* Finding: There is no public benefit to delay a decision when all of the necessary information has been provided and it has been shown that the applicable criteria are met.

*Principle 3.3.b. Cooperative Approach. When working with property owners, developers, and City staff, all parties are expected to maintain a cooperative attitude, promote open communication, and work to identify mutually-beneficial solutions to problems that may arise during the review process.* Finding: All efforts have been made to provide a legitimate review process, maintain a cooperative attitude, and seek proper mitigation of potential negative impacts to the extent of applicable regulations.

*Objective 6.4: Provide stormwater management systems that mitigate the impacts of heavy storm and flood events, address the effects of development, and protect the health of the public and the environment.* Finding: The stormwater plan exceeds City standards.

*Principle 8.4.a. Opportunities for Civic Engagement. Include opportunities for meaningful public engagement and feedback in the City of Cody's planning and community development activities.* Finding: Opportunity to provide written comments throughout the notice period has been provided, as customary, although such is not required. The public hearing has also provided additional opportunity for meaningful public engagement.

*Objective 9.1: Support a vibrant, year-round local economy that allows for economic growth while protecting Cody's small-town lifestyle.* Finding: Several comments noted how those attending the Cody temple would also redirect much of their purchasing power to Cody and the State of Wyoming, whereas now they spend it in Billings, Montana. That support would be on a year-round basis.

*Principle 13.1.b. Quality of Life. Support the preservation of Cody's quiet character by limiting noise and lighting impacts where quality of life is important.* Finding: The ability to perform temple worship locally is a significant quality of life improvement for

those in the community. The temple project will not produce noise, with the exception of associated traffic, yet the amount of traffic and associated noise levels do not exceed that of other uses permitted in the zone.

*Principle 14.1.f. Street Hierarchy. Ensure a street system that properly considers and implements the functional classification of each street, such that arterial and major collector streets are maximized for mobility and capacity, and minor collectors and local streets function within their intended limits so that residential streets are protected from excessive volumes of traffic and the intrusion of undesirable cut-through traffic. Avoid situations where undesirable cut-through traffic occurs on minor collectors and local streets.* Finding: Skyline Drive, as a collector street, will continue to function within its capacity with the temple traffic.

ADDITIONAL FINDING:

Finding: The staff report was prepared in a manner that complies with the U.S Constitution, federal law, the City of Cody Code, and the City Personnel and Policy Manual.