



# Reno City Attorney

## MEMORANDUM

**Date:** May 30, 2018  
**To:** Mayor, Council Members, and City Manager  
**cc:** Karl Hall, City Attorney *KH*  
Andy Bass, Parks, Recreation and Community Services Director  
**From:** Jonathan Shipman, Assistant City Attorney  
Julie Towler, Deputy City Attorney *JT*  
**Subject:** Evans Historical Park Project; Deed Restriction

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City Council requested that the City Attorney's Office opine as to whether the "Evans Historical Park" plan presented to City Council on May 23, 2018 (the "Project"), (Exhibit 1.), conflicts with a deed restriction requiring the parcels to be used "forever for Park Purposes." (See, Exhibit 2, at 1.) *This opinion is intended for the sole benefit and use of the City Council, and should not be construed as conferring any rights to any third party.*

In *Valley Motor, Inc., v. E.W. Almborg*, 106 Nev. 338, 338 (1990), the Nevada Supreme Court held that restrictive covenants will be enforced as long as the original purpose of the covenant can still be accomplished and substantial benefit will inure to the restricted area. Moreover, changed conditions sufficient to justify nonenforcement of an otherwise valid restrictive covenant must be so fundamental as to thwart the original purpose of the restriction. *Gladstone v. Gregory*, 95 Nev. 474, 478 (1979).

Here, as a threshold issue, the CAO is not aware of any facts or circumstances indicating that conditions in and around Evans Park have changed so substantially to justify nonenforcement of the deed restriction.

That said, R.M.C. § 8.23.010 defines a "park" as "land owned, operated or maintained by the City of Reno and specifically set apart for the recreational use of the public or for the beautification of public streets or facilities." R.M.C. § 18.24.203.3690 defines a "Park or Recreation Area, Active" as a "park, playground, golf course or athletic field that has scheduled athletic events and draws large numbers of people from throughout the city to the events. Usually has lights and designated playing fields or other structured areas." In addition, R.M.C. § 18.24.203.3700 defines a "Park or Recreation Area, Passive" as a "park, playground, swimming pool, or reservoir that primarily serves residents living within walking distance of the facility and does not have scheduled events or fields."

Case law from other jurisdictions provides persuasive guidance on what can be considered a "park" and activities that further "park purposes"; specifically:

- Parks are free for the public's use in promotion of health and enjoyment, and parks cannot be interfered with by intrusion with the public's health and enjoyment. *Williams*

v. *Gallatin*, 229 N.Y. 248, 253-54 (1920).

- A park is a place where the public can go to for recreation, air, and light. *Cohen v. City of Lynn*, 33 Mass. App. Ct. 271, 278 (1992).
- In furtherance of the public’s health and enjoyment, the limitation of part of a park so that all possible community uses are restricted is not consistent with park purposes. *Union Square Park Community Coalition, Inc., v New York City Department of Parks and Recreation*, 38 Misc.3d 1215(A) (Unreported Disposition) (2013), reversed by *Union Square Park Community Coalition, Inc., v New York City Department of Parks and Recreation*, 966 N.Y.S.2d 669, 670 (2013).
- In regards to providing concessions in a small sized park with large crowds, a park purpose is furthered when the concessions prices are accessible to the public at large. *Id.*
- A municipality that holds land for purposes of a public park in perpetuity cannot use a portion of the land for a school building, and cannot build an ice skating rink on 148,000 square feet of a park, which totaled 160,000 square feet in size or 3.64 acres. *Dunphy et al. v. Commonwealth et al.*, 368 Mass 376 (1975).

Here, Evans Park consists of two parcels<sup>1</sup> totaling approximately 2.07 acres. (Exhibit 1, at 3.) Today, the City owns, operates and maintains the Evans Park property. Ordinarily, the park is free for the public’s recreational use and enjoyment—generally serving the community at large, and specifically serving the residents and students living within walking distance. Programming is minimal. The property infrequently hosts organized athletic events and other community activities. As far as park amenities, the property has approximately 1.37 acres of turf-grass open space, a horseshoe pit, and a seasonal bathroom. In general, Evans Park remains a place where the public can go to for air, light and unstructured recreation. As such, the current use clearly meets the definition of “park purposes” in the deed; the definition of “park” found in R.M.C. § 8.23.010, §18.24.203.3700; and remains consistent with other common “park” attributes cited in case law from other jurisdictions.

In contrast, the Project presented to City Council on May 23<sup>rd</sup> proposes that the City lease Evans Park to the Truckee Meadows Heritage Trust (the “Trust”). The Trust is an established nonprofit organization working to preserve the region’s historical heritage through community partnerships. Upon acquiring a ground lease from the City, the pro forma financial statement shows that the Trust will raise approximately \$2 million dollars over a 15 year period, (Exhibit 1, at 15.), to relocate eleven Gateway historical homes to Evans Park, (Exhibit 1, at 10.) Upon relocation, the homes will be listed on the City’s register of historic structures. In coordination with the City Historic Resources Commission and the Recreation and Parks Commission, the historic value and history of the homes will be interpreted robustly with signage, a website, a mobile app, and other educational tools.

Upon relocation, the historic homes will be re-purposed for commercial uses. In the words of the Project sponsors, “Evans Historic Park is a project that benefits the community by creating a beautiful setting where small businesses can offer services and amenities within walking distance to the UNR campus and downtown.” At this point in development, the Trust has not identified specific tenant(s) for the homes, or even the overall, projected mix of tenants. In general, the Trust proposes that the ground floor of each historic home will remain a public accommodation, such as a retail store, restaurant, coffeehouse, yoga studio, etc., or will operate as a concession for visitors, i.e., sale of Reno-centric souvenirs, sports gear, bike rentals, and/or

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<sup>1</sup> APN Nos. 007-221-05 and 007-221-04.

other recreational activities. Shops and concessions will be open to the public during reasonable business hours, while the second floor of some homes may be leased out for office space to generate additional revenue for the Project. The Project will preserve mature trees on the property, and the Trust will use Project proceeds to relocate the horseshoe pit to another City park.

Whether the proposed Project conflicts with the deed restriction requiring the parcels to be used “forever for Park Purposes” is determined by looking at the totality of the circumstances.

Here, the Trust, not the City, will operate and maintain the property. See, R.M.C. § 8.23.010 (park operated or maintained by city). The City’s control will be limited. While the interests of the City and the interests of the Trust overlap, they are not identical. While under the control and possession of the Trust, the Project will always serve the historic preservation and charitable interests of the Trust, potentially at the expense of “park purposes”. By failing to identify specific tenants, or even the mix of tenants, the City can only speculate as to how the Trust will strike an appropriate balance between its commercial interests, and the City’s interests in preserving Evans Park as a park.

While the property will remain open and free<sup>2</sup> to the public for recreational use and enjoyment, it will generally serve a different population, namely tourists, shoppers, visitors of the University of Nevada, and people interested in the history of Gateway historical homes, not neighborhood residents and students living within walking distance. When completed, the Project will fundamentally change the mix of commercial and non-commercial activity on the site, with commercial activity dominating over non-commercial activity. Special events and community activities will likely increase, but such programming will be aimed at financially supporting and preserving the historic homes by promoting the commercial interests of the Project’s small business tenants.

Physically, relocation of the homes will leave less than one (.92) acre of open space available for unstructured activities, e.g., frisbee, playing catch, flying kites, etc; compare to, *Dunphy et al. v. Commonwealth et al.*, 368 Mass 376 (1975). Likewise, office space leased by second floor tenants will not be accessible to the public.

In conclusion, the amount commercial activity necessary to financially support the Project will fundamentally change the character of Evans Park as a park. In short, the Project will transform a longstanding neighborhood park into a historical shopping district dominated by small business interests. Given the totality of circumstances, it is the opinion of the City Attorney’s Office that the Project presented to City Council on May 23<sup>rd</sup> conflicts with the deed restriction requiring the parcels to be used “forever for Park Purposes.”

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<sup>2</sup> The plan for the Project does appear to contemplate users paying any fee or donation to access the property.

# EXHIBIT 1

EXHIBIT 1



# Evans Historic Park

[EvansPark.org](http://EvansPark.org)

# Neighborhood Map

1. NDOT    2. University of Nevada, Reno, Student Union    3. 2017 City of Reno: Annual Report    4. Washoe County Assessor



# Map, Traffic, & Demographics

1. NDOT    2. University of Nevada, Reno, Student Union    3. 2017 City of Reno: Annual Report    4. Washoe County Assessor







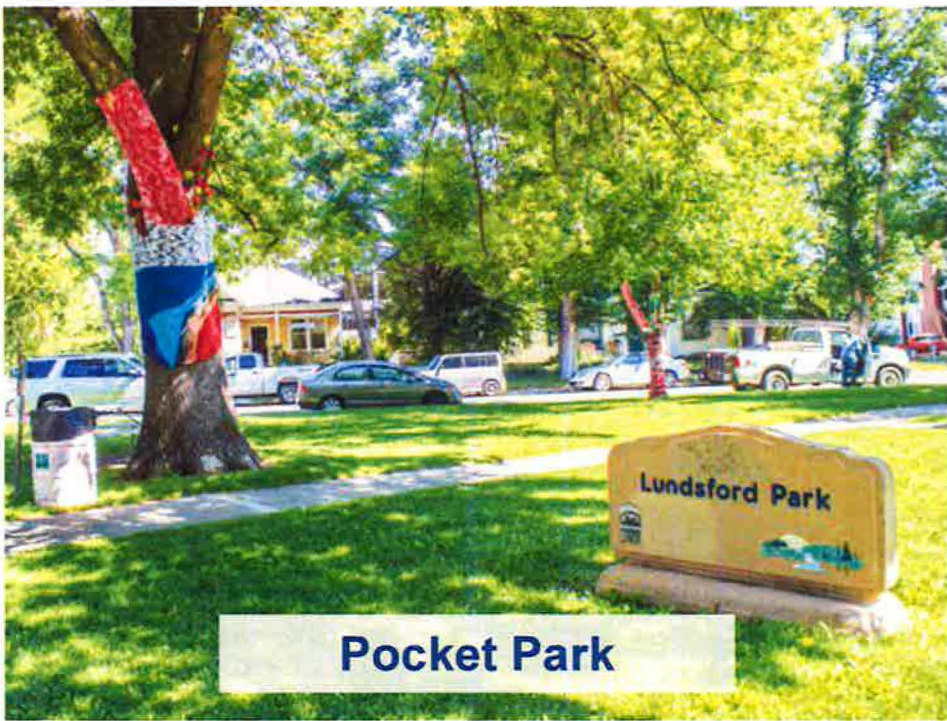


# What is a Park?



"Park" means a land owned, operated or maintained by the City of Reno and specifically set apart for the recreational use of the public or for the beautification of public streets or facilities.

Reno Nevada Administrative Code Sec. 8.23.010. - Jurisdiction.



**Pocket Park**



**Neighborhood Park**

Varies by location; ranging from playgrounds or dog parks to more passive gathering spaces, such as a community garden or an urban plaza with seating, landscaping, and other features. Pocket parks are typically privately-owned and maintained by a homeowners or business association. Due to limited recreational use and high cost, pocket parks should be privately owned, constructed, and maintained to the maximum extent feasible.

**Minimum Required Amenities:** None

**Typical Size:** Less than 1 acre; however, some may be as large as 2 acres.

**Service Area:** Intended to serve a concentrated population within walking distance ( $\frac{1}{4}$  mile radius)

**Location:** In neighborhoods, centers, corridors, or other areas where they are readily accessible to concentrated populations on foot (e.g. Downtown Regional Center).

Neighborhood parks are designed to provide the basic recreational needs for residents of the immediate neighborhood; they are cornerstone of the City of Reno's overall park system and a primary focus for attainment. The design and programming of a neighborhood park will vary based on the needs of residents within the service area.

**Minimum Required Amenities:** 1 playground incorporating 2-5 & 5-12 age groups; 1 group shelter with 6 tables; 1.5 acres open turf; 2 courts (basketball, tennis, volleyball, pickleball, horseshoes); Parking with 2 spaces/acre; 1 unisex restroom

New neighborhood parks will include permanent restroom facilities in the design when the site totals five acres or more and a permanent restroom is not otherwise provided at a contiguous public facility.

**Typical Size:** Existing neighborhood parks range from 3.5 to 10 acres; minimum of 5 acres for new construction

**Service Area:**  $\frac{1}{4}$  to  $\frac{1}{2}$  mile radius

**Location:** Centrally located within neighborhoods in areas with safe pedestrian and bicycle access. Due to safety and access considerations, the service radius should not be divided by natural or artificial barriers, such as arterial roads, railroads, commercial or industrial areas.

# Changes in Use of Evans Park

## SPECIAL PROGRAM FOR PLAYGROUND

A pet and doll parade, a family picnic, a band concert and games are part of a special playground program to be held at Evans park Thursday evening, it was announced today by Miss Mary Gayle Reece, playground director.

Starting at 6 p. m., children attending the playground will parade with their dolls and pets. Families of the neighborhood will enjoy their picnic lunches in the park starting at 6:30, according to Miss Reece.

## Brownie Troop Enjoys Camping Program

The Brownie back yard camping program is progressing very rapidly with the Northside group of Brownies, and the young girls are having a great deal of enjoyable work given them by adults of Reno.

This group of girls meet every Monday at Evans park and will have three more meetings during their camping program, which is in charge of Mrs. Frank M. Fitz.

## NEW WADING POOL IN PARK STARTED

Construction of a childrens' wading pool at Evans park, on Lake street near the university, was started today by the city, it was announced by C. L. Hill, city engineer. The small pool, twenty-six feet in diameter, is estimated to cost \$500.

The pool will be round and will have a depth ranging from twelve inches to three feet and will be lined with concrete. Sidewalks, sloping away from the pool, will be built around it, Hill stated. The water will be changed every day or oftener, he said.

## Evans Park

Gazette-Journal  
Legislative Bureau

The Assembly passed a bill returning property at Evans Park in Reno back to the city. Reno had deeded the property to the state when plans called for construction of the Nevada Historical Society's new building on that site. But the society decided to build on the campus of the University of Nevada instead.

## Youth Band Makes Debut

Marking the transfer of playground headquarters to Evans park from the Orvis Ring school, the "Young Recreation Band" will make its debut at a concert in Evans park at 1 p.m. on Monday, the Reno Recreation commission said today.

Children who live in the northeast section of town who wish to participate in the playground program from 9:30 a.m. to noon and from 1 to 5:30 p.m., may register at the park, it was announced by Miss Mary Gayle Reece, playground director.

## Evans Park Has New Standards

Youngsters in the Evans Park area can now play outdoor basketball to their hearts content. Two basketball standards were recently installed by the City Park and Recreation Department at each end of one of the paved tennis courts in the park.

Fred Galloway, park supervisor, had charge of the installation. Outdoor basketball facilities are about the most-used pieces of playground equipment to be found on any of the city park playgrounds.

Each good day after schools and on Saturdays and Sundays many boys and some coaching fathers can be seen on the courts playing and practicing basketball at Whitaker, Stewart, Pickett, Suto, Community Center, and now at Evans Park playgrounds.

## Evans Park

Location: Evans Ave. at Ninth St.

Tennis courts, playground apparatus, sand box, large lawns, shade and play areas.

Directors: Ed Van Gorder and Margery Titus.

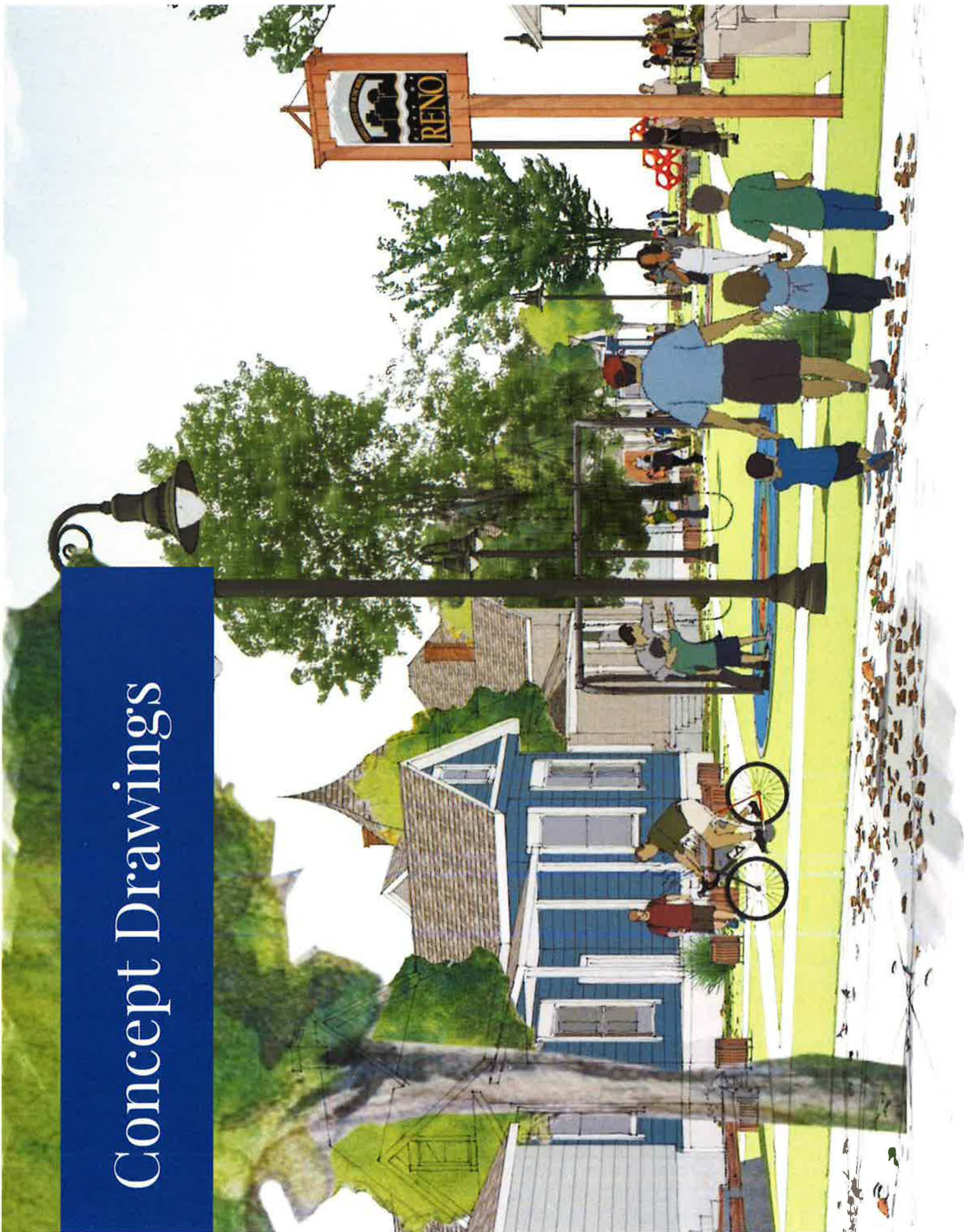
## Evans Park Children to Present Playlet at Junior Crafts Show

"Children Need a Place to Play" was the title of a playlet presented last night at the annual junior craft and hobby show by the Evans Park Playground.

It was one of six skits to be presented by the playgrounds of Reno at the Idlewild Recreation Center.

da Douglas, Barbara Dunbrack, Dorothy Blanchard, Gary Fruix, Inez Sarasue, Diane Stephens, Janice Strawn, Kay Kellogg, Marilyn Moore, Marie McDonough, Judy Douglass, Carol Kellogg, George Cross, Gary Elder, Alvin Walker, Alvin Munoz, Phillis High,

# Concept Drawings





Rich in History





Dick Taylor

8th Street

Whitaker

Evelyn Mount

Horseshoe Pits



# Est. \$2 Million

raised over 15 years (subject to final verification of project costs)



Parks

Pools

Fields

Historic  
Preservation  
Planner



# Community Funds

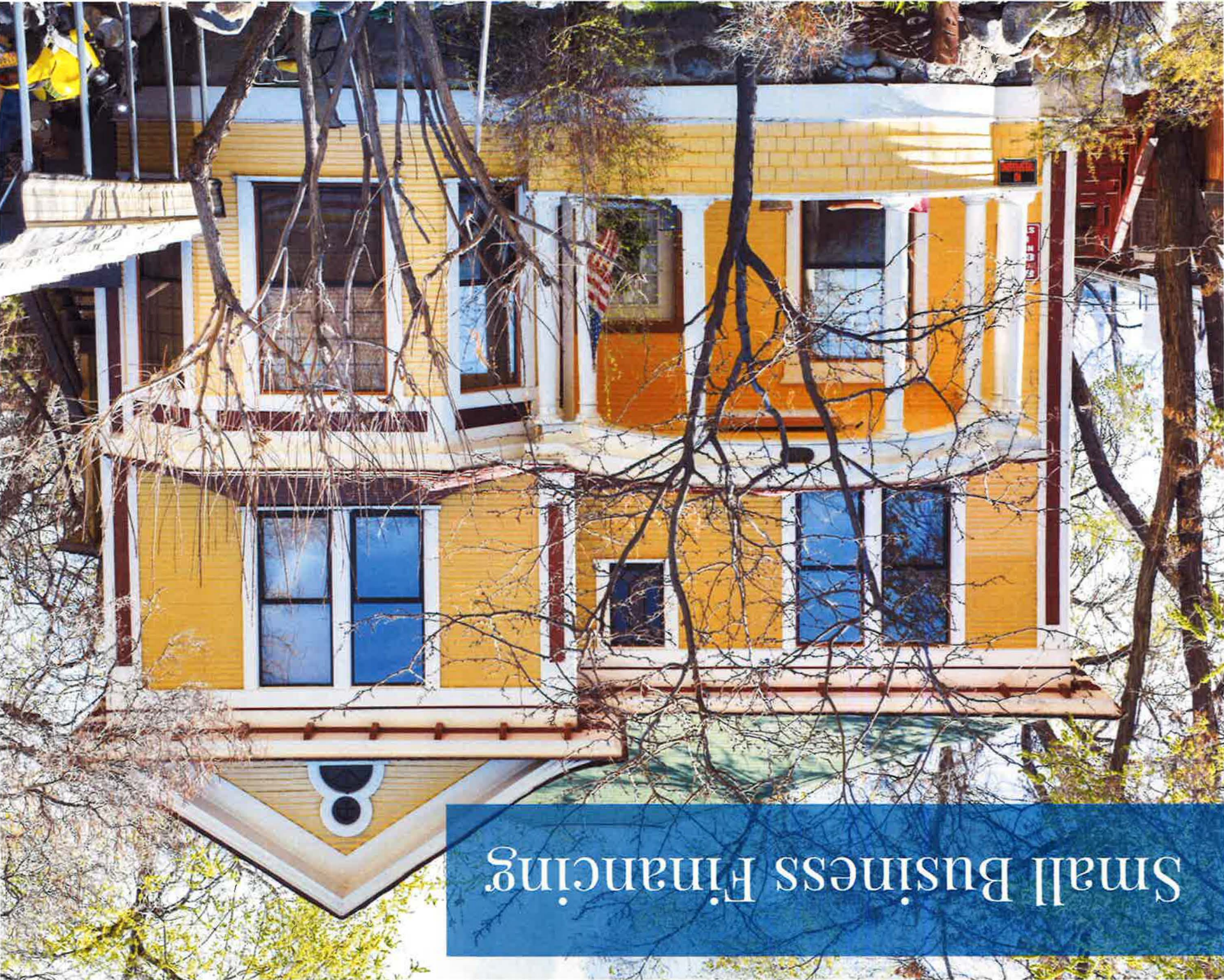
Year 1           \$ 562,500

Years 2 - 5       \$ 26,400 per year

Years 6 - 15     \$ 136,400 per year

Year 16+         \$ 26,400 per year

15 year total    \$2,032,100

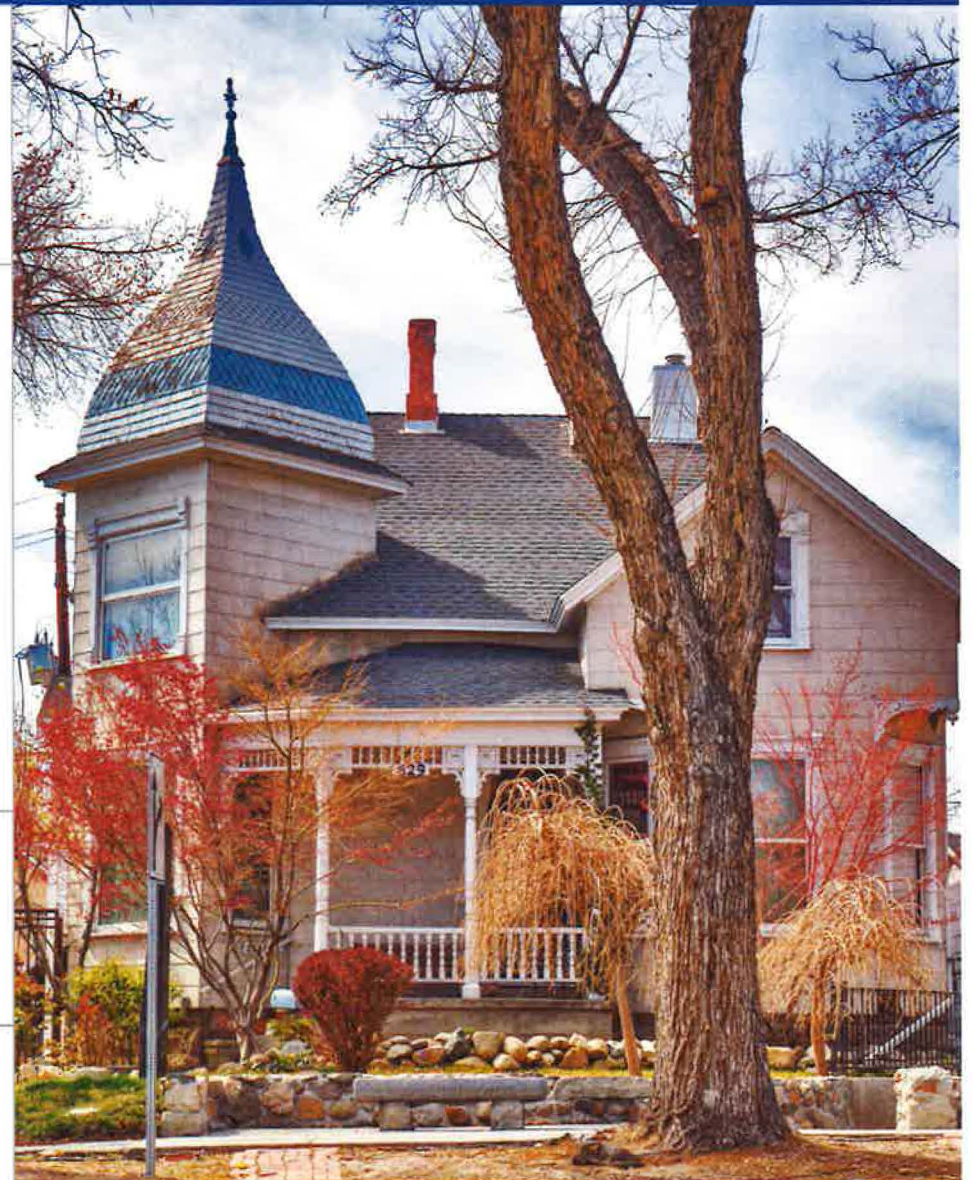


Small Business Financing

Evans historic park 18 month timeline with 11 homes

# Estimated Project Cost Summary

Site utilities	\$ 275,000	(utilities \$25,000 per structure) including community grease interceptor (\$50,000 per foundation) (\$50,000 to relocate each home) <i>infrastructure costs for eleven homes, \$125,000 per home</i>
Foundations	\$ 550,000	
Home moving	\$ 550,000	
<b>Est. subtotal</b>	<b>\$ 1,375,000</b>	
Site engineering	\$ 100,000	A project manager, HOA attorney, and historic preservation professional will oversee all aspects of the project and resolve complex tasks as they may arise.
Prof. salaries	\$ 150,000	
Legal Fees	\$ 12,500	Evans Park will be re-landscaped with turf, sprinklers, new walkways, and interpretive signage.
Insurance	\$ 10,000	
Demolition	\$ 40,000	
Landscaping	\$ 50,000	Paving for delivery zone/ADA parking with driveway onto Evans.
Paving	\$ 50,000	
Historic signage	\$ 15,000	Horseshoe pits to be relocated. Additional costs to establish park, \$40,000 per home
Relocate horseshoe pits	\$ 5,000	
<b>Est. subtotal</b>	<b>\$ 432,500</b>	
Total Est. Cost	\$ 1,807,500	\$325,000 each is an estimated average. Individual prices will vary. Contingency for investor returns and unknown costs 1,100,000 to be deferred for 5 years
11 house sales	\$ 3,575,000	
Contingency	\$ 105,000	
<b>Balance</b>	<b>\$ 1,662,500</b>	



Total allocation for City Parks and Historic Preservation Planner:

**\$2,032,100 over 15 years**

(subject to final verification of project costs)

## **University Campus District**

City zoning should support the land uses established in the University's Campus Master Plan (Map 3 – UNR Campus Precincts), which identifies:

- A Gateway Precinct that fosters a heightened urban mixed-use pedestrian environment anchored by a flagship multi-modal transit station. The Gateway should feature a mix of campus academic spaces and community-serving uses with a welcoming program for the broader Reno community.
- The City and Historical Resources Commission should collaborate with the University and its planning consultants regarding potentially historic resources in the Plan area. In relation to potential historic resources, redevelopment in the University Campus Gateway Precinct on parcels not abutting North Virginia Street should prioritize in the following order: 1) preservation; 2) adaptive reuse; and 3) development that evaluates compatibility and integration of potential historic resources. Relocation of historic resources should be encouraged only in lieu of demolition.



## 3.3

### Promote the continued revitalization of the downtown economy and built environment.

#### **3.3C: UNIVERSITY LINKAGES**

Proactively seek opportunities to collaborate with UNR, RTC, and other partners on efforts to strengthen both physical and symbolic linkages between the UNR campus and Downtown. Prioritize efforts identified as part of the *Downtown Action Plan*, which include transit enhancements, joint development efforts, the creation of an active, mixed-use University District, and related activities.

#### **3.3E: ADAPTIVE REUSE**

Encourage the adaptive reuse and rehabilitation of historic structures as a key component of an overall reinvestment and revitalization strategy for Downtown.



## 7.5

Protect and preserve Reno's heritage and historic assets.

### **7.5B: IDENTIFICATION OF HISTORIC PROPERTIES**

Identify, recognize, and increase historic resources by encouraging and incentivizing the addition of properties to the City, state, and national registers.

### **7.5C: PROTECTION OF HISTORIC RESOURCES**

Reinforce the Historic Resource Commission's regulatory processes and its role as historic preservation advisor to the City Council.

### **7.5E: ECONOMIC DEVELOPMENT AND HERITAGE PRESERVATION**

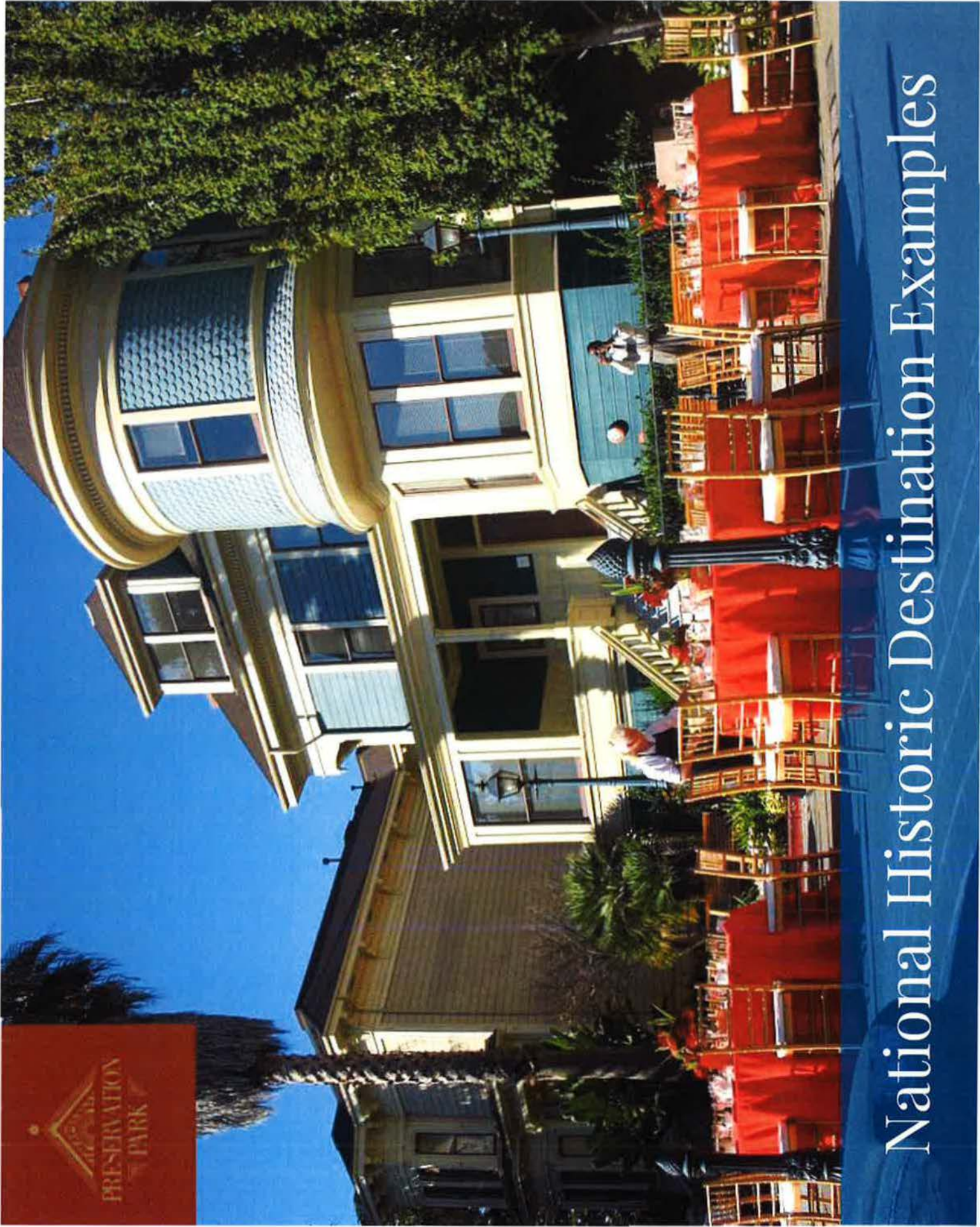
Emphasize the economic benefits of historic preservation and its role in economic development, sustainability, and heritage tourism.

### **7.5F: ORDER OF PREFERENCE**

Minimize impacts as part of future development to maintain integrity of historical context. As a first priority, encourage the preservation or adaptive reuse of historic resources on the City Register of Historic Places. If alterations to historic resources on the City Register are proposed, they should be analyzed with the intention of minimizing impacts to significant features and maintaining the integrity of the historic resource. Support mitigation measures (e.g. relocation) in lieu of demolition when reuse is not deemed feasible.

Strategy	Responsibility
<p><b>IMP-7.5f.</b> Develop a near-term strategic plan for the Historical Resources Commission that identifies actions the HRC can take to address historical resource issues, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Advocate for the reinstatement of an annual budget for the Historical Resources Commission and increased staff time to assist the historic preservation program;</li> <li>• Strive to protect historic resources that are City-owned property;</li> <li>• Expand the Historic Resources Commission’s annual award program to encourage and recognize excellence in historic preservation in the community;</li> <li>• Develop a historic marker program to interpret, educate, and promote the region’s history and to foster heritage tourism;</li> <li>• Increase understanding of historic preservation goals in non-historic preservation-related departments and commissions;</li> <li>• Actively pursue new listings to the City Register through outreach to private property owners of potentially eligible properties listed in the National Register of Historic Places;</li> <li>• Actively reach out to private developers to promote and facilitate investment in historic rehabilitation, especially in commercial buildings;</li> </ul>	<p><b>Lead:</b> Historical Resources Commission</p> <p><b>Partners:</b> Community Development, Historic Reno Preservation Society, State Historic Preservation Office, EDawn, RSCVA</p>





# National Historic Destination Examples

# Public Outreach

- EvansPark.org - page views - over 2,400 as of May 22nd
- Facebook advertisement - 2,392 people reached
- Questions and public feedback accepted on the website
- Media interviews and articles
- Historical Resources Commission Meeting
- Recreation & Parks Commission Meeting

# EXHIBIT 2

EXHIBIT 2

12/25/1  
Parcel 9  
Evans Park

J. N. EVANS ESTATE COMPANY

TO

CITY OF RENO

THIS INDENTURE, made the twelfth, day of July one thousand nine hundred and twenty-six. BETWEEN J. N. EVANS ESTATE COMPANY, a corporation organized and doing business under the laws of Nevada, and having its principal place of business in the City of Reno, County of Washoe, Nevada, the party of the first part, and the CITY OF RENO, a Municipal Corporation of Washoe County, Nevada, the party of the second part, WITNESSETH: That the said party of the first part, in consideration of the sum of ten dollars, lawful money of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell unto the said party of the second part, and to its heirs and assigns forever, all those certain lots, piece, or parcel of land situate in the City of Reno, County of Washoe, State of Nevada, and bounded and described as follows, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, and 13, in Block (4), of Evans Northwest Addition to the City of Reno, as designated upon a certain map thereof on file in the office of the County Recorder of said Washoe County, Nevada, together with ten (10) shares of capital stock of the Orr Ditch and Water Company, a corporation organized under the laws of Nevada.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever for Park Purposes,

IN WITNESS WHEREOF, the party of the first part, by its president and secretary thereunto duly authorized by resolution of its board of directors, has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed, the day and year first above written.

(CORPORATE SEAL)

J. N. EVANS ESTATE COMPANY,

By J L Robinson

President.

Attest:

Elizabeth Evans Robinson

Secretary.

STATE OF NEVADA )  
                  )SS.  
County of WASHOE )

On this 12th day of July A.D. one thousand nine hundred and twenty six personally appeared before me, MARCIA R. CARTER, a Notary Public in and for the County of WASHOE State of Nevada, ELIZABETH EVANS ROBINSON known to me to be the Secretary of the corporation that executed the foregoing instrument, and upon oath did depose that she is the officer of said corporation as above designated; that she is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by the officers of said corporation as indicated after said signatures, and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

Marcia R. Carter

Notary Public in and for the County of Washoe,  
State of Nevada.

Filing No. 45869

Filed for Record at the Request of J. B. Reese City Clerk JAN-25-1929  
at 16 min. past 2 o'clock P. M. No Fee

HR:DMP  
ED:HAA  
HAA Verified

*Lella O. Boyd*  
COUNTY RECORDER