



REGULAR CITY COUNCIL MEETING AGENDA
Tuesday, April 4, 2023 - 6:00 PM
Community Room, Montrose Public Safety Complex – 434 S. First Street

The Montrose City Council is pleased to have residents of the community take time to attend City Council meetings. We encourage your attendance and participation. Individuals wishing to be heard during public hearing proceedings are encouraged to be prepared and will generally be limited to three minutes to allow everyone the opportunity to be heard. Additional written comments are welcome and will be received at any time. The 11:00 p.m. rule will be enforced in accordance with City of Montrose Regulations (Sec. 7-15-2).

Public participation for this meeting will be in person in the Community Room of the Montrose Public Safety Complex. The meeting recording can be viewed at the link below:
<https://www.youtube.com/user/MontroseCityGov>.

Hearing assistance devices are available for public use. Please let us know if you need accommodation. The City also offers interpretation for Spanish speakers. In order to allow time to book this resource, please email planningmail@ci.montrose.co.us at least three days before the meeting.

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- 1) City Council meeting called to order by Mayor Dave Frank
 - 2) The Pledge of Allegiance
 - 3) Roll call by the City Clerk
 - 4) Changes to the agenda including additions and deletions
 - 5) AmeriCorps Week Proclamation 4
 - 6) CALL FOR PUBLIC COMMENT FOR NON-AGENDA ITEMS

The “Call for Public Comment” agenda item is a time when concerned members of the community may publicly voice their concerns and discuss items of interest. Please note that no formal action will be taken on the matters raised during this time.

Comments made during this time should be addressed to the Council and pertain to matters of at least general importance to the City and its operations. Please be aware that neither City Council nor City staff are expected to respond or engage in discussion or debate.

Personal attacks and disagreements, personnel and employment matters, the use of profanity or ethnic, racial or gender-oriented slurs are prohibited, as is any “disorderly conduct” which violates state or local law and shall not be permitted.

7) APPROVAL OF MINUTES (5 minutes)

City Council consideration of the minutes of the March 21, 2023, regular City Council meeting. *Staff: City Clerk Lisa DelPiccolo* **5-12**

Action: Consider making a motion to approve the minutes of the March 21, 2023, regular City Council meeting as presented.

8) ORDINANCE 2620 - FIRST READING (15 minutes)

City Council consideration of Ordinance 2620 on first reading, an Ordinance of the City of Montrose authorizing the substitution of other City property for the City Hall building under a 2017 lease-purchase financing; and authorizing and approving documentation related thereto. *Staff: Finance Director Shani Wittenberg and City Attorney Ben Morris* **13-41**

Action: Accept public comment. Consider making a motion to pass Ordinance 2620 on first reading as presented.

9) ORDINANCE 2618 - SECOND READING (10 minutes)

City Council Consideration of Ordinance 2618 on second reading, an Ordinance of the City of Montrose, Colorado, amending the zoning designation of 122 acres adjacent to the south of the Cobble Creek Golf Course bordering 6400 Road from "R-3" Medium Density District with conditions to "R-3" Medium Density District with no conditions. *Staff: Planning Manager Jace Hochwalt* **42-83**

Action: Hold a hearing. Consider making a motion to adopt Ordinance 2618 on second reading as presented expressly conditioned upon the execution and recording of the Agreement and Declaration of Covenants between the City of Montrose and Weststar Development, LLC that was authorized by City Council for signature at their February 21, 2023 Regular meeting.

10) ORDINANCE 2619 - SECOND READING (10 minutes)

City Council Consideration of Ordinance 2619 on second reading, an Ordinance of the City of Montrose, Colorado, amending the zoning designation of Lot 12 of the Miami Business Park Subdivision Filing No. 1 and Lots 5-11 of the Miami Business Park Subdivision Filing No. 2, totaling 5.56 acres, from "OR" Office-Residential to "R-4" High Density District. *Staff: Planning Manager Jace Hochwalt* **84-99**

Action: Hold a hearing. Consider making a motion to adopt Ordinance 2619 on second reading as presented.

11) DRY CEDAR CREEK FINAL PLANNED DEVELOPMENT (10 Minutes)

City Council consideration of the Dry Cedar Creek Final Planned Development. *Staff: Planning Manager Jace Hochwalt* **100-113**

Action: Accept public comment. Consider making a motion to approve the Dry Cedar Creek Final Planned Development.

12) ANDERSON ROAD PAVING CONSTRUCTION CONTRACT (10 minutes)

City Council consideration of the approval of \$679,873.30 in expenditures for construction of the Anderson Road Paving Project. This includes the award of a construction contract to Skip Huston Construction in the amount of \$639,873.30 and a survey/engineering support contract to Del-Mont Consultants in the amount of \$40,000.00. *Staff: City Engineer Scott Murphy* **114-117**

Action: Accept public comment. Consider making a motion to approve \$679,873.30 in expenditures for construction of the Anderson Road Paving Project as presented.

13) 2023 PARKS MOWER PURCHASE RECOMMENDATION (10 minutes)

City Council consideration of the purchase of three Toro mowers from Roaring Fork Rentals in Glenwood Springs, Colorado, for the total purchase price of \$51,432.00. *Staff: Public Works Manager Jim Scheid* **118-120**

Action: Accept public comment. Consider making a motion to approve the purchase of three Toro mowers from Roaring Fork Rentals in Glenwood Springs, Colorado, for the total purchase price of \$51,432.00.

14) STAFF REPORTS15) YOUTH CITY COUNCIL COMMENTS16) CITY COUNCIL COMMENTS17) MOTION TO ADJOURN



PROCLAMATION

AmeriCorps Week

*April 3-9,
2023*

WHEREAS, service is a hallmark of the American character and has the unique ability to bring people of all backgrounds together in common cause, and throughout our history citizens have stepped up to meet our most pressing challenges of the day by volunteering in their communities; and

WHEREAS, AmeriCorps and AmeriCorps Seniors programs provide opportunities for more than 200,000 Americans to serve their country through service at nonprofits, schools, public agencies, and community and faith-based groups across the country; and

WHEREAS, in Southwest Colorado, AmeriCorps members and AmeriCorps Seniors volunteers of diverse ages and backgrounds helped to meet local needs. By increasing programming capacity to better serve community needs, addressing housing disparities, restoring, and protecting the environment; and

WHEREAS, AmeriCorps Week is an opportunity to recognize the dedication and commitment of the more than 1.2 million Americans who have chosen to serve their country through AmeriCorps, and to encourage more Americans to follow their footsteps in service.

NOW, THEREFORE, we, the City Council of the City of Montrose, Colorado, do hereby proclaim April 3-9, 2023, as

AMERICORPS WEEK

in the City of Montrose and urge citizens to thank AmeriCorps members and alumni and AmeriCorps Seniors volunteers for their service and to find their own ways to give back to their communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Montrose, this 4th day of April, 2023.

Dave Frank, Mayor
City of Montrose

A regular meeting of the Montrose City Council was held on Tuesday, March 21, 2023, at 6:00 p.m. in the Community Room of the Montrose Public Safety Complex. Said meeting was posted in accordance with the Sunshine Law.

PRESENT: Dave Frank, Barbara Bynum, Doug Glaspell, J. David Reed, Ed Ulibarri, Bill Bell, Ann Morgenthaler, Ben Morris, Chris Dowsey, Lisa DelPiccolo, Greg Story, William Woody, Scott Murphy, Matt Smith, Tim Cox, Matt Magliaro, Blaine Hall, Jim Scheid, Shani Wittenberg, Jace Hochwalt, William Reis, Dan Payne

GUESTS: Flint Ogle, Steve Metheny, Tony Lugard, Kathy Heavers, Chris Koch, Mike Surak, Anvir Purewal

CALL TO ORDER

Mayor Dave Frank called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

CHANGES TO THE AGENDA

No changes were made to the agenda.

CALL FOR PUBLIC COMMENT

No comments were received.

APPROVAL OF MINUTES

City Council considered the minutes of the March 6, 2023, special City Council meeting and the March 7, 2023, regular City Council meeting.

A motion was made by Doug Glaspell, seconded by Barbara Bynum, to approve the minutes of the March 6, 2023, special City Council meeting and the March 7, 2023, regular City Council meeting as presented. Ed Ulibarri voted no. All others voted yes. Motion passed.

RESOLUTION 2023-05

City Council considered Resolution 2023-05 authorizing the City Manager and the City Attorney to execute documents as may be necessary to accomplish the transfer of the real property described in Exhibit "A," and to attend a real estate closing on the City's behalf, wherein such transfer is to take place.

A motion was made by Doug Glaspell, seconded by Barbara Bynum, to adopt Resolution 2023-05 as presented. Ed Ulibarri voted no. All others voted yes. Motion passed.

ORDINANCE 2616 – SECOND READING

City Council considered Ordinance 2616 on second reading, an Ordinance of the City of Montrose, Colorado, amending Section 6-4-1 (B)(4) of the Official Code of the City of Montrose, Colorado, to correct an internal cross-reference.

City Attorney Ben Morris reported no changes to Ordinance 2616. A hearing was held during the March 7 City Council meeting and the Ordinance passed unanimously on first reading.

Public comment was accepted. No comments were received.

A motion was made by Barbara Bynum, seconded by Ed Ulibarri, to adopt Ordinance 2616 on second reading as presented. All voted yes. Motion passed.

ORDINANCE 2617 – SECOND READING

City Council considered Ordinance 2617 on second reading, an Ordinance of the City of Montrose, Colorado, authorizing the sale of real property as addressed at 433 S. First Street, Montrose, Colorado, and being particularly described herein, pursuant to § 1-9-2 of the Official Code of the City of Montrose. A hearing was held.

City Manager Bill Bell reported that this Ordinance and the property transaction were discussed at length at the March 7 City Council meeting. Mr. Bell said a public hearing will be held this evening, and he will address any questions presented.

Mayor Dave Frank opened the hearing.

Public comment was accepted. No comments were received.

Mayor Frank closed the hearing.

City Councilor J. David Reed stated that he read a statement into the record at the March 7 City Council meeting and asked that the statement is included in the record for this meeting. Mr. Reed stated that he would provide the statement to the City Clerk for inclusion in the meeting packet.

A motion was made by Doug Glaspell, seconded by J. David Reed, to adopt Ordinance 2617 on second reading as presented. Ed Ulibarri voted no. All others voted yes. Motion passed.

RESOLUTION 2023-04

City Council considered Resolution 2023-04 setting May 2, 2023, as the hearing date for the Senergy Addition Annexation.

Planner II William Reis reviewed the annexation schedule and the location of the 35.5 acres on Miami Road. Mr. Reis stated that the property is within the City's Urban Growth Boundary and within the City's water and sewer service areas. Mr. Reis reviewed the zoning of the surrounding area and said that the proposed zoning designation is R-2, Low Density District. An impact report is required and an annexation agreement has been signed by the applicant.

Mr. Reis stated that the proposal is consistent with public health, safety, and welfare, City annexation policies and the Comprehensive Plan.

Public comment was accepted. No comments were received.

A motion was made by J. David Reed, seconded by Barbara Bynum, to adopt Resolution 2023-04 as presented. All voted yes. Motion passed.

DRY CEDAR CREEK PRELIMINARY PLANNED DEVELOPMENT

City Council considered the Dry Cedar Creek Preliminary Planned Development.

Planning Manager Jace Hochwalt reported that this project is a multi-family development known as The Residences at Dry Cedar Creek, and the applicant is Real American Development LLC.

Mr. Hochwalt reviewed the location of the property adjacent to the Community Recreation Center and said the Planning Commission unanimously recommended approval on March 8. Mr. Hochwalt said the PD area encompasses 4.41 acres of the 7.34-acre parcel and is zoned R-3A, Medium High Density District. The proposed development consists of 60 multi-family units, with 1.82 acres, or 41 percent, retained as open space. Mr. Hochwalt stated that the deviations included in the proposal are to allow multiple buildings on a single parcel and to allow a minimum setback of two feet from the UVWUA canal easement.

Mr. Hochwalt recommended approval stating that the request is in compliance with Planned Development regulations and Comprehensive Plan and meets the intent of the R-3A zoning district.

City Engineer Scott Murphy confirmed that the stability of the adobe soils was addressed by geotechnical engineers, and utility relocations for the Otter Pond dam construction have been accounted for. Mr. Murphy also addressed road improvements.

Public comment was accepted.

Kathy Heavers asked about Bureau of Reclamation requirements and whether one entrance is adequate for emergency access. Mr. Murphy and Mr. Hochwalt addressed the Bureau of Reclamation requirements. Mr. Murphy stated that safety and access elements have been approved by the appropriate entities.

A motion was made by Doug Glaspell, seconded by J. David Reed, to approve the Dry Cedar Creek Preliminary Planned Development. All voted yes. Motion passed.

THE GROVE SUBDIVISION PRELIMINARY PLAT

City Council considered the Grove Subdivision Preliminary Plat.

Planning Manager Jace Hochwalt gave an overview of the project which encompasses 44.64 acres in southeast Montrose. The applicant is Chris Koch. Mr. Hochwalt stated that the Planning Commission unanimously recommended approval of the request on March 8. Mr. Hochwalt reported that the property is currently zoned R-2, Low Density District, and the development will contain 129 single-family lots with 9.88 acres, or approximately 21 percent, retained as open space.

Mr. Hochwalt reviewed the R-2 zoning designation and surrounding zoning and stated that the proposal is compatible with neighboring uses. Mr. Hochwalt recommended approval with the standard condition stating the request is in compliance with Subdivision Regulations and the Comprehensive Plan and meets the intent of the R-2 zoning designation.

Mr. Hochwalt stated that the applicant intends to develop in phases. City Engineer Scott Murphy reviewed pending permitting required by the Bureau of Reclamation and stated that the first phase is not affected and can begin.

Public comment was accepted. No comments were received.

A motion was made by Doug Glaspell, seconded by J. David Reed, to approve The Grove Subdivision Preliminary Plat expressly conditioned upon City staff ensuring that all policies, regulations, ordinances and Municipal Code provisions are met and that the Applicant adequately addressed all of staff's concerns prior to the execution of the Final Plat. The City staff is not authorized by this approval to execute the Final Plat prior to all conditions being satisfied. All voted yes. Motion passed.

ORDINANCE 2619 – FIRST READING

City Council considered Ordinance 2619 on first reading, an Ordinance of the City of Montrose, Colorado, amending the zoning designation of Lot 12 of the Miami Business Park Subdivision Filing No. 1 and Lots 5-11 of the Miami Business Park Subdivision Filing No. 2, totaling 5.56 acres, from "OR" Office-Residential to "R-4" High Density District. A hearing was held.

Mayor Pro Tem Barbara Bynum and City Councilor J. David Reed recused themselves from this agenda item due to conflicts of interest and left the meeting at 6:41 p.m.

Planner II William Reis reviewed a request to rezone eight lots along Star Court. Mr. Reis reviewed the zoning of the surrounding area and said the rezone encompasses 8 parcels as well as a trail and detention tract. Mr. Reis said the applicant is seeking to accommodate multi-family development on the site and allow flexibility for future development.

Mr. Reis recommended approval stating that the request meets rezone criteria, is in compliance with Comprehensive Plan goals and objectives and is compatible with existing uses in the surrounding area.

Mayor Dave Frank opened the hearing.

Public comment was accepted. No comments were received.

Mayor Frank closed the hearing.

A motion was made by Doug Glaspell, seconded by Ed Ulibarri, to pass Ordinance 2619 on first reading as presented. All present voted yes. Motion passed.

Ms. Bynum and Mr. Reed rejoined the meeting at 6:48 p.m.

ORDINANCE 2618 – FIRST READING

City Council considered Ordinance 2618 on first reading, an Ordinance of the City of Montrose, Colorado, amending the zoning designation of 122 acres adjacent to the south of the Cobble Creek Golf Course bordering 6400 Road from "R-3" Medium Density District with conditions to "R-3" Medium Density District with no conditions. A hearing was held.

Planning Manager Jace Hochwalt presented a proposal from Weststar Development to rezone 122 acres within the Two Creeks addition annexed in 1986. Mr. Hochwalt reported that the Planning Commission unanimously recommended conditional approval on March 8, and City Council approved a covenant document at a previous meeting. Mr. Hochwalt stated that the parcel was originally zoned R-3 with conditions including a limit of 139 units, a density of approximately 1.1 units per acre, which is below the R-3 zoning district standards.

Mr. Hochwalt said Weststar is seeking the rezone to remove density restriction, and a required Declaration of Covenants has been signed by the developer to retain all other conditions within the original zoning ordinance. Mr. Hochwalt recommended conditional approval stating that the request meets rezone criteria, is in compliance with the Comprehensive Plan and is compatible with surrounding uses.

Applicant Flint Ogle reviewed the progression of the proposed development and requested approval in the interest of fairness, consistency with current zoning practice, uniformity, and efficient use of infrastructure.

Traffic implications and future improvements to surrounding roads were discussed.

Mayor Dave Frank opened the hearing and stated that letters from two citizens are included in the meeting packet.

Public comment was accepted. No comments were received.

Mayor Frank closed the hearing.

City Manager Bill Bell stated that the decision made this evening is for the rezone request only, and traffic and access issues are part of the subdivision process.

A motion was made by J. David Reed, seconded by Barbara Bynum, to pass Ordinance 2618 on first reading as presented expressly conditioned upon the execution and recording of the Agreement and Declaration of Covenants between the City of Montrose and Weststar Development, LLC that was authorized by City Council for signature at their February 21, 2023, Regular meeting. All voted yes. Motion passed.

2023 PARKS TURF CARE CONTRACT AWARD RECOMMENDATION

City Council considered the award of the 2023 Parks Turf Care Maintenance Contract to Green and Bearit of Montrose, Colorado, for the total amount of \$119,988.00.

Parks Superintendent Dan Payne reported that this contract provides for turf maintenance for City parks but does not include the Sunset Mesa ball fields or Cedar Creek Cemetery. Mr. Payne reviewed the bid process and stated that four qualified bids were received. Mr. Payne recommended approval of the contract with Green and Bearit.

Public comment was accepted. No comments were received.

A motion was made by Barbara Bynum, seconded by Ed Ulibarri, to award the 2023 Parks Turf Care Maintenance Contract to Green and Bearit of Montrose, Colorado, for the total amount of \$119,988.00 as presented. All voted yes. Motion passed.

BUCKLEY PARK PLAYGROUND AWARD RECOMMENDATION

City Council considered the award of the Buckley Park Playground Replacement design/build contract to Just Be You Inc., doing business as Star Playgrounds of Littleton, Colorado, for the not-to-exceed amount of \$420,000.00.

Parks Superintendent Dan Payne reported that a new all-inclusive playground will be installed at Buckley Park and will be fully compliant with the Americans with Disabilities Act. Mr. Payne reviewed the RFQ process and said six qualified proposals were received. Mr. Payne recommended awarding the contract to Just Be You, Inc.

Public Works Manager Jim Scheid reviewed the planned playground features. Mr. Payne stated that the contract with the vendor includes public meetings to gather input on a schedule that accommodates families with young children.

Public comment was accepted. No comments were received.

A motion was made by Barbara Bynum, seconded by Ed Ulibarri, to award the Buckley Park Playground Replacement design/build contract to Just Be You Inc., doing business as Star Playgrounds of Littleton, Colorado, for the not-to-exceed amount of \$420,000.00. All voted yes. Motion passed.

MOVING MONTROSE FORWARD 2023 CONTRACTED STREET MAINTENANCE CONSTRUCTION CONTRACT

City Council considered a contract award to Oldcastle SW Group (dba United Companies) in the amount of \$2,900,000.00 for completion of the Moving Montrose Forward 2023 Contracted Street Maintenance Project.

City Engineer Scott Murphy reported that since discussion at a previous work session, the amount of the contract was increased to allow use of the full budget allocation. Mr. Murphy stated that \$4.3 million was allocated for street maintenance in 2023. Surface treatment contracts have been awarded and a contract for sidewalk improvements is in the bid process. This contract encompasses the remainder of the budget allocation and is for robust street maintenance such as overlays and rebuilds.

Mr. Murphy said information is available on the MoveMo webpage and citizens can sign up for traffic alerts. Mr. Murphy stated that the extra funds will allow for improvements to a portion of Nevada Avenue south of S. Fifth Street and a right turn lane at Odelle and Townsend.

Mr. Murphy reviewed the bid process and recommended awarding the contract to Oldcastle.

Public comment was accepted. No comments were received.

A motion was made by Doug Glaspell, seconded by J. David Reed, to award a contract to Oldcastle SW Group (dba United Companies) in the amount of \$2,900,000.00 for completion of the Moving Montrose Forward 2023 Contracted Street Maintenance Project as presented. All voted yes. Motion passed.

STAFF REPORTS

Sales, Use, and Excise Tax Report: Finance Director Shani Wittenberg provided a sales, use and excise report for the month of January 2023. Ms. Wittenberg reported that total sales and use tax collections were up 7.5 percent as compared to January of 2022, with a positive budget variance of 16.5 percent.

2A Report Card: Police Chief Blaine Hall reported that a 2A Report Card presentation was provided at the March 20 work session and the Report Card will be included in the next City Beat publication. Chief Hall stated that the Police Department is attracting more certified officers to apply, and 12-13 are expected to attend the Summer Police Academy.

New City Hall: Deputy City Manager Ann Morgenthaler announced that the new City Hall facility at 400 E. Main Street will open to the public on Monday, March 27.

YOUTH CITY COUNCIL COMMENTS

No comments were provided.

CITY COUNCIL COMMENTS

Mayor Dave Frank acknowledged Information Systems staff for accommodating multiple projects.

MOTION TO ADJOURN

At 7:34 p.m., a motion was made by J. David Reed, seconded by Barbara Bynum, to adjourn the meeting with no further action taken.

ATTEST:

David Frank, Mayor

Lisa DelPiccolo, City Clerk

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, Colorado 80202
Attention: Thomas M. Peltz, Esq.

3383/3325 SITE LEASE

between

CITY OF MONTROSE
IN MONTROSE COUNTY, COLORADO
as Lessor,

and

ZIONS BANCORPORATION, N.A.,
A NATIONAL BANKING ASSOCIATION
as Lessee

Dated as of May __, 2023

THIS 3382/3325 SITE LEASE dated as of May __, 2023 (this “Site Lease”), between **CITY OF MONTROSE**, in Montrose County, Colorado, as lessor (the “City”), a home-rule municipal corporation and body politic of the State of Colorado (the “State”), and **ZIONS BANCORPORATION, N.A.**, a national banking association (as successor to ZB, N.A.), as lessee (together with its successors and assigns, the “Lender”).

WITNESSETH:

WHEREAS, the City Council of the City (the “City Council”) has the power, pursuant to the Charter of the City (the “City Charter”) and Section 31-15-713(1)(c), Colorado Revised Statutes, to lease any real estate owned by the City when deemed by the City Council to be in the best interests of the City; and

WHEREAS, pursuant to the City Charter and Section 31-15-101(1)(d), Colorado Revised Statutes, the City has the power to acquire, hold, lease and dispose of property, both real and personal; and

WHEREAS, in order to generate moneys in 2017 to finance the costs of street improvements the City conveyed a long-term leasehold interest in its City Hall located at 433 South 1st Street (the “City Hall”) pursuant to the City Hall Site Lease, dated as of November 9, 2017 (the “City Hall Site Lease”) by and between the City, as lessor, and the Lender, as lessee, and, contemporaneously with the execution and delivery of the City Hall Site Lease, subleased the City Hall back from the Lender pursuant to that certain City Hall Lease Purchase Agreement dated as of November 9, 2017 (the “City Hall Lease Purchase Agreement”) between the Lender, as sublessor, and the City, as sublessee; and

WHEREAS, the City Council has determined it is in the best interests of the City and its inhabitants that (i) the City shall convey a long-term leasehold interest a parcel including its Animal Shelter, located at 3383 N Townsend Avenue, and the Brown Center, located at 3325 N Townsend Avenue (collectively, as more specifically described in Exhibit A attached hereto, the “Substituted Parcel”) pursuant to this Site Lease, (ii) the Substituted Parcel shall be substituted for and replace the City Hall under the City Hall Lease Purchase Agreement pursuant to a First Amendment to City Hall Lease Purchase Agreement, dated as of May __, 2023 (the “First Amendment”) between the Lender, as sublessor, and the City, as sublessee (the City Hall Lease Purchase Agreement, as amended by the First Amendment, is hereafter referred to as the “Lease Purchase Agreement”), and (iii) the City Hall Site Lease shall be terminated and the City Hall be released from the encumbrance of the Lease Purchase Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows;

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used herein shall have the meanings ascribed to them herein and in the Lease Purchase Agreement.

Section 2. Site Lease and Terms. The City hereby leases to the Lender and the Lender hereby leases from the City, on the terms and conditions hereinafter set forth, the Substituted Parcel, which consists of the real property (including all improvements thereon, whether existing now or hereafter) described in Exhibit A attached hereto and made a part hereof, subject to

permitted encumbrances as described in the Lease Purchase Agreement, and such lease to the Lender is hereby deemed to be in the best interests of the City and its inhabitants.

The term of this Site Lease shall commence on the date hereof and shall end on December 31, 2037 (the "Site Lease Termination Date"), unless such term is sooner terminated as hereinafter provided. If, prior to the Site Lease Termination Date, all legal interests of the Lender in the Substituted Parcel have been conveyed to the City pursuant to the Lease Purchase Agreement as a result of the City's payment of (i) the related Purchase Option Price thereunder or (ii) all Base Rentals and Additional Rentals as provided in Section 12.02 of the City Hall Lease Purchase Agreement, then the term of this Site Lease shall end immediately thereafter.

Section 3. Rent and Payment. The Lender previously paid to the City and the City previously acknowledged receipt from the Lender as and for rental of the City Hall Site Lease and hereunder, paid in advance, the sum of \$2,980,504.08, as and for all rent due hereunder, and other good and valuable consideration, the receipt and the sufficiency of which are hereby acknowledged, to have and to hold for the term of this Site Lease as provided herein. The City previously determined and hereby determines that such amount was and is reasonable consideration for the leasing of the Substituted Parcel to the Lender for the term of this Site Lease.

Section 4. Purpose. The Lender shall use the Substituted Parcel for the purpose of subletting the same to the City pursuant to the Lease Purchase Agreement; provided, that upon the occurrence of an Event of Nonappropriation or an Event of Default under the Lease Purchase Agreement, the City shall vacate the Substituted Parcel as provided in the Lease Purchase Agreement, the Lender may exercise the remedies provided in the Lease Purchase Agreement and the Lender may use or sublet the Substituted Parcel for any lawful purposes.

Section 5. Owner in Fee. The City covenants and represents that it is the owner in fee of the Substituted Parcel, subject only to permitted encumbrances set forth in Exhibit B hereto, and the permitted encumbrances do not and shall not interfere in any material way with the Substituted Parcel.

Section 6. Assignments and Subleases. The Lender may assign its rights under this Site Lease, in whole but not in part, without the written consent of the City. Such assignment, transfer or conveyance shall be made only to (i) an affiliate of the Lender; or (ii) banks, insurance companies or other financial institutions or their affiliates, but no such assignment, transfer or conveyance shall be effective as against the City unless and until the Lender has delivered to the City written notice thereof that discloses the name and address of the assignee, so long as such assignment is in accordance with Colorado state law. The City will not have the right to and will not assert against any assignee any claim, counterclaim, defense, set-off or other right the City may have against the Lender.

In the event that (a) the Lease Purchase Agreement is terminated for any reason; and (b) this Site Lease is not terminated, the Lender may sublease the Substituted Parcel or any portion thereof, or sell an assignment of its interest in this Site Lease. Except as provided in this Site Lease or in the Lease Purchase Agreement, neither the City nor the Lender will sell, mortgage or encumber the Substituted Parcel or any portion thereof during the term of this Site Lease.

Section 7. Right of Entry. The City reserves the right, so long as no Event of Nonappropriation or Event of Default shall have occurred under the Lease Purchase Agreement, for any of its duly authorized representatives to enter upon the Substituted Parcel at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 8. Termination. The Lender agrees, upon the termination of this Site Lease, to quit and surrender the Substituted Parcel and any improvements and structures built on the Substituted Parcel, to the City, and agrees that any fixtures, permanent improvements and structures existing upon the Substituted Parcel, including any improvements and structures built on the Substituted Parcel, at the time of the termination of this Site Lease shall remain thereon and all legal interests of the Lender thereto shall vest in the City. The Lender and any sublessee or assignee shall execute and deliver, upon request by the City, any instrument of transfer, conveyance or release necessary or appropriate to confirm the vesting of such legal interests in the City.

Section 9. Default. In the event the Lender shall be in default in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Lender, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease Purchase Agreement shall be deemed to occur as a result thereof.

Section 10. Quiet Enjoyment and Acknowledgment of Lender's Interest. The Lender at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy the Substituted Parcel and any improvements and structures built on the Substituted Parcel, subject to the provisions of the Lease Purchase Agreement, and the City hereby acknowledges that the Lender shall have a leasehold interest in the land comprising the Substituted Parcel and in all fixtures, improvements and structures on the Substituted Parcel, subject to the Lease Purchase Agreement.

Section 11. Waiver of Personal Liability. All liabilities under this Site Lease on the part of the Lender are solely liabilities of the Lender, and the City hereby releases each and every director, member, officer, employee and agent of the Lender of and from any personal or individual liability under this Site Lease. No employee or agent of the Lender shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Lender hereunder.

Section 12. Taxes; Maintenance; Insurance. During the Lease Term of the Lease Purchase Agreement and in accordance with the provisions of the Lease Purchase Agreement, the City covenants and agrees to pay any and all assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Substituted Parcel and any improvements thereon, and all maintenance costs and utility charges in connection with the Substituted Parcel and any improvements thereon. In the event that the Lease Purchase Agreement is terminated for any reason and this Site Lease is not terminated, the Lender or any sublessee or assignee of the Substituted Parcel shall pay or cause to be paid when due all taxes and assessments imposed thereon and maintain the Substituted Parcel in good condition. Any such

payments that are to be made by the Lender are required to be made solely from the proceeds of any such subleasing or assignment of the Substituted Parcel.

The provisions of the Lease Purchase Agreement shall govern with respect to the maintenance of insurance hereunder during the Lease Term of the Lease Purchase Agreement.

Section 13. Damage, Destruction or Condemnation. The provisions of the Lease Purchase Agreement shall govern with respect to any damage, destruction or condemnation of the Substituted Parcel or any improvements and structures built on the Substituted Parcel during the Lease Term of the Lease Purchase Agreement. In the event that (a) the Lease Purchase Agreement is terminated for any reason, (b) this Site Lease is not terminated and either (i) the Substituted Parcel or any portion thereof are damaged or destroyed, in whole or in part, by fire or other casualty, or (ii) title to or use of the Substituted Parcel or any part thereof shall be taken under the exercise of the power of eminent domain, the City and the Lender, or any sublessee, purchaser or assignee of the Substituted Parcel from the Lender shall cause the Net Proceeds of any insurance claim or condemnation award to be applied in accordance with the provisions of Articles 9 and 10 of the City Hall Lease Purchase Agreement.

Section 14. Warranty and Indemnity Regarding Environmental Matters. The City hereby warrants and represents that (i) there has not been any “release” (as defined in 42 U.S.C. § 9601(22)) or threat of a “release” of any “hazardous substances” (as defined in 42 U.S.C. § 9601(14)) on or about any of the Substituted Parcel; (ii) no part of the Substituted Parcel is or may be a “facility” (within the meaning of 42 U.S.C. § 9607(a)); and (iii) the Substituted Parcel and the use thereof are in compliance with all applicable laws, statutes, ordinances, rules and regulations of any governmental or quasi-governmental authority, specifically including without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act, both as amended, and all other environmental protection or toxic waste or hazardous substance handling, treatment, storage or disposal laws, statutes, ordinances, rules and regulations.

The City agrees to provide the Lender with copies of any notifications of releases of oil or hazardous materials or substances or of any environmental hazards or potential hazards which are given by or on behalf of the City to any federal, state or local agencies or authorities or which are received by the City from any federal, state or local agencies or authorities with respect to the Substituted Parcel. Such copies will be sent to the Lender concurrently with their being mailed or delivered to the governmental agencies or authorities or within 10 days after they are received by the City.

The City agrees to provide the Lender with copies of all emergency and hazardous chemical inventory forms (hereinafter “Notices”) with respect to the Substituted Parcel previously given, as of the date hereof, to any federal, state or local governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. Section 1101 *et seq.*, and to provide the Lender with copies of all such Notices subsequently sent to any such governmental authority or agency as required pursuant to the Emergency Planning and Community Right-to-Know Act of 1986. Such copies of subsequent Notices will be sent to the Lender concurrently with their being mailed to any such governmental authority or agency.

The City hereby covenants and agrees, to the extent permitted by law, to indemnify, protect and hold harmless the Lender from and against any and all claims, demands, liabilities and costs, including without limitation attorneys' fees, arising from (a) any "release" (as defined above) or threat of a "release," actual or alleged, of any "hazardous substances" (as defined above) upon or about the Substituted Parcel or respecting any products or materials previously or now located upon, delivered to or in transit to or from the Substituted Parcel regardless of whether such release or threat of a release or alleged release or threat of release has occurred prior to the date hereof and hereafter occurs and regardless of whether such release or threat of a release or alleged release or threat of a release occurs as the result of the negligence or misconduct of the City or any third party or otherwise; or (b) any violation, actual or alleged, of or any other liability under or in connection with any law, statute, ordinance, rule or regulation of any governmental or quasi-governmental authority, specifically including without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act, both as amended, or any other environmental protection or toxic waste or hazardous substance handling, treatment, storage or disposal laws, statutes, ordinances, rules or regulations upon or about the Substituted Parcel or respecting any products or materials previously or now located upon, delivered to or in transit to or from the Substituted Parcel, regardless of whether such violation or alleged violation has occurred prior to the date hereof or hereafter occurs and regardless of whether such violation or alleged violation occurs as a result of the negligence or misconduct of the City or any third party or otherwise. Notwithstanding the foregoing, the City will not be obligated to indemnify and hold harmless the Lender from and against any claims, demands, liabilities and costs, including without limitation attorneys' fees, which arise solely as a result of the negligence or misconduct of the Lender.

Section 15. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 16. No Merger. The City and the Lender intend that the legal doctrine of merger shall have no application to this Site Lease and that neither the execution and delivery of the Lease Purchase Agreement by the Lender and the City nor the exercise of any remedies under this Site Lease or the Lease Purchase Agreement shall operate to terminate or extinguish this Site Lease or the Lease Purchase Agreement, except as specifically provided herein and therein.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed shall be made by United States registered mail, return receipt requested, postage prepaid, at the addresses indicated in the City Hall Lease Purchase Agreement, or to such other addresses as the respective parties may from time to time designate in writing.

Section 18. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

Section 19. Execution. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same Site Lease.

Section 20. Governing Law. This Site Lease shall be governed by and construed in accordance with the law of the State of Colorado.

Section 21. Electronic Transactions. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature Page of Site Lease Follows]

IN WITNESS WHEREOF, the City and the Lender have caused this Site Lease to be executed by their respective officers thereunto duly authorized, and the City has affixed its official seal hereto all as of the day and year first above written.

CITY OF MONTROSE, Colorado, as Lessor

By _____
David Frank, Mayor

Attest:

By _____
Lisa DelPiccolo, City Clerk

ZIONS BANCORPORATION, N.A., a national
banking corporation, as successor to ZB, N.A.,
as Lessee

By: _____
Name: _____
Title: _____

[Signature Page to Site Lease]

STATE OF COLORADO)
) ss.
COUNTY OF MONTROSE)

 This instrument was acknowledged before me this ____ day of May, 2023, David Frank,
as Mayor of the City of Montrose, Colorado, and by Lisa DelPiccolo, as City Clerk of the City of
Montrose, Colorado.

 WITNESS my hand and official seal.

Notary Public

[SEAL]

My Commission Expires:

STATE OF COLORADO)
) ss.
CTIY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of May, 2023, by _____ as an authorized officer of Zions Bancorporation, N.A., a national banking corporation.

WITNESS my hand and official seal.

Notary Public

[SEAL]

EXHIBIT A

DESCRIPTION OF SUBSTITUTED PARCEL

I. Legal Description (Animal Center and Brown Center)

All that part of the SE1/4NE1/4 of Section 18, Township 49 North, Range 9 West, New Mexico Principal Meridian, lying southwest of the Denver and Rio Grande Western Railroad Right of Way, County of Montrose, State of Colorado.

II. Animal Shelter

Address

3383 N Townsend Avenue, Montrose, Colorado

Facilities

One component of the facilities leased under this Site Lease and the Lease Purchase Agreement consists of the City's Animal Shelter, which is a 7,831 square-foot masonry building constructed in 1988. *[additional description]*

III. Brown Center

Address

3325 N Townsend Avenue, Montrose, Colorado

Facilities

The second component of the facilities leased under this Site Lease and the Lease Purchase Agreement consists of the Brown Center, which is *[to be inserted]*.

EXHIBIT B

PERMITTED ENCUMBRANCES

Permitted Encumbrances means the following: (a) liens for taxes and assessments not then delinquent, or liens which may remain unpaid pending contest pursuant to the provisions of Article VII and Article IX of the City Hall Lease Purchase Agreement; (b) this 3382/3325 Site Lease; (c) utility, access and other easements and rights of way, restrictions and exceptions which an Authorized Officer of the City certifies will not interfere with or impair the Substituted Parcel (as such term is amended by the First Amendment), including rights or privileges in the nature of easements as provided in Section 9.07 of the Lease Purchase Agreement; (d) any financing statements filed to perfect security interests pursuant to this 3383/3325 Site Lease; (e) any encumbrance represented by financing statements in forms appropriate to perfect purchase money security interests given by the Lender in any of the Substituted Parcel; (f) existing easements, covenants, restrictions, liens and encumbrances (if any) to which title to the Substituted Parcel was subject when a leasehold interest therein was conveyed to the Lender pursuant to this 3383/3325 Site Lease or otherwise, and which do not interfere in any material way with the Substituted Parcel; and (g) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Substituted Parcel and as do not render the title unmarketable.

TERMINATION AND PARTIAL RELEASE

THIS TERMINATION AND PARTIAL RELEASE is made to be effective as of May __, 2023, by and between the CITY OF MONTROSE, COLORADO (the “City”), a home-rule municipal corporation and body politic of the State of Colorado, and Zions Bancorporation, N.A., a national banking association, as successor to ZB, N.A. (the “Lender”).

RECITALS:

A. The City previously leased the property described in Exhibit A attached hereto (“City Hall”) to the Lender pursuant to that certain City Hall Site Lease dated as of November 9, 2017 (the “City Hall Site Lease”) by and between the City, as lessor, and the Lender, as lessee; and

B. The Lender subleased City Hall back to the City pursuant to that certain City Hall Lease Purchase Agreement dated as of November 9, 2017 (the “City Hall Lease Purchase Agreement”) by and between the Lender, as lessor, and the City, as lessee; and

C. The City has entered into a contract for the sale of its fee ownership interest in the City Hall and, to enable the sale of the property and avoid the need to refinance the underlying financial obligation related to the City Hall Lease Purchase Agreement, the Lender has agreed to the substitution of a parcel including the Animal Shelter, located at 3383 N Townsend Avenue, and the Brown Center, located at 3325 N Townsend Avenue (collectively, the “Substituted Parcel”), as replacement for and release of the encumbrance of City Hall under the City Hall Lease Purchase Agreement; and

D. To complete the above-described substitution of property, the City will lease the Substituted Parcel to the Lender pursuant to the 3383/3325 Site Lease, dated on or about May __, 2023, by and between the City, as lessor, and the Lender, as lessee, and the Lender will sublease the Substituted Parcel back to the City pursuant to a First Amendment to City Hall Lease Purchase Agreement, dated on or about May __, 2023, by and between the Lender, as sublessor, and the City, as sublessee (the “First Amendment”), thereby substituting the Substituted Parcel for City Hall while maintaining the existing financial terms and provisions of the City Hall Lease Purchase Agreement; and

E. The City and the Lender desire to (i) terminate and release the City Hall Site Lease in its entirety and (ii) release City Hall from the encumbrance of the City Hall Lease Purchase Agreement (provided the underlying agreement will continue in effect with the substitution of the Substituted Parcel), all as more fully set forth below.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Lender agree as follows:

1. The City and the Lender hereby terminate and/or release, as the case may be, their respective interests in the following:

CITY HALL SITE LEASE, DATED AS OF NOVEMBER 9, 2017, BY AND BETWEEN CITY OF MONTROSE, IN MONTROSE COUNTY COLORADO, AS LESSOR, AND ZB, N.A., AS LESSEE, RECORDED NOVEMBER 9, 2017 UNDER RECEPTION NO. 891545 (MONTROSE COUNTY RECORDS).

2. The City and the Lender hereby release City Hall from the encumbrance of the following, without terminating the balance of the provisions provided in the following:

CITY HALL LEASE PURCHASE AGREEMENT, DATED AS OF NOVEMBER 9, 2017, BY AND BETWEEN ZB, N.A., AS LESSOR, AND CITY OF MONTROSE, IN MONTROSE COUNTY, COLORADO, AS LESSEE, RECORDED NOVEMBER 9, 2017 UNDER RECEPTION NO. 891546 (MONTROSE COUNTY RECORDS).

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Termination and Partial Release to be effective the day and year above first written.

CITY OF MONTROSE, COLORADO

Mayor

STATE OF COLORADO)
) ss.
COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Barbara Bynum as Mayor of the City of Montrose, Colorado.

Witness my hand and official seal.

[SEAL]

Notary Public

[Signature Page to Termination and Partial Release]

By _____
Authorized Officer

Notary Public

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EXHIBIT A

DESCRIPTION OF RELEASED LEASE PROPERTY – CITY HALL

Address

433 South 1st Street, Montrose, Colorado

Legal Description

Lots 18, 19, 20, 21, 22, 23 and 24, block 87, Town of Montrose now a part of the City of Montrose, County of Montrose, State of Colorado.

AFTER RECORDATION PLEASE RETURN TO:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, Colorado 80202
Attention: Thomas M. Peltz, Esq.

FIRST AMENDMENT TO
CITY HALL LEASE PURCHASE AGREEMENT

Dated as of November 9, 2017

by and between

ZIONS BANCORPORATION, N.A.,
A NATIONAL BANKING ASSOCIATION
(AS SUCCESSOR TO ZB, N.A.),
as Lessor,

and

CITY OF MONTROSE,
IN MONTROSE COUNTY, COLORADO,
as Lessee

First Amendment Dated as of May __, 2023

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FIRST AMENDMENT TO CITY HALL LEASE PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO CITY HALL LEASE PURCHASE AGREEMENT dated as of May __, 2023 (this “First Amendment”) amends that certain City Hall Lease Purchase Agreement dated as of November 9, 2017 (the “City Hall Lease Purchase Agreement”) between **ZIONS BANCORPORATION, N.A., A NATIONAL BANKING ASSOCIATION, AS SUCCESSOR TO ZB, N.A.**, (the “Lender”), as lessor, and **CITY OF MONTROSE, IN MONTROSE COUNTY, COLORADO** (the “City”), a home-rule municipal corporation and body politic of the State of Colorado (the “State”), as lessee. Capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in the City Hall Lease Purchase Agreement.

WITNESSETH:

WHEREAS, the City of Montrose, in Montrose County, Colorado, is a home-rule municipal corporation and body politic of the State; and

WHEREAS, the City Council of the City (the “City Council”) has the power, pursuant to the Charter of the City (the “City Charter”) and Section 31-15-713(1)(c), Colorado Revised Statutes, to lease any real estate owned by the City when deemed by the City Council to be in the best interests of the City; and

WHEREAS, pursuant to the City Charter and Section 31-15-101(1)(d), Colorado Revised Statutes, the City has the power to acquire, hold, lease and dispose of property, both real and personal; and

WHEREAS, in order to generate moneys to finance the costs of Financed Project, the City conveyed a long-term leasehold interest in its City Hall located at 433 South 1st Street (“City Hall”) pursuant to the City Hall Site Lease dated as of November 9, 2017 (the “City Hall Site Lease”) by and between the City, as lessor, and the Lender, as lessee, and, contemporaneously with the execution and delivery of the City Hall Site Lease, sublease City Hall back from the Lender pursuant to the City Hall Lease Purchase Agreement; and

WHEREAS, the City Council has determined it is in the best interests of the City and its inhabitants that (i) the City shall convey a long-term leasehold interest in its Animal Shelter, located at 3383 N Townsend Avenue, and the Brown Center, located at 3325 N Townsend Avenue (collectively and as more specifically described in Exhibit A attached hereto, the “Substituted Parcel”), pursuant to the 3383/3325 Site Lease dated as of the date hereof (the “3383/3325 Site Lease”) by and between the City, as lessor, and the Lender, as lessee, (ii) the Substituted Parcel shall be substituted for and replace the City Hall under the City Hall Lease Purchase Agreement pursuant to this First Amendment (as such, the Substituted Parcel shall be the Leased Property under the City Hall Lease Purchase Agreement, as amended by this First Amendment), and (iii) the City Hall Site Lease shall be terminated and the City Hall be released from the encumbrance of the City Hall Lease Purchase Agreement; and

WHEREAS, all other provisions of the City Hall Lease Purchase Agreement not amended by this First Amendment shall remain unchanged and in full effect.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows:

ARTICLE I

AMENDED LEASE PROVISIONS

Section 1.01. Amendment of Section 1.01. Section 1.01 of the City Hall Lease Purchase Agreement shall be amended and restated to read as follows:

Section 1.01 Terms Defined in Preamble and Recitals. The following terms shall have the meanings set forth in the preamble and recitals hereto.

City
City Council
Lender

Section 1.02. Amended and Restated Definitions. The following definitions contained in Section 1.04 of the City Hall Lease Purchase Agreement are hereby amended and restated to read as follows:

“*Lease*” means the City Hall Lease Purchase Agreement, dated as of November 9, 2017, as amended by the First Amendment.

“*Site Lease*” means, prior to the date of this First Amendment, the City Hall Site Lease, dated as of November 9, 2017, between the City, as lessor, and the Lender, as lessee, and on and after the date of this First Amendment, the 3383/3325 Site Lease, dated as of May __, 2023, between the City, as lessor, and the Lender, as lessee.

Section 1.03. Amendment of Exhibit A to the City Hall Lease Purchase Agreement. Exhibit A attached to the City Hall Lease Purchase Agreement is amended and replaced in its entirety by Exhibit A attached hereto.

ARTICLE II

REAFFIRMATION OF LEASE PROVISIONS

All terms and provisions of the City Hall Lease Purchase Agreement not otherwise amended by this First Amendment are hereby reaffirmed and remain in full force and effect.

ARTICLE III

LENDER’S CONSENT

The Lender hereby consents to the amendment of the City Hall Lease Purchase Agreement as provided in this First Amendment.

ARTICLE IV

MISCELLANEOUS

Section 4.01. Binding Effect. This First Amendment shall inure to the benefit of and shall be binding upon the Lender and the City and their respective successors and assigns, subject, however, to any limitations contained in Article XIII of the Lease.

Section 4.02. Amendments, Changes and Modifications. Except as otherwise provided in the City Hall Lease Purchase Agreement, this First Amendment may not be effectively amended, changed, modified or altered without the written consent of the Lender and the City.

Section 4.03. Severability. In the event that any provision of this First Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 4.04. Execution in Counterparts. This First Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.05. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 4.06. Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to conflict of laws principles.

Section 4.07. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this First Amendment.

[Remainder of Page Left Intentionally Blank]

WITNESS the due execution hereof as of the day and the year first mentioned above.

ZIONS BANCORPORATION, N.A., a national
banking association, as successor to ZB, N.A.,
as Lessee

By: _____
Name: _____
Title: _____

CITY OF MONTROSE, COLORADO, as
Lessee

By _____
David Frank, Mayor

Attest:

By _____
Lisa DelPiccolo, City Clerk

[Signature Page to First Amendment to City Hall Lease Purchase Agreement Purchase
Agreement]

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of May, 2023, by _____ as an authorized officer of Zions Bancorporation, N.A., a national banking association.

WITNESS my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

STATE OF COLORADO)
) ss.
COUNTY OF MONTROSE)

 This instrument was acknowledged before me this ____ day of May, 2023, David Frank,
as Mayor of the City of Montrose, Colorado, and by Lisa DelPiccolo, as City Clerk of the City of
Montrose, Colorado.

 Witness my hand and official seal.

[SEAL]

Notary Public

My Commission Expires:

EXHIBIT A

DESCRIPTION OF THE LEASED PROPERTY

I. Legal Description (Animal Center and Brown Center)

All that part of the SE1/4NE1/4 of Section 18, Township 49 North, Range 9 West, New Mexico Principal Meridian, lying southwest of the Denver and Rio Grande Western Railroad Right of Way, County of Montrose, State of Colorado.

II. Animal Shelter

Address

3383 N Townsend Avenue, Montrose, Colorado

Facilities

One component of the facilities leased under this Site Lease and the Lease Purchase Agreement consists of the City's Animal Shelter, which is a 7,831 square-foot masonry building constructed in 1988. [*additional description*]

III. Brown Center

Address

3325 N Townsend Avenue, Montrose, Colorado

Facilities

The second component of the facilities leased under this Site Lease and the Lease Purchase Agreement consists of the Brown Center, which is [to be inserted].

ORDINANCE NO. 2620

AN ORDINANCE OF THE CITY OF MONTROSE AUTHORIZING THE SUBSTITUTION OF OTHER CITY PROPERTY FOR THE CITY HALL BUILDING UNDER A 2017 LEASE-PURCHASE FINANCING; AND AUTHORIZING AND APPROVING DOCUMENTATION RELATED THERETO

WHEREAS, Ordinance No. 2437 (the “2017 Ordinance”) of the City of Montrose (the “City”) authorized a financing for various capital improvements through the City’s conveyance of a long-term leasehold interest in the City Hall building, located at 433 South 1st Street in the City (the “City Hall”), pursuant to the City Hall Site Lease dated as of November 9, 2017 (the “City Hall Site Lease”) by and between the City, as lessor, and Zions Bancorporation, N.A., as successor to ZB, N.A. (the “Lender”), as lessee, and contemporaneously subleasing the City Hall back from the Lender pursuant to the City Hall Lease Purchase Agreement dated as of November 9, 2017 (the “City Hall Lease Purchase Agreement”) between the Lender, as sublessor, and the City, as sublessee; and

WHEREAS, the City has entered into a contract for the sale of its fee ownership interest in the City Hall and, to enable the sale of the property and avoid the need to refinance the underlying financial obligation related to the City Hall Lease Purchase Agreement, the Lender has agreed to the substitution of a parcel including the Animal Shelter, located at 3383 N Townsend Avenue and the Brown Center, located at 3325 N Townsend Avenue (collectively, the “Substituted Parcel”) as replacement for and release of the encumbrance of City Hall under the City Hall Lease Purchase Agreement; and

WHEREAS, it is in the best interests of the City and its inhabitants that (i) City shall convey a long-term leasehold interest in the Substituted Parcel to the Lender pursuant to the 3383/3325 Site Lease (the “3383/3325 Site Lease”) by and between the City, as lessor, and the Lender, as lessee, reflecting the same material terms and provisions as the City Hall Site Lease, (ii) the Substituted Parcel be substituted for and replace the City Hall under the City Hall Lease Purchase Agreement pursuant to a First Amendment to City Hall Lease Purchase Agreement between the Lender, as sublessor, and the City, as sublessee (the “First Amendment”) to maintain the existing financial terms and provisions established in 2017 for the financing of street improvements, and (iii) the City Hall Site Lease be terminated and the City Hall be released from the encumbrance of the City Hall Lease Purchase Agreement; and

WHEREAS, there have been presented to the administrative staff of the City and its advisors, and made available to the Montrose City Council (the “City Council”), copies of the 3383/3325 Site Lease and the First Amendment; and

WHEREAS, the City Council desires to authorize and otherwise proceed with the substitution described herein;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO:

Section 1. Authorization of Substitution. The City Council hereby approves the long-term lease of the Substituted Parcel to the Lender in accordance with the 3383/3325 Site Lease and the lease-back of the Substituted Parcel from the Lender to the City pursuant to the City Hall Lease Purchase Agreement, as amended by the First Amendment. The 3383/3325 Site Lease and the First Amendment, in substantially the forms and with substantially the content presented to the City Council, are in all respects approved, authorized and confirmed, and the Mayor, or in the Mayor's absence the Mayor Pro-Tem, is authorized and directed to execute the 3383/3325 Site Lease and the First Amendment in substantially the forms and with substantially the same content as the forms thereof presented to the City Council, for and on behalf of the City, but with such changes therein as the Mayor, or in the Mayor's absence the Mayor Pro-Tem, may deem necessary or appropriate upon the advice of the City Attorney, as evidenced by the execution thereof.

Section 2. Execution of Miscellaneous Documents. The City Clerk or, in the absence thereof, the Deputy City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City Council or the City in connection with the matters authorized by this Ordinance, and to place the seal of the City on the 3383/3325 Site Lease and the First Amendment and all other additional certificates, documents and other papers (including all documentation necessary to complete the termination and release of the City Hall Site Lease and the release of the encumbrance of the City Hall under the City Hall Lease Purchase Agreement) associated with the actions and other matters authorized by this Ordinance. The Mayor, the Mayor Pro-Tem and other officials, employees and agents of the City are hereby authorized to execute and deliver for and on behalf of the City any and all additional agreements, certificates, documents and other papers and to perform all other acts that they may deem necessary or appropriate in order to implement and carry out the actions and other matters authorized or contemplated by this Ordinance.

Section 3. Reaffirmation of Declarations, Findings, Representations Covenants and Warranties. The declarations and findings of the City provided in Section 6 of the 2017 Ordinance are hereby reaffirmed with the execution of the First Amendment. Except as expressly provided, modified or amended in the First Amendment, the terms and provisions of the City Hall Lease Purchase Agreement shall remain unchanged and in full force and effect and are hereby affirmed, confirmed and ratified in all respects. Without limiting the foregoing, the representations, covenants and warranties of the City set forth in Section 2.01 of the City Hall Lease Purchase Agreement, as amended by the First Amendment, are hereby reaffirmed.

Section 4. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Ordinance) by the City Council or by the officers and employees of the City directed toward the completing the substitution of property for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 5. Headings. The headings to the various sections and paragraphs to this Ordinance have been inserted solely for the convenience of the reader, are not a part of this Ordinance, and shall not be used in any manner to interpret this Ordinance.

Section 6. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any

other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 7. Repealer. All orders, bylaws, ordinances, and resolutions of the City, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 8. Publication and Effective Date. Pursuant to the home-rule charter of the City, this Ordinance shall be published in full following first reading and a public hearing shall be set not earlier than seven (7) days after publication. This Ordinance shall take effect and be in force five (5) days after publication following final passage. If this Ordinance is published by title, the publication shall include a summary of the subject matter hereof and a notice to the public that copies of the full text are available at the office of the City Clerk.

INTRODUCED, READ AND PASSED on first reading, this 4th day of April, 2023.

CITY OF MONTROSE, COLORADO

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

You will please take notice that the City Council of the City of Montrose, Colorado will hold a hearing upon the above Ordinance and on the question of its adoption on second reading on Tuesday, the 18th day of April, 2023, at the hour of 6:00 p.m. in the City Council Chambers located in the Elks Civic Building, 107 S. Cascade Avenue, in Montrose, Colorado

INTRODUCED, READ AND ADOPTED on second reading this 18th day of April, 2023.

CITY OF MONTROSE, COLORADO

Mayor

ATTEST:

Lisa DelPiccolo, City Clerk



CITY OF MONTROSE
Planning Services

MEMO

TO: City Council
FROM: Jace Hochwalt, Planning Manager
DATE: April 4, 2023
RE: Cobble Creek South Rezone

ATTACHMENTS:

- Exhibit A: Maps
- Exhibit B: Photos of Project Area
- Exhibit C: Zoning Code Excerpt
- Exhibit D: Approved Agreement and Declaration of Covenants
- Exhibit E: Ordinance 1603
- Exhibit F: Weststar Development Rezone General Project Report
- Exhibit G: Public Comment Received

Public notice requirements have been fulfilled in accordance with Section 4-4-31(D) of the City of Montrose Municipal Code. A sign was posted on the property, letters sent to property owners within 100 feet, and an ad appeared in the Montrose Daily Press.

City Council Consideration:

City Council is considering approval of the Cobble Creek South rezone located adjacent to the south of the Cobble Creek Golf Course bordering 6400 Road. City Council will consider all of the information in this memo in making a decision.

Applicant: Weststar Development, LLC

Application Background:

In 1996, a large area of land known as the Two Creeks Addition was annexed and zoned within the Montrose City limits. The total land area of the Two Creeks Addition Annexation was 484



acres. Since the annexation, that area has been subdivided, with portions being developed for residential use, as well as the Cobble Creek Golf Course.

Weststar Development, LLC owns 122 acres at the southernmost portion of the Two Creeks Addition, which sits south of the Cobble Creek Golf Course. In the original 1996 Zoning Ordinance (Ordinance No. 1603, attached as Exhibit E), the area that Weststar Development, LLC owns is limited to 139 dwelling units, which falls well below the maximum density of the R-3 zone district. In addition to the density conditions imposed by Ordinance 1603, there are other conditions specific to open space, right-of-way dedication, and infrastructure improvements, all of which would be required upon future development. Neither the City nor the developer seek to eliminate these other requirements; instead, the goal is to retain them, while eliminating the density condition.

For this application request, Weststar Development, LLC specifically desires to rezone the 122-acre parcel to allow a subdivision to be built-out to the dimensional standards of a normal R-3 zoned property. Because Ordinance 1603 also contains other conditions beyond just the density restrictions, City staff has determined that the best way to move forward with this rezone request would be via a new rezone ordinance. The recommended zoning ordinance would not contain conditions for the 122-acre property, aside from a condition that the owner would be required to sign an Agreement and Declaration of Covenants with the City to retain the infrastructure, right-of-way dedication, and open space conditions imposed in Ordinance 1603. By signing and recording the Agreement and Declaration of Covenants, these conditions will then run with the land and associated title reports, which will make clear to the current and future owners of the property what the infrastructure and open space requirements are for any future development. As things stand now, Ordinance 1603 is held in City records but is not recorded, and may not show up on a title report. This can add confusion for City staff and any owners of the property who were not involved in the annexation and rezone - which took place in 1996.

Staff has negotiated the Agreement and Declaration of Covenants document (Exhibit D) with the developer, and has incorporated the infrastructure, right-of-way dedication, easement, and open space requirements within it that are carried over from Ordinance 1603. This Agreement and Declaration of Covenants document was presented to City Council at their February 6, 2023 Work Session Meeting, and City Council approved for the authorization of the City Manager to sign the document at the February 21, 2023 Regular City Council Meeting. It should be noted that the document will not be recorded until the rezone hearing is complete.

The proposal is to rezone one parcel totaling 122 acre subdivision, as well as associated rights-of-way, to the “R-3” Medium Density District. The property is more particularly described as



follows:

A TRACT OF LAND SITUATED IN THE NW1/4 SECTION 8, TOWNSHIP 48 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF MONTROSE, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID NW1/4 SECTION 8; THENCE NORTH 01°52'11" EAST ALONG THE WEST LINE OF SAID NW1/4 SECTION 8, 2318.34 FEET; THENCE SOUTH 88°08'58" EAST 30.15 FEET TO THE SOUTHWEST CORNER OF COBBLE CREEK SUBDIVISION FILING NO. 4 RECORDED AT RECEPTION NO. 685496; THENCE THE FOLLOWING 4 COURSES ALONG THE BOUNDARY OF COBBLE CREEK SUBDIVISION FILING NO. 4:
SOUTH 88°08'58" EAST 859.87 FEET;
NORTH 81°09'38" EAST 115.39 FEET;
NORTH 71°56'13" EAST 88.27 FEET;
SOUTH 88°22'38" EAST 101.58 FEET TO THE NORTHWEST CORNER OF COBBLE CREEK SUBDIVISION FILING NO. 5 RECORDED AT RECEPTION NO. 713931;
THENCE THE FOLLOWING 6 COURSES ALONG THE BOUNDARY OF SAID COBBLE CREEK SUBDIVISION FILING NO. 5:
SOUTH 18°41'53" EAST 141.89 FEET;
58.69 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 67°15'22" AND A CHORD OF SOUTH 37°40'24" WEST 55.38 FEET;
NORTH 85°57'18" WEST 145.00 FEET;
SOUTH 08°31'24" EAST 105.38 FEET;
SOUTH 47°29'51" EAST 147.41 FEET;
SOUTH 82°52'05" EAST 230.00 FEET TO THE SOUTHWEST CORNER OF SAID COBBLE CREEK SUBDIVISION FILING NO. 4;
THENCE THE FOLLOWING 8 COURSES ALONG THE BOUNDARY OF SAID COBBLE CREEK SUBDIVISION FILING NO. 4:
SOUTH 88°31'24" EAST 117.17 FEET;
NORTH 79°29'13" EAST 254.22 FEET;
NORTH 43°05'56" EAST 532.49 FEET;
SOUTH 46°54'04" EAST 217.27 FEET;
90.48 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 125.00 FEET, A CENTRAL ANGLE OF 41°28'27" AND A CHORD OF SOUTH 67°38'21" EAST 88.52 FEET;
SOUTH 88°22'38" EAST 210.31 FEET;
31.41 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°58'58" AND A CHORD OF SOUTH 43°22'38" EAST 28.28 FEET;
SOUTH 88°28'38" EAST 30.00 FEET TO THE SOUTHEAST CORNER OF SAID COBBLE



CREEK SUBDIVISION FILING NO. 4 AND A POINT ON THE EAST LINE OF SAID NW1/4 SECTION 8;
 THENCE SOUTH 01°37'23" WEST ALONG THE WEST LINE OF SAID NW1/4 SECTION 8, 763.93 FEET TO THE NORTHEAST CORNER OF KELLY MURPHY MINOR SUBDIVISION & REPLAT OF COLLINS MINOR SUBDIVISION, RECORDED AT RECEPTION NO. 600440;
 THENCE THE FOLLOWING 3 COURSES ALONG THE BOUNDARY OF SAID KELLY MURPHY MINOR SUBDIVISION & REPLAT OF COLLINS MINOR SUBDIVISION:
 NORTH 88°30'13" WEST 740.45 FEET;
 SOUTH 01°28'40" WEST 441.05 FEET;
 SOUTH 88°48'10" EAST 709.35 FEET TO A POINT ON THE WEST LINE OF RIGHT OF WAY DEEDED TO MONTROSE COUNTY BOOK 600 PAGE 651;
 THENCE ALONG SAID RIGHT OF WAY SOUTH 01°37'23" WEST 586.81 FEET;
 THENCE LEAVING SAID RIGHT OF WAY NORTH 89°06'42" WEST 477.12 FEET;
 THENCE SOUTH 01°37'05" WEST 410.28 FEET TO A POINT ON THE SOUTH LINE OF SAID NW1/4 SECTION 8;
 THENCE NORTH 89°01'46" WEST ALONG THE SOUTH LINE OF SAID NW1/4 SECTION 8, 2146.28 FEET BACK TO THE POINT OF BEGINNING,
 COUNTY OF MONTROSE, STATE OF COLORADO.

Proposed Zoning: "R-3" Medium Density District

Staff Analysis:

1. Municipal Code, Section, 4-4-29(A), Rezoning.
 "Amendments to the Official Zoning Map involving any change in the boundaries of an existing zoning district, or changing the designation of a district, shall be allowed only upon findings as follows:
 - a) The amendment is not adverse to the public health, safety and welfare; and
 - b) The amendment is in substantial conformity with the master plan or,
 - i. The existing zoning is erroneous, or
 - ii. Conditions in the area affected or adjacent areas have changed materially since the area was last zoned."
2. The Planning Commission should consider the merits of the proposed rezone only and make a recommendation to City Council based on whether it should be rezoned to "R-3" Medium Density District. The current zoning is "R-3" Medium High Density District but as indicated in the Application Background section, there are density conditions of the zoning that the Applicant is seeking to have removed.



- Zoning Regulations. The "R-3" Medium Density District is intended to provide an area which is suitable for single-family homes and duplexes. The district provides for other uses which are compatible with such uses. (Section 4-4-7)
 - Exhibit C includes an excerpt from the Municipal Code showing uses by right in the "R-3" Medium Density District.
3. This property is immediately adjacent to properties that are zoned "R-3" Medium Density District and property outside of City limits.
4. General Conformance with the Comprehensive Plan:
- The Comprehensive Plan Future Land Use Map (Chapter 5) designates the areas to be rezoned as Residential Mixed Density Medium. The Residential Mixed Density Medium district provides for a variety of residential types mixed within a neighborhood, including single-family homes, townhomes, duplexes and triplexes.
 - Goal LU (Land Use) 3: Infrastructure: Manage growth to ensure sufficient and fiscally responsible infrastructure while minimizing future City operation and maintenance costs.
 - a) Objective 3.1: Plan for a sustainable variety of land uses, densities, and regulations that meet the demand for each type of use and provide a compatible transition between land uses.
 - b) Objective 3.6: Encourage compact and contiguous development in growth-efficient areas (in close proximity to existing streets, utilities, and public services) within the Urban Growth Boundary, including infill and redevelopment of older neighborhoods.
 - Goal LU (Land Use) 5: Infill & Redevelopment: Promote higher density infill and redevelopment of underutilized sites and support development in areas that can be easily accessed by foot, bike, and/or public transit.
 - Goal HN (Housing & Neighborhoods) 1: Housing Variety. Encourage a variety of housing types, tenure, and density to meet the needs of the community.
 - a) Objective 1.1 Promote a mix of residential housing types including single-family homes on a variety of lot sizes, multi-family housing, townhomes, apartments, senior housing, and transitional housing.
 - b) Objective 1.2 Encourage a variety of housing densities (low, medium, high) throughout the community, including mixed-density neighborhoods.
 - As reflected above, Staff finds that the proposed zoning meets numerous goals and objectives of the Comprehensive Plan.



5. The “R-3” zoning designation does not appear to be adverse to the public health, safety and welfare, and is consistent with Municipal Code requirements, zoning in the surrounding area, and the Comprehensive Plan.

Staff finds that the rezone criteria has been met; it is in compliance with the Comprehensive Plan; it is compatible with existing uses in the surrounding area; and therefore, recommends approval of the "R-3" Medium Density District conditioned upon the execution of the previously mentioned agreement and declaration of covenants document agreed upon by the City and the Applicant.

Planning Commission Recommendation:

The Planning Commission Recommended approval of the Cobble Creek South Rezone to “R-3” Medium Density District with the following condition: The approval of this rezone is expressly conditioned upon the execution and recording of the Agreement and Declaration of Covenants between the City of Montrose and Weststar Development, LLC that was authorized by City Council for signature at their February 21, 2023 Regular meeting. The request meets the Code criteria based on the evidence and testimony presented at this hearing and in the staff report.

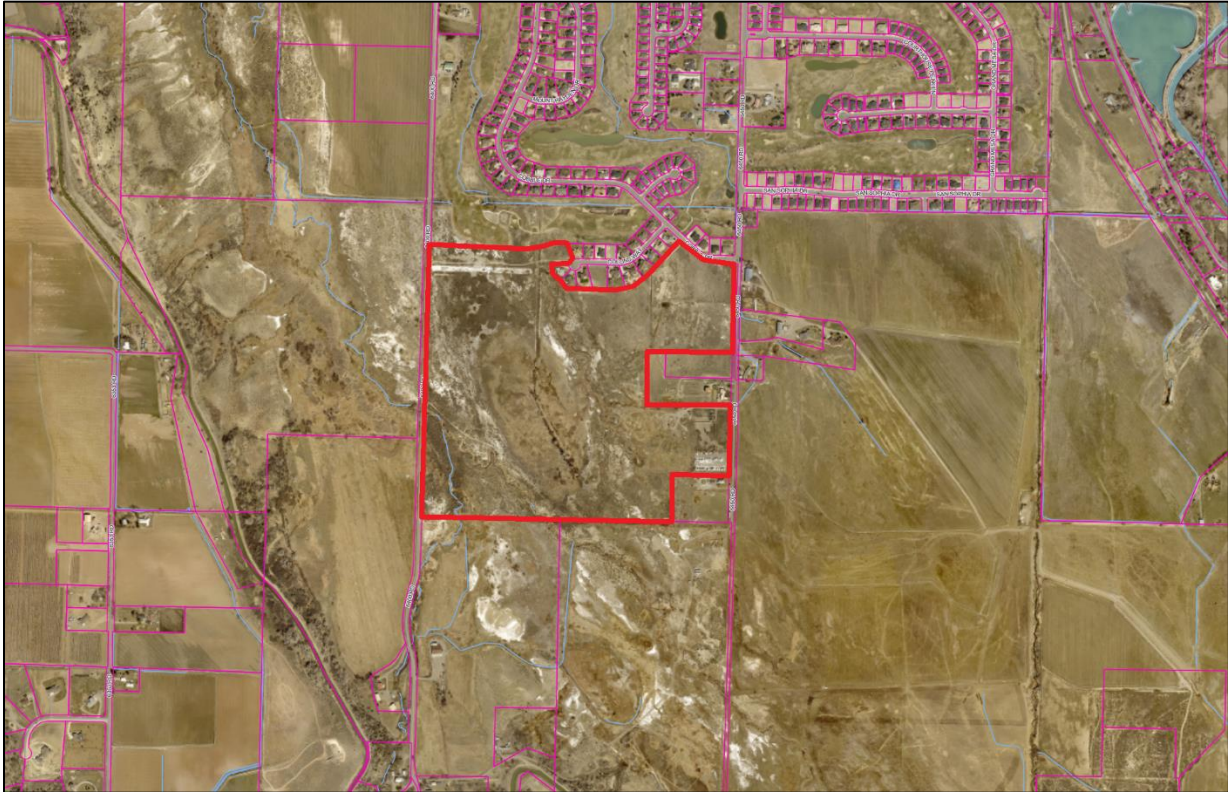
City Council Options:

1. Accept the Planning Commission recommendation and approve the rezone conditioned upon the execution and recording of the Agreement and Declaration of Covenants between the City of Montrose and Weststar Development, LLC that was authorized by City Council for signature at their February 21, 2023 Regular meeting. The request meets the Code criteria based on the evidence and testimony presented at this hearing and in the staff report.
2. Deny the request for a rezone and schedule a de novo hearing. The hearing date should be established in consultation with the City Attorney.

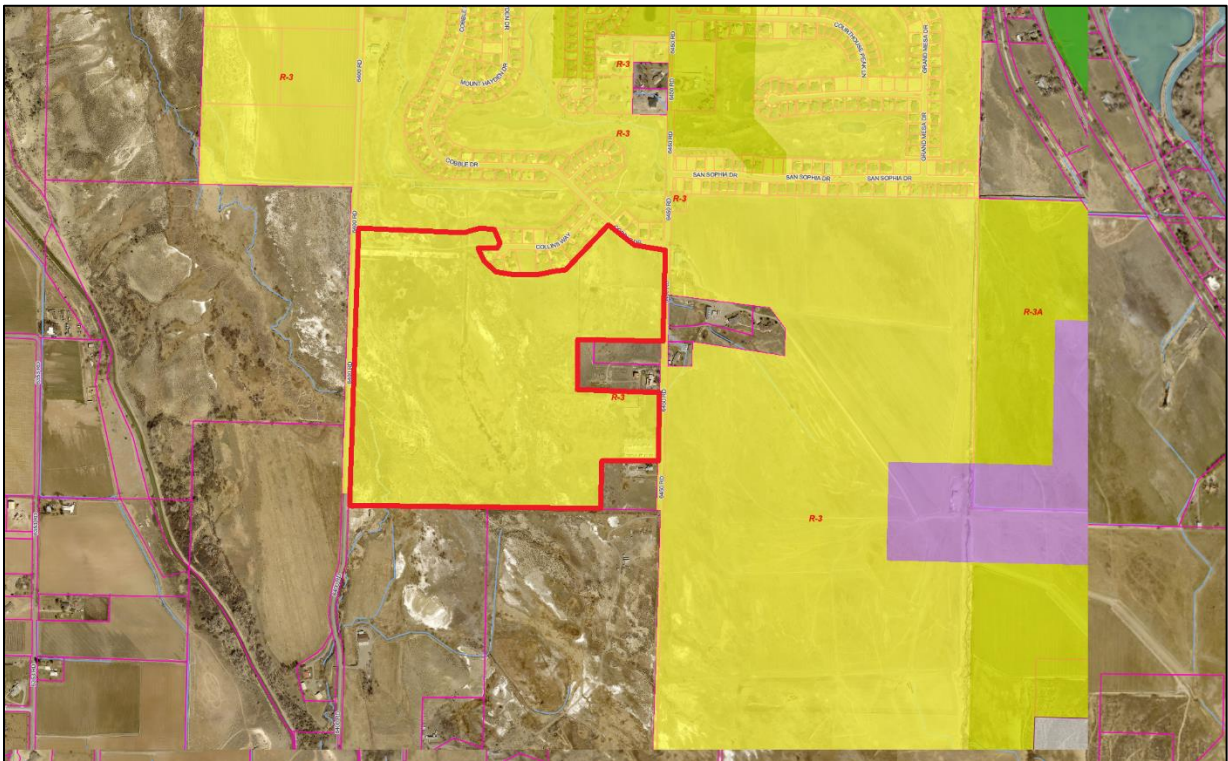


EXHIBIT A - MAPS

Vicinity Map



Zoning Map



Comprehensive Plan Future Land Use Map

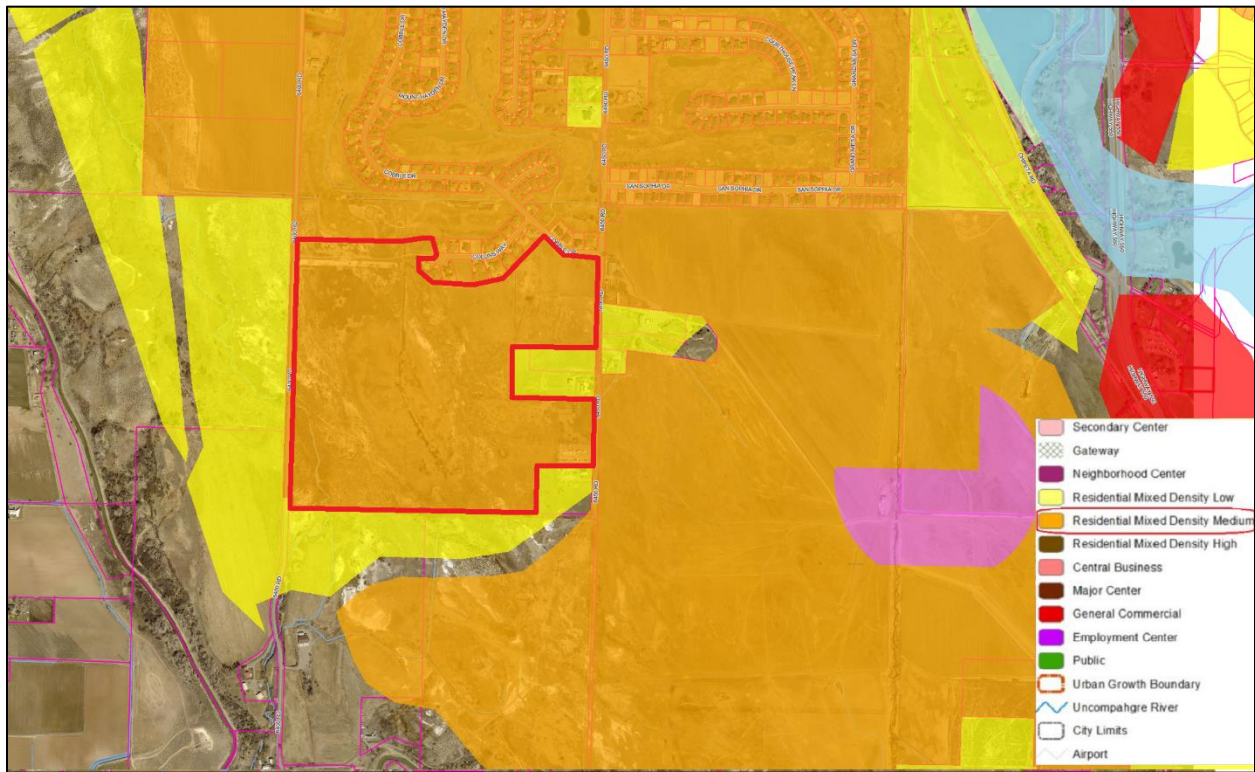


EXHIBIT B - PHOTOS

East from 6400 Rd



Facing Northeast from Southwest Corner



Facing South from Cobble Drive



Facing Southeast from 6400 Road



Facing southwest from 6450 Road



Facing southwest from Cobble Drive



Facing southwest from the end of Collins Way



Facing southwest from the northeast property corner



Facing west from 6450 Road



Facing west from Collins Way



EXHIBIT C: Zoning Code Excerpt

Sec. 4-4-7. "R-3" Medium Density District.

- (A) *Intent.* The "R-3" Medium Density District is intended to provide an area which is suitable for single-family homes and duplexes. The district provides for other uses which are compatible with such uses.
- (B) *Uses by Right.*
- (1) Single-family homes and duplexes.
 - (2) Public utility service facilities.
 - (3) Government buildings and facilities.
 - (4) Parks and recreation facilities owned or operated by a homeowner association.
 - (5) Places of worship.
 - (6) Accessory uses.
 - (7) Short-term rentals.
 - (8) Family child care home.
- (C) *Conditional Uses.*
- (1) Childcare facilities.
 - (2) Skilled nursing and assisted living facilities.
 - (3) Multiple-family residences.
 - (4) Bed and breakfast operations operated solely by the residents of a lot of at least 6,250 square feet providing no more than two bedrooms for rent in the dwelling unit, and the only meal provided on the premises shall be breakfast to the renters.
 - (5) Schools.

(Ord. No. 2472 , § 4-4-8, 5-7-2019; Ord. No. 2561 , 10-19-2021)



EXHIBIT D - APPROVED AGREEMENT

AGREEMENT AND DECLARATION OF COVENANTS

THIS AGREEMENT is entered into this ____ day of _____, 2023, by and between **WESTSTAR DEVELOPMENT, LLC**, a Colorado limited liability company hereinafter called “Declarant”, and the **CITY OF MONTROSE, COLORADO**, hereinafter called “City” or “Grantee”.

WHEREAS, except for public streets and highways, the Owner is, or is under contract to be, the sole owner of the property located in Montrose, Colorado, more fully described on **EXHIBIT A** attached hereto and incorporated into this Agreement (the "Property"); and

WHEREAS, the City wishes to control its growth in a planned and orderly fashion, maintaining and improving its quality of life and its ability to provide and enhance environmental amenities, services, and local opportunity for its citizens; and

WHEREAS, development conditions outlined for the Property with its initial zoning under Ordinance 1603 are being updated herein and separated from the zoning ordinance with a concurrent rezone of a portion of the land to which said Ordinance is applicable; and

WHEREAS, the Two Creeks Addition Annexation Ordinance recorded under reception no. 619192, and the plat recorded under plat book 0012, page 1593, in the records of the Montrose County Clerk and Recorder contain obligations related to those in Ordinance 1603; and

WHEREAS, the Owner wishes to develop the Property for a use or uses compatible with its objectives and those of the City; and

WHEREAS, it is in the public interest for the parties to enter into a written agreement regarding the matters addressed in this Agreement.

COVENANTS:

NOW, THEREFORE, in consideration of the foregoing recitals and representations, the mutual covenants contained herein, the parties agree as follows:

1. CITY JURISDICTION OVER PROPERTY

Except as expressly set forth in Sections 2 and 3 below with respect to zoning and development improvements, the Property is subject to all of the ordinances, codes, rules, regulations, policies and applicable contracts of the City, as now or hereafter constituted.

2. ZONING

- 2.1. **ZONING**. The Owner hereby requests “R-3,” Medium Density District zoning, in accordance with the proposed zoning map attached hereto as **EXHIBIT B** and incorporated herein. Nothing in this Agreement shall be construed or interpreted to limit, restrict or

abrogate in any way the power or authority of the City to rezone the Property.

- 2.2. **Effect of Failure to Zone; Challenge.** Rezoning of the property as requested by Rezoning Application no. 23-0004 shall be a condition precedent to this Agreement becoming effective or being recorded in the County Clerk and Recorder's records. Should the ordinance(s) zoning the Property be challenged by citizen initiative, referendum, or otherwise, and should any such challenge result in the invalidity of the zoning ordinance(s) upon entry of a final order of court which is unappealable or which the parties have elected not to appeal, then, similarly, this Declaration of Covenants shall be null, void and of no effect. In the event of invalidity of the zoning ordinance(s) pursuant to any of the conditions described in this Section, such invalidity shall not be deemed a breach of the Agreement by either party, and the parties shall be deemed released from further obligations hereunder, provided that Owner shall remain responsible for the cost of legal defense as set forth hereinbelow.

3. **DEVELOPMENT**

- 3.1. **Application of City Requirements.** The Property shall be developed in general conformity with City's current Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements, including without limitation, those pertaining to zoning, subdivision, streets, storm drainage, utilities, landscaping, parks and open spaces and flood control. The City may amend and apply to the Property the City's Comprehensive Plan, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements from time to time as needed to address changing effects upon the City's infrastructure, administration and delivery of governmental services as a result of development occurring within the City so long as the same are generally applicable and uniformly applied or enforced to all similarly situated property within the City.
- 3.2. **Subdivision Required.** Any subdivision of the Property shall be in accordance with City subdivision and other applicable regulations in effect at the same time application is made for subdivision approval. In addition to the improvements required by this Agreement, the specific public improvements required in connection with such development shall be determined during the subdivision process, in accordance with applicable regulations of the City.
- 3.3. **Sewer.** As part of any significant development, Owner shall provide a City gravity sewer sized in accordance with City standards and specifications, subdivision regulations and all other applicable regulations.
- 3.4. **Domestic Water Service.** As part of any significant development, Owner shall connect to the City's domestic water system, in a manner sized in accordance with City standards and specifications, applicable fire codes, subdivision regulations and all other applicable regulations. This is based on the mutual understanding that the Property is legally situated within the City of Montrose water service area.

- 3.5. Irrigation. Upon request of the City or as necessary to accommodate roadway construction, Owner shall relocate any conflicting ditches and/or canals outside of right-of-way and utility easement areas upon approval of the appropriate ditch/canal owner.
- 3.6. Required Off-Site Street Improvements. The following street improvements shall be performed, at a time to be determined by the City, or secured by an appropriate performance guarantee, or secured by an improvement district covenant. This shall be in addition to all street improvements required within the subdivision by subdivision regulations in place at the time of development. The obligations for some of the following improvements are shared with adjoining properties as memorialized in existing annexation agreements and zoning ordinances (and as may be memorialized in future annexation agreements and zoning ordinances). Nothing herein shall be deemed to impose upon the Property any additional or disproportionate burdens for the following improvements not already contained in such existing annexation agreements and zoning ordinances.
- 3.6.1. The intersection of 6450 Road and Chipeta Drive shall be constructed to City and Montrose County specifications and standards.
- 3.6.2. 6450 Road from Chipeta Road to the southern line of the Property shall be developed and improved to the extent reasonable within existing County rights-of-way, and shall be constructed to City standards and specifications within and abutting the Two Creeks Addition.
- 3.6.3. The property shall be subject to cost sharing, by improvement district covenants, for right-of-way acquisition and future construction and improvement to Chipeta Road from 6450 Road to Hwy 550; and access between 6450 and Hwy 550 at locations yet to be determined; the cost sharing shall be roughly proportionate to the need for said access and use as created by development of the Property.
- 3.7. Rights-of-way. As part of any significant development of the Property, or at the request of the City, Owner shall dedicate to the City:
- 3.7.1. A right-of-way, not to exceed 80 foot wide, for an east-west minor arterial connection along the southern end of the Property between 6400 Road and 6450 Road in general conformance with the alignment shown on the City's comprehensive plan road network map or aligned with any previous or planned dedications said street rights-of-way on adjoining properties. Final alignment through the property shall be determined at a later date as part of a standalone City capital project or concurrent with development by the Owner.
- 3.7.2. 40 feet right-of-way along the Property's 6450 Road and 6400 Road frontages measured from the centerline of the respective roadways.
- 3.7.3. Rights-of-way for public streets interior to the subdivision in accordance with City of Montrose subdivision and other applicable regulations in place at the time of subdivision.

- 3.8. Utility Easements. As part of any significant development, or at the request of the City, Owner shall dedicate a 15-foot-wide utility easement located on each side of, and parallel to, all roadway dedications.
- 3.9. Parkland Dedication or Money in Lieu. This parcel, as part of the Two Creeks Addition, was subject to a minimum of 120 acres to be developed for golf course use or as open space. The 120 acres has been established in earlier in time developments and those developments are still subject to this requirement. As part of any significant development of the property described in **Exhibit A**, Owner shall provide a minimum of 8%, or such greater area as may be required by the City's subdivision regulations, developed as trails, parks, and playgrounds at the Owner's expense, or payment in lieu of all or part thereof, as determined by the City.
- 3.10. Money in Lieu of School Land Dedication. All residential lots or residential units having unique legal descriptions shall be required to make payment of money in lieu of school land dedication, at the time of issuance of building permit or certificate of occupancy relative to improvements upon said lot. The payment of money in lieu of school land dedication shall be made to the City, to be later disbursed to the RE-1J School District.

4. INDEMNIFICATION AGAINST LEGAL CHALLENGE

Owner understands and acknowledges that the zoning of the Property may be subject to challenge by the filing of litigation in a state or federal court by third parties based on the City's quasi-judicial action in zoning the Property ("Third Party Challenge"). In the event of such Third Party Challenge, the City will incur costs and expenses related to defense of same, including reasonable attorney's fees, filing fees, and court costs. To the extent Owner desires to proceed with the zoning that is the subject of such Third Party Challenge, Owner shall indemnify the City and shall pay all reasonable out of pocket costs and expenses incurred by the City in any defense of a Third Party Challenge. Owner further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the City's option to pay the attorney's fees for defense counsel of the City's choice for any such Third Party Challenge. In the event of a Third Party Challenge, the City shall reserve and retain the right to settle, prosecute, litigate, and defend any such action in any manner and by any method that the City deems appropriate, desirable, or in its best interests; however, the Parties agree that the Owner shall be an indispensable party to such litigation, and nothing in this Agreement shall be construed as waiving or otherwise compromising or limiting the Owner's rights to defend such Third Party Claims in court to the fullest extent permitted by law, regardless of the City's action or inaction in defending, settling, compromising, litigating, or prosecuting its claims.

In the event of a challenge to the City's legislative action in zoning of the Property pursuant to Article IX of the City Charter ("Legislative Challenge"), the City shall reserve and retain the right to repeal, modify, or amend any or all ordinances zoning the Property. . The City shall, to the extent practicable and convenient, consult with and advise the Owner of the progress of the Legislative Challenge.

5. **REFERENDUM**

The City shall reserve and retain sole discretion to repeal, modify, or amend any or all ordinances and resolutions zoning the Property or to take any other action the City deems appropriate, desirable, or in its best interests in the handling and consideration of the referendum petition and referendum election. Owner is not responsible for any costs related to a public referendum, but shall hold the City harmless for the City's actions taken to handle the referendum.

6. **GENERAL PROVISIONS**

6.1. **No Waiver.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

6.2. **Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

City:

City of Montrose
c/o City Manager
433 South First Street
P.O. Box 790
Montrose, CO 81402-0790

Owner:

With copy to:

City Attorney

Same address as above

With copy to:

Or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

6.3. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the Property, and shall constitute covenants running with the land.

6.4. **Disconnection.** In the event the Property or any portion thereof is disconnected pursuant to C.R.S. § 31-12-119 for any reason, the City shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.

6.5. **Zoning Subject to Legislative Discretion.** The Owner acknowledges that the zoning of the

Property are subject to the legislative discretion of the City Council of the City of Montrose. No assurances of zoning have been made or relied upon by the Owner. In the event that the City Council, in the exercise of its legislative discretion, does not take any action with respect to the Property herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the City in accordance with state law, as may be appropriate. However, nothing herein shall preclude the development of the Property in accordance with the zoning in effect at the time of such proposed development, as a “remedy” or otherwise.

- 6.6. Legal Discretion in the Case of Challenge. The City reserves the right to not defend any legal challenge to this zoning. In the event such a challenge occurs prior to any expiration of any statute of limitation, City may, at its discretion, choose to legally contest the challenge or allow the challenge to proceed without defense.
- 6.7. Amendments to Governing Ordinances, Resolutions and Policies. As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any City ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon Owner.
- 6.8. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third party. It is the express intent of the City and Owner that any person other than the City or the Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 6.9. Governing Law and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. This Agreement may be enforced at law or in equity. Jurisdiction and venue for such suits shall be proper and exclusive in the district court for Montrose County, Colorado. In addition to any other available remedies, the City may, if the Owner is also in violation of applicable laws, regulations, or applicable development standards, withhold or revoke any permits or certificates, including but not limited to building permits and certificates of occupancy, for any lot or structure within the Property owned at the time by Owner, or any successor in interest of the Owner, in the event of a breach of this Agreement by the Owner or such successor in interest.
- 6.10. Attorney’s Fees. Should the Owner or the City breach this Agreement, the breaching party shall pay the other party’s reasonable costs and attorney’s fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement. In no event shall either party be responsible for or entitled to any damages, whether regular, special, punitive, or consequential, nor for any economic losses, damages, or lost profits.
- 6.11. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

- 6.12. Integration and Amendment. This Agreement represents the entire agreement between the parties and no additional or different representation, promise or agreement, written or oral, shall be binding upon either party with respect to the subject matter hereof. This Agreement may be amended only by an instrument in writing signed by the parties.
- 6.13. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 6.14. Recordation. This Agreement shall be recorded by the City in the Clerk and Recorder's Office of Montrose County, Colorado. The Owner shall pay the reasonable cost of recordation of this Agreement, Zoning Ordinances, and any and all other documents, promptly upon request by the City. If at anytime in the future Owner requests an estoppel certificate from the City stating that the obligations of Owner are current under the terms of this Agreement, the City shall have ten (10) days after receipt of such written request to provide an estoppel certificate in order to provide such estoppel certificate and if the City fails to provide the requested estoppel certificate within said ten (10) day period, the requested estoppel certificate shall be deemed provided by the City.
- 6.15. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.
- 6.16. Police Power. Declarant understands and agrees that the City cannot contract away its police power and that nothing contained herein may be construed to foreclose the City from applying additional requirements of its Subdivision Regulations and other ordinances and regulations, as in effect from time-to-time, in accordance with their terms, including dedication of additional property when required.
- 6.17. TABOR Clause. The parties agree that the City's payment or expenditure of any monies under this Agreement is subject to annual budget appropriations as required by provisions of the Taxpayers' Bill of Rights ("TABOR") contained in Article X, Section 20 of the Colorado Constitution, as amended. The parties further agree that any failure to fund the obligations set forth herein as a result of TABOR-related monetary constraints shall not give rise to any legal or equitable cause of action whatsoever.

EXECUTED the day above first written.

CITY OF MONTROSE

Weststar Development, LLC

By: _____
William E. Bell, City Manager

By: _____
_____, Manager

Exhibit A

A TRACT OF LAND SITUATED IN THE NW1/4 SECTION 8, TOWNSHIP 48 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF MONTROSE, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NW1/4 SECTION 8; THENCE NORTH 01°52'11" EAST ALONG THE WEST LINE OF SAID NW1/4 SECTION 8, 2318.34 FEET; THENCE SOUTH 88°08'58" EAST 30.15 FEET TO THE SOUTHWEST CORNER OF COBBLE CREEK SUBDIVISION FILING NO. 4 RECORDED AT RECEPTION NO. 685496; THENCE THE FOLLOWING 4 COURSES ALONG THE BOUNDARY OF COBBLE CREEK SUBDIVISION FILING NO. 4:

SOUTH 88°08'58" EAST 859.87 FEET;

NORTH 81°09'38" EAST 115.39 FEET;

NORTH 71°56'13" EAST 88.27 FEET;

SOUTH 88°22'38" EAST 101.58 FEET TO THE NORTHWEST CORNER OF COBBLE CREEK SUBDIVISION FILING NO. 5 RECORDED AT RECEPTION NO. 713931;

THENCE THE FOLLOWING 6 COURSES ALONG THE BOUNDARY OF SAID COBBLE CREEK SUBDIVISION FILING NO. 5:

SOUTH 18°41'53" EAST 141.89 FEET;

58.69 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 50.00 FEET, A CENTRAL ANGLE OF 67°15'22" AND A CHORD OF SOUTH 37°40'24" WEST 55.38 FEET;

NORTH 85°57'18" WEST 145.00 FEET;

SOUTH 08°31'24" EAST 105.38 FEET;

SOUTH 47°29'51" EAST 147.41 FEET;

SOUTH 82°52'05" EAST 230.00 FEET TO THE SOUTHWEST CORNER OF SAID COBBLE CREEK SUBDIVISION FILING NO. 4;

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SOUTH 88°31'24" EAST 117.17 FEET;

NORTH 79°29'13" EAST 254.22 FEET;

NORTH 43°05'56" EAST 532.49 FEET;

SOUTH 46°54'04" EAST 217.27 FEET;

90.48 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 125.00 FEET, A CENTRAL ANGLE OF 41°28'27" AND A CHORD OF SOUTH 67°38'21" EAST 88.52 FEET;

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31.41 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°58'58" AND A CHORD OF SOUTH 43°22'38" EAST 28.28 FEET;

SOUTH 88°28'38" EAST 30.00 FEET TO THE SOUTHEAST CORNER OF SAID COBBLE CREEK SUBDIVISION FILING NO. 4 AND A POINT ON THE EAST LINE OF SAID NW1/4 SECTION 8;

THENCE SOUTH 01°37'23" WEST ALONG THE WEST LINE OF SAID NW1/4 SECTION 8, 763.93 FEET TO THE NORTHEAST CORNER OF KELLY MURPHY MINOR

SUBDIVISION & REPLAT OF COLLINS MINOR SUBDIVISION, RECORDED AT
RECEPTION NO. 600440;
THENCE THE FOLLOWING 3 COURSES ALONG THE BOUNDARY OF SAID KELLY
MURPHY MINOR SUBDIVISION & REPLAT OF COLLINS MINOR SUBDIVISION:
NORTH 88°30'13" WEST 740.45 FEET;
SOUTH 01°28'40" WEST 441.05 FEET;
SOUTH 88°48'10" EAST 709.35 FEET TO A POINT ON THE WEST LINE OF RIGHT OF
WAY DEEDED TO MONTROSE COUNTY BOOK 600 PAGE 651;
THENCE ALONG SAID RIGHT OF WAY SOUTH 01°37'23" WEST 586.81 FEET;
THENCE LEAVING SAID RIGHT OF WAY NORTH 89°06'42" WEST 477.12 FEET;
THENCE SOUTH 01°37'05" WEST 410.28 FEET TO A POINT ON THE SOUTH LINE OF
SAID NW1/4 SECTION 8;
THENCE NORTH 89°01'46" WEST ALONG THE SOUTH LINE OF SAID NW1/4 SECTION
8, 2146.28 FEET BACK TO THE POINT OF BEGINNING,
COUNTY OF MONTROSE, STATE OF COLORADO.

EXHIBIT E - ORDINANCE 1603

ORDINANCE NO. 1603

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, PROVIDING FOR THE ZONING OF TWO CREEKS ADDITION AS R-2, R-3 AND R-3A RESIDENTIAL DISTRICTS, B-4 COMMERCIAL DISTRICT, AND I-1 AND I-2 INDUSTRIAL DISTRICTS.

WHEREAS, the **Two Creeks Addition** has been recently annexed to the City of Montrose, Colorado, and

WHEREAS, the owners of such property have requested zoning which the Planning Commission has reviewed and recommended in accordance with the requirements of the City Code and

WHEREAS, the proposed recommendation is substantially in accordance with the City's Master Plan, is compatible with existing zoning in nearby or adjoining properties, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, that

Section 1.

The Official Zoning Map is amended to zone the **Two Creeks Addition** to the City of Montrose, Colorado as described below:

Tract 1 as depicted on Exhibit A attached hereto and incorporated herein shall be designated as a B-4 Neighborhood Shopping District;

Tracts 2 & 3 as depicted on Exhibit A shall be designated as an R-3A Medium High Density Residential District;

The remainder of Two Creeks Addition southwesterly of Chipeta Drive shall be designated as an R-3 Medium Density District;

The remainder of Two Creeks Addition northeasterly of Chipeta Drive shall be designated as R-3 Medium Density District, *except* for those portions designated as I-1 Light Industrial District and I-2 General Industrial District, and R-2 Low Density District, as so denoted on the attached Exhibit A.

Section 2.

The following conditions shall apply to that portion of the Addition lying southwesterly of Chipeta Drive:

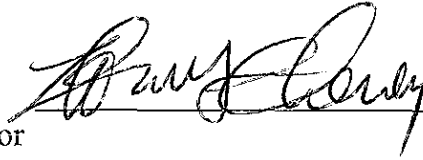
- A. The total number of residential dwelling units shall be no more than 455 for Phases I & II as depicted on Exhibit B attached hereto and incorporated herein; Phase III as depicted on Exhibit B shall be limited 100 residential dwelling units;
- B. As a condition of subdivision, planned development, or other development approval, guarantees for the following improvements shall be required:
 - 1. The intersection for primary access into the development shall be located where Two Creeks Addition abuts Chipeta Drive; said intersection shall be constructed to City specifications and standards;*
 - 2. The intersection of 64.50 Road and Chipeta Drive shall be constructed to City specifications and standards, at a time to be determined, secured by performance guaranties or improvement district covenants;*
 - 3. 64.50 Road from Chipeta Road to the southern line of the Two Creeks Addition shall be developed and improved to the extent reasonable within existing right-of-way in the County, and shall be constructed to City specifications and standards within and abutting the Addition, at a time to be determined, secured by performance guaranties or improvement district covenants;*
 - 4. Appropriate rights-of-way shall be dedicated on or in the vicinity of the southern line of Section 5, T48N, R9W, N.M.P.M, and on that portion of the mid-section line of Section 8, T48N, R9W, N.M.P.M., that lies within the Two Creeks Addition, as needed to provide for minimum 80-foot wide rights-of-way between 64.00 Road and the eastern boundary of the Addition;
 - 5. The Addition shall be subject to cost sharing, by improvement district covenants, for right-of-way acquisition and future construction and improvement to Chipeta Road from 64.50 Road to Hwy 550; and access between 64.50 and Hwy 550 at locations yet to be determined; the cost sharing shall be roughly proportionate to the need for said access as created by development of the Two Creeks Addition;*
 - 6. A minimum of 120 acres shall be developed for golf course use or must remain open space

7. The development of Phase III shall require an additional traffic impact study at filing of preliminary plat.

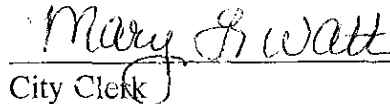
* Approval of Montrose County shall be required so long as the improvement in question is in unincorporated Montrose County.

INTRODUCED, READ and PASSED on first reading this 3rd day of October, 1996.

Mayor



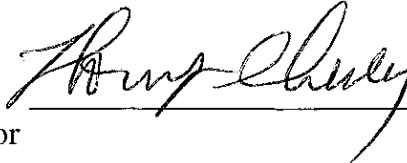
ATTEST:


City Clerk

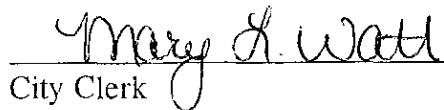
You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its adoption on second reading on October 17th, at the hour of 7:30 p.m. at Montrose City Hall in Montrose, Colorado.

INTRODUCED, READ and ADOPTED on second reading this 17th day October, 1996.

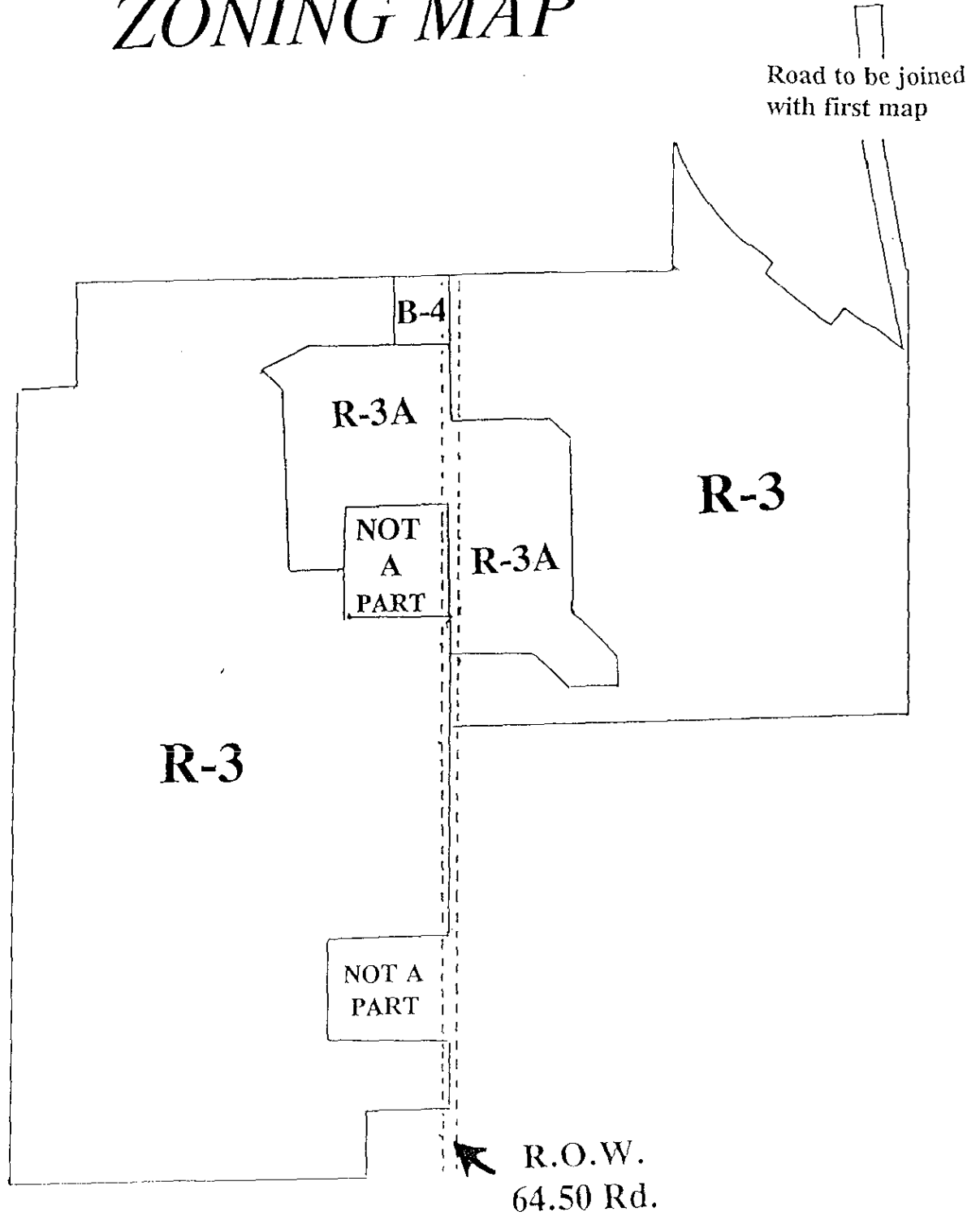
Mayor



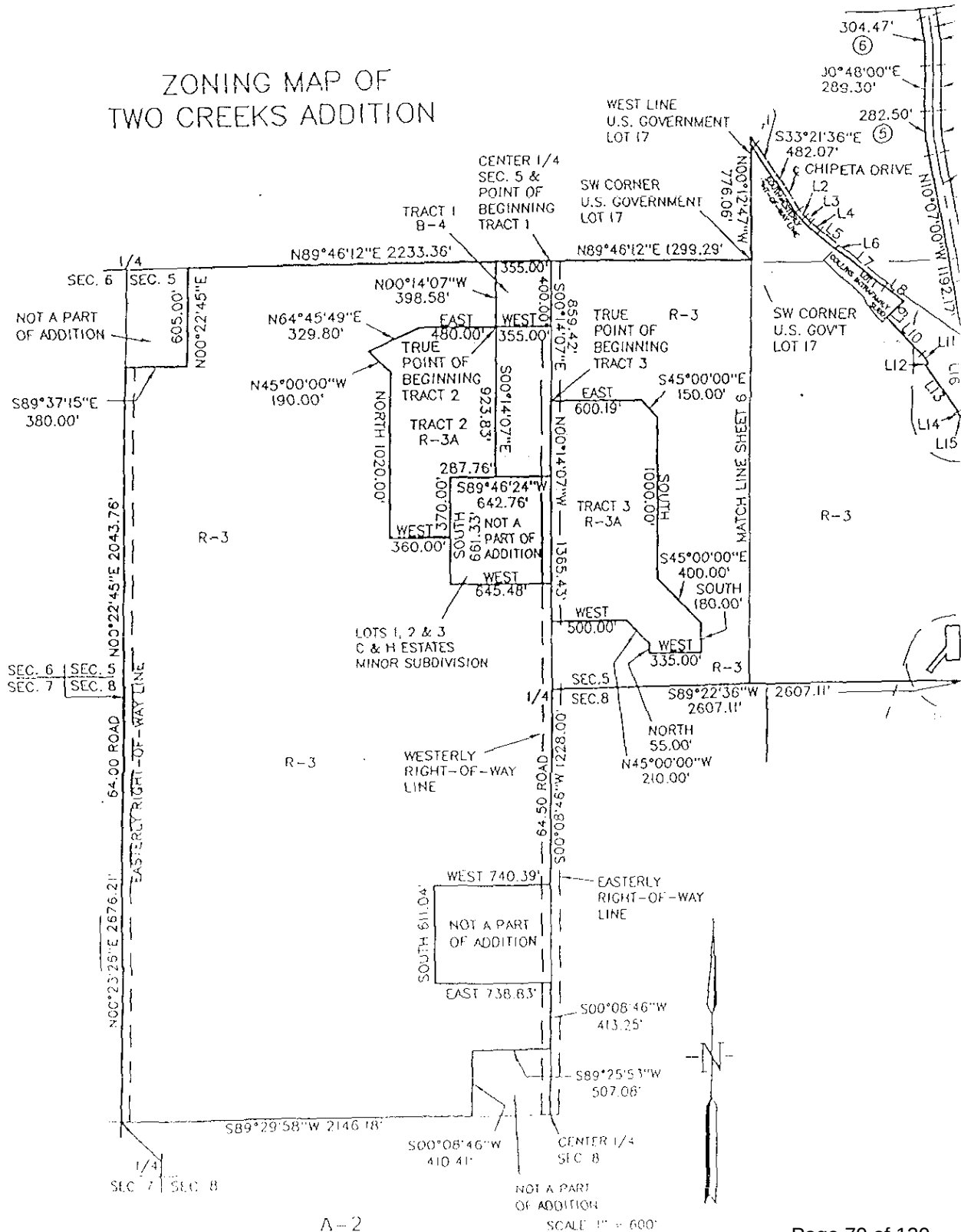
ATTEST:


City Clerk

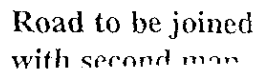
TWO CREEKS ADDITION ZONING MAP



ZONING MAP OF TWO CREEKS ADDITION



R-3



COLLINS FARMS SOUTH

Phase II
(147.96 Acres)

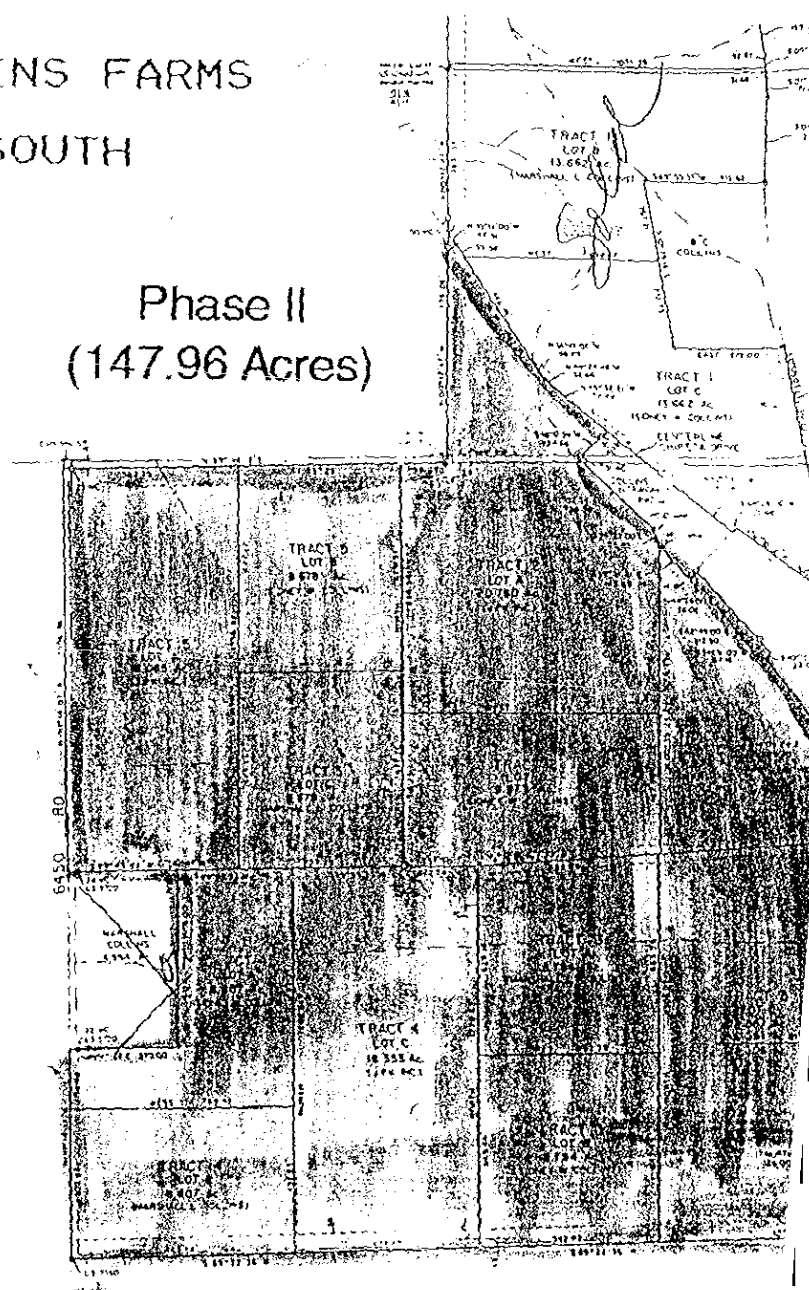
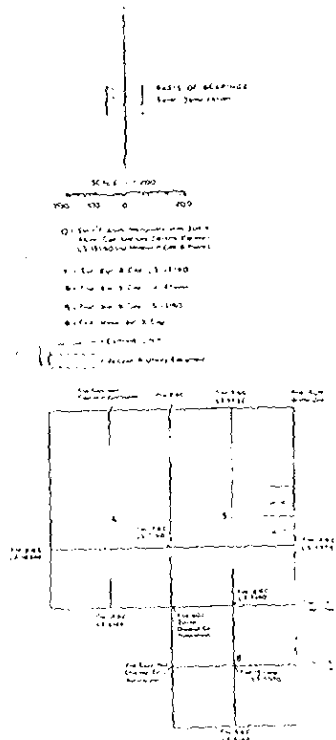
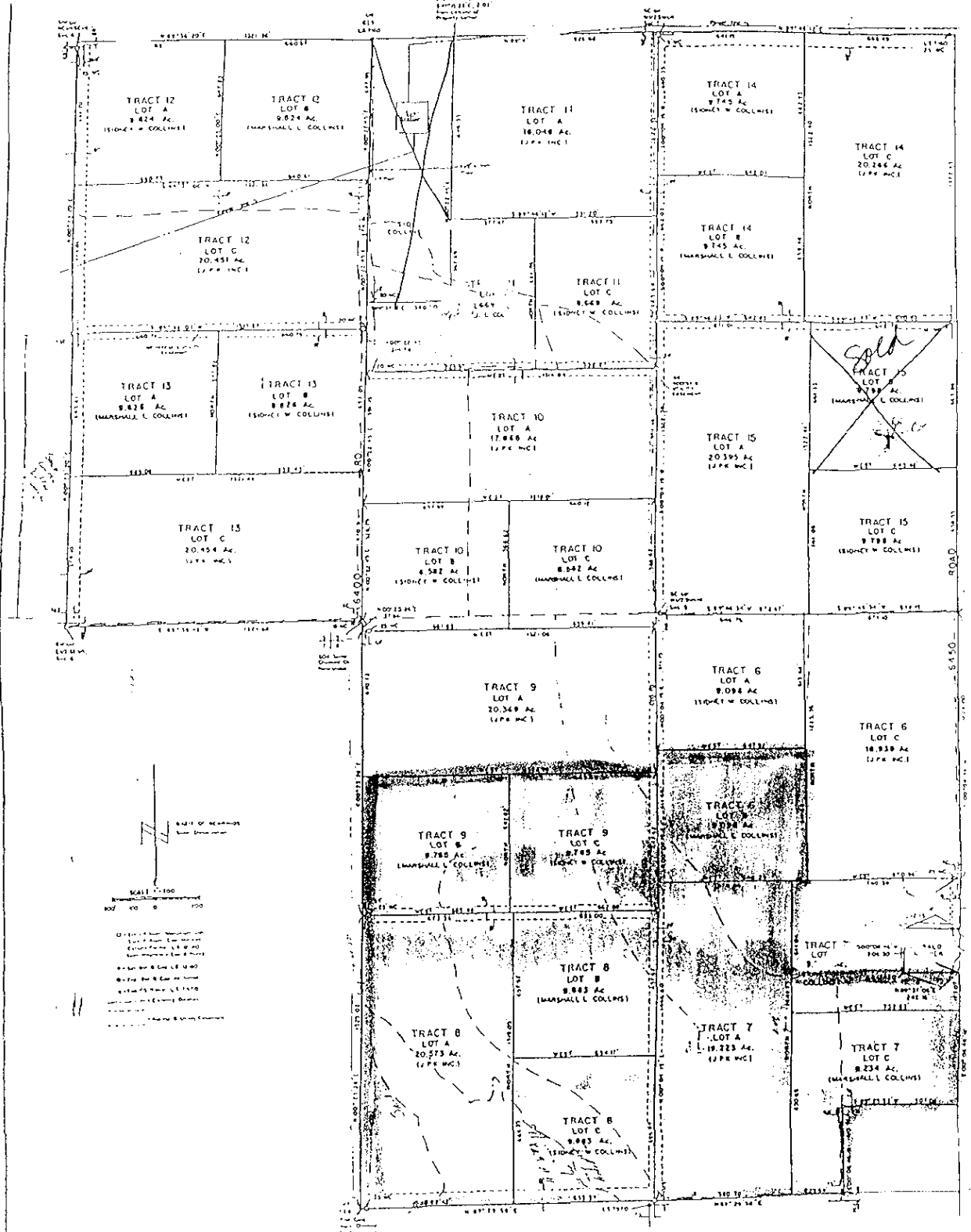


EXHIBIT "B" (Cont'd)



Phase III (100.464 Acres)

WON 222, 100.464	PLAT OF DESC.
DATE 11-11-82	
RECORDED	MONROSE CO.
BOOK 17	
PAGE 100	

EXHIBIT F - GENERAL PROJECT REPORT

Requested Re-Zoning Overview

121.93 Acres

Cobble Creek South (“the Property”)

By this application, Weststar Development, LLC (“Applicant”) requests the re-zoning under the City’s current zoning regulations of the 121.93-acre tract described on Exhibits A and B attached hereto (the “Property”) in its entirety to R-3 Medium Density District. The requested zoning is the same as the Property’s existing base zoning but would exclude and/or clarify certain restrictions imposed when the Property was initially zoned in 1996.

The Property includes all of Phase III and a portion of Phase I of the Two Creeks Addition referenced in Ordinance No. 1603, adopted on October 17, 1996, and subsequently superseded. The Property is currently zoned as an R-3 Medium Density District. Weststar Development, LLC owns the Property and is initiating this request on behalf of Momentum Development, LLC, an experienced developer who intends to purchase the Property and move forward with development of the Property in 2023. This zoning update will eliminate the division of the Property into two phases as currently configured, allow more flexibility in lot layout, and update the zoning requirements to be compatible with the City’s current zoning practices.

The original zoning Ordinance No. 1603 covered a much larger tract that included the entirety of what has been developed to date in the Cobble Creek Community. No previously platted acreage is included in this re-zoning request.

Ordinance No. 1603 contained a provision that would have limited the remaining density of the Property to 139 units. This places the Property at an economic disadvantage as compared to more recently zoned R-3 tracts within the City and prohibits development of the Property consistent with the City’s current Envision 2040 comprehensive master plan and requirements for an R-3 zoning district. The City of Montrose no longer applies density limitations to zoning classifications. This rezone will follow Sec 4-4-7 “R-3” Medium Density District and Sec 4-4-22 Dimensional Requirements in the current code. The tract includes significant undevelopable land due to wetlands and designated flood zones and the ultimate density, which is unlikely to exceed 290 dwelling units, will be well below the density typically available in R-3 zoned property.

Per discussions with City of Montrose staff, Applicant believes it is appropriate to carry forward some of the conditions in the original zoning and to modify others to reflect current requirements as well as to allow additional positive flexibility in subdivision configuration. Applicant proposes that the following requirements be included in the requested rezoning ordinance:

1. The intersection of 64.50 Road and Chipeta Drive shall be constructed to City specification and standards, at a time to be determined based upon then current City street construction and financing criteria which may include improvement district covenants;*
2. 64.50 Road adjacent to the east boundary of the Property shall be developed and improved to the extent reasonable within existing right-of-way in the County, and shall be constructed to City specifications and standards commensurate with development of the Property:*
3. Appropriate rights-of-way shall be dedicated in the Property as it is developed as needed to provide for an east-west street as outlined in the Master Plan to provide for access between 64.50 Road and 64.00 Road;*
4. The Property shall be subject to cost sharing, by improvement district covenants, for right-of-way acquisition and future construction and improvement to Chipeta Road from 64.50 Road to Hwy 550; and access between 64.50 Road and Hwy 550 at locations yet to be determined; the cost sharing shall be roughly proportionate to the need for said access as created by the development of the Property.*
5. The development of the Property shall require a traffic impact study at filing of a preliminary plat.

*Approval of Montrose County shall be required so long as the improvement in question is in unincorporated Montrose County.

Applicant expects to work with City staff regarding infrastructure requirements/conditions prior to re-zone ordinance approval.

This request is in compliance with applicable criteria as the base zoning is not being changed and the applicable requirements related to the updated zoning will be equal to other tracts in the city that are zoned R-3. R-3 zoning for this property is in substantial conformity with the Master Plan.

A key consideration in the City's review of this re-zoning application is how it relates to the Envision 2040 Montrose Comprehensive Plan. The subject property is designated as "Residential Mixed Density Medium" on the Future Land Use Map found in the Comprehensive Plan. The R-3 zoning proposed for Cobble Creek South consistent with this land use designation. Further, Cobble Creek West is located within "Growth Area 1", an area defined by the Comp Plan as the "most cost-effective area for the City to grow". Cobble Creek South is located where the City's Comprehensive Plan specifically encourages residential development.

Cobble Creek

Golf Community

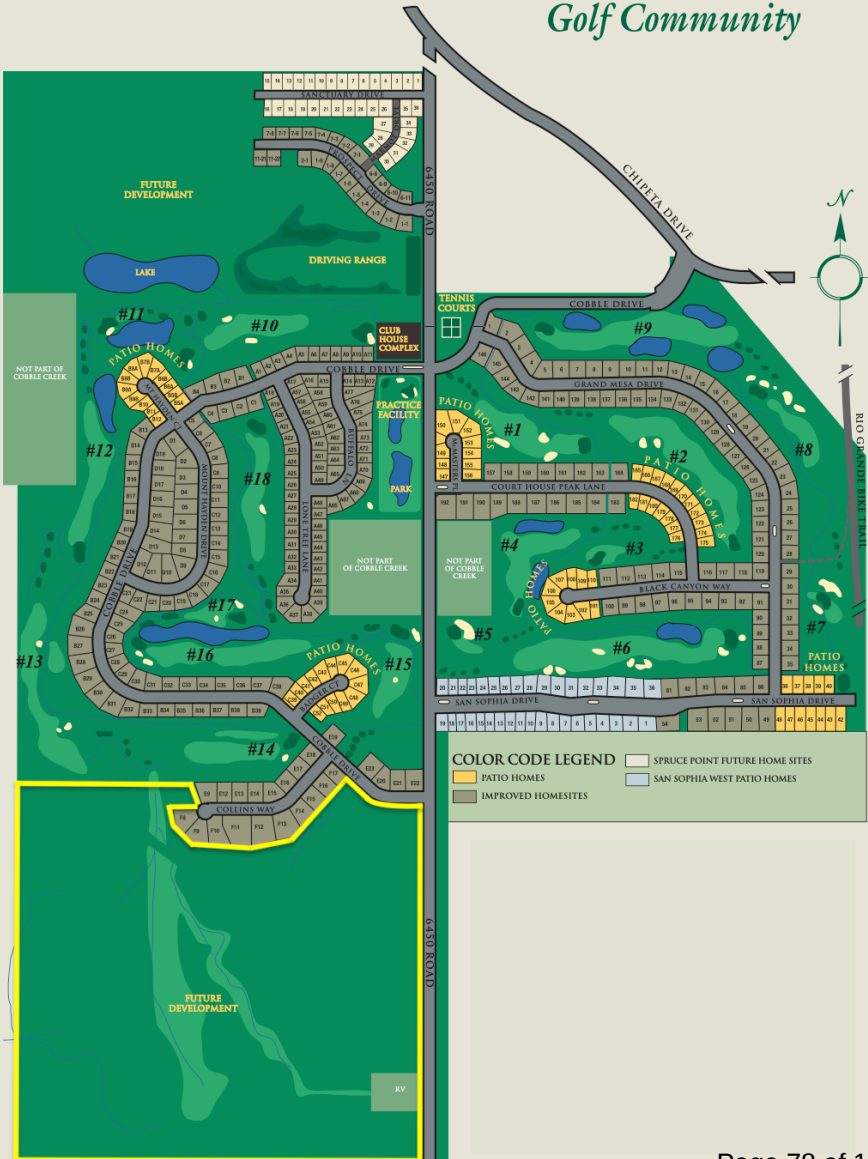


EXHIBIT G - PUBLIC COMMENTS RECIEVED AS OF 3/7/2023

March 3, 2023

Planning Services Department
City of Montrose
P.O. Box 790

Re: Cobble Creek South Rezone

Dear Jace Hochwalt;

I am writing as an adjacent land owner whose south property line abuts the subject parcel. As such I am opposed to any action by the City that would afford the developers of the subject parcel the ability to build apartments or other high density housing. Rezoning hearkens back to promises made by the City that if the HUB property was annexed and rezoned it would only permit single family dwellings. Please do not allow the developers of the South parcel behind my house to be allowed development of multi-family housing or apartments.

With that said, it is my understanding that this rezoning would actually allow the developer to have more units, but that the density would be spread across a larger area of the parcel rather than restricting development to a portion of the larger subject parcel. I would not be opposed to that scenario.

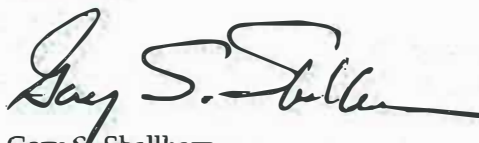
I think the larger issue and problem with development of the Cobble Creek South parcel is traffic. Funneling traffic from that south parcel back onto 6450 road is a significant impact. The width of 6450 road is essentially 20 feet narrower than the northern portion of 6450 road beyond its intersection with Cobble Drive. There are no sidewalks along 6450 road and that segment of the road is subject to a relatively high volume of pedestrians, using the road itself. Additional access to other major roadways in the area such as 6400 road and Chipeta road should be a condition attached to the rezoning authorization of the south parcel.

It should be noted that there are several drainage ditches and pipes located within the subject parcel that must be preserved and the easements for those drainage structures must be protected. My house has a foundation drain that ties into a drain pipe just south of my property line located on the subject parcel. This drainage system was approved and expected to be utilized by phase I Cobble Creek parcels such as mine. Drainage systems are critical to the subject parcel as much of the property directly south of Cobble Creek have high water tables and seasonally actually discharge to the surface in various locations.

My original understanding from the developers of Cobble Creek back in 2004 that when the parcel to the south of my property was to be developed there would be an easement for the drain south of my house. I was shown maps indicating such an easement and assurances no structures would be build upon the drainage easement. I expect the City to adhere to such assurances in their approvals of any rezoning that would lift the original conditions for the R-3 Medium Density District.

I appreciate the opportunity to comment on this matter and wish my correspondence to entered into the record and afford me standing in any appeal process that may be afforded adjacent property owners.

Sincerely,



Gary S. Shellhorn
540 Collins Way
Montrose, CO 81403
970-901-8014
shellfish52@gmx.com



Jace Hochwalt <jhochwalt@ci.montrose.co.us>

Proposed Cobble Creek South Rezone--March 8, 2023 Planning Commission meeting

OHN HAMILL <HAMILLDSRT50@msn.com>

Mon, Mar 6, 2023 at 12:37 PM

To: "jhochwalt@ci.montrose.co.us" <jhochwalt@ci.montrose.co.us>

Hello Jace: I own a home on Cobble Drive just southeast of the proposed Cobble Creek re-zone for 122 acres from R-3 Medium Density with conditions to R-3 Medium Density with no conditions. I am opposed to approval of the proposed zone request. I am providing these written comments as I am unable to attend the March 8, 2023 Planning Commission meeting public hearing.

Much of the subject property is a wetland area with high wildlife and environmental values. Some of the property is dominated by wetland plant species which should be excluded from development. The area is rich in biodiversity. I have frequently observed deer, pheasant, quail, various raptors, coyotes and numerous bird species. Waterfowl are currently nesting in the area.

The city should insure that the highest valued wetland areas in the property should be protected by retaining the current density restrictions. The current density restrictions will allow the areas with the highest wetland values to be protected while allowing for a reasonable level of development. Retaining the current density restrictions will contribute to the welfare of the community, add value to the residential developments in and adjacent to the property, and help promote the City of Montrose as a responsible steward of the environment.

Over 50% of wetlands in Colorado have been already been destroyed due to agricultural, industrial/commercial and residential development. At the very least the developer should be required to prepare an environmental assessment prior to approval of the zoning variance request. Also, the city should require the developer to prepare a plan to mitigate the impact of its development by protecting wetlands either on the subject property or in offsite area.

Thank you for considering my recommendations.

Respectfully,

John Hamill (retired fish and wildlife biologist)

[412 Cobble Drive](#)

[Montrose, CO 81403](#)

Hamilldsrt50@msn.com

ORDINANCE NO. 2618

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, AMENDING THE ZONING DISTRICT DESIGNATION OF A PORTION OF THE TWO CREEKS ADDITION FROM "R-3," MEDIUM DENSITY DISTRICT WITH CONDITIONS TO "R-3," MEDIUM DENSITY DISTRICT WITH NO CONDITIONS

WHEREAS, Planning Commission met on March 8, 2023, to consider the rezoning of a portion of the Two Creeks Addition, City of Montrose; and

WHEREAS, the motion carried, and the Planning Commission has recommended to the City Council the zoning changes provided herein; and

WHEREAS, the City Council has determined that such zoning will be consistent with the public health, safety and welfare, the City's Master Plan and changed conditions in the area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, that:

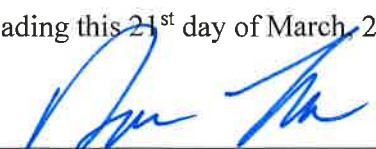
SECTION 1:

The Official Zoning Map is amended to designate a portion of the Two Creeks Addition, more particularly described on "**Exhibit A**," attached hereto and incorporated herein by this reference, as an "R-3," Medium Density District, with no conditions, according to the Official Zoning Map.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its passage on first reading on Tuesday, the 21st day of March, 2023, at the hour of 6:00 p.m. at Montrose Police Department Community Room at 434 S. 1st Street, in Montrose, Colorado.

INTRODUCED, READ and PASSED on first reading this 21st day of March, 2023.

ATTEST:


David Frank, Mayor


Lisa DelPiccolo, City Clerk



INTRODUCED, READ and ADOPTED on second reading this 4th day of April, 2023.

ATTEST:

David Frank, Mayor

Lisa DelPiccolo, City Clerk

EXHIBIT "A"

A TRACT OF LAND SITUATED IN THE NW1/4 SECTION 8, TOWNSHIP 48 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF MONTROSE, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID NW1/4 SECTION 8; THENCE NORTH 01°52'11" EAST ALONG THE WEST LINE OF SAID NW1/4 SECTION 8, 2318.34 FEET; THENCE SOUTH 88°08'58" EAST 30.15 FEET TO THE SOUTHWEST CORNER OF COBBLE CREEK SUBDIVISION FILING NO. 4 RECORDED AT RECEPTION NO. 685496; THENCE THE FOLLOWING 4 COURSES ALONG THE BOUNDARY OF COBBLE CREEK SUBDIVISION FILING NO. 4:
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NORTH 71°56'13" EAST 88.27 FEET;
SOUTH 88°22'38" EAST 101.58 FEET TO THE NORTHWEST CORNER OF COBBLE CREEK SUBDIVISION FILING NO. 5 RECORDED AT RECEPTION NO. 713931;
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NORTH 85°57'18" WEST 145.00 FEET;
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SOUTH 47°29'51" EAST 147.41 FEET;
SOUTH 82°52'05" EAST 230.00 FEET TO THE SOUTHWEST CORNER OF SAID COBBLE CREEK SUBDIVISION FILING NO. 4;
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NORTH 79°29'13" EAST 254.22 FEET;
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SOUTH 46°54'04" EAST 217.27 FEET;
90.48 FEET ALONG THE ARC OF A CURVE TO THE LEFT, WITH A RADIUS OF 125.00 FEET, A CENTRAL ANGLE OF 41°28'27" AND A CHORD OF SOUTH 67°38'21" EAST 88.52 FEET;
SOUTH 88°22'38" EAST 210.31 FEET;
31.41 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, WITH A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 89°58'58" AND A CHORD OF SOUTH 43°22'38" EAST 28.28 FEET;
SOUTH 88°28'38" EAST 30.00 FEET TO THE SOUTHEAST CORNER OF SAID COBBLE CREEK SUBDIVISION FILING NO. 4 AND A POINT ON THE EAST LINE OF SAID NW1/4 SECTION 8;
THENCE SOUTH 01°37'23" WEST ALONG THE WEST LINE OF SAID NW1/4 SECTION 8, 763.93 FEET TO THE NORTHEAST CORNER OF KELLY MURPHY MINOR SUBDIVISION & REPLAT OF COLLINS MINOR SUBDIVISION, RECORDED AT RECEPTION NO. 600440;
THENCE THE FOLLOWING 3 COURSES ALONG THE BOUNDARY OF SAID KELLY MURPHY MINOR SUBDIVISION & REPLAT OF COLLINS MINOR SUBDIVISION:
NORTH 88°30'13" WEST 740.45 FEET;
SOUTH 01°28'40" WEST 441.05 FEET;
SOUTH 88°48'10" EAST 709.35 FEET TO A POINT ON THE WEST LINE OF RIGHT OF WAY DEEDED TO MONTROSE COUNTY BOOK 600 PAGE 651;
THENCE ALONG SAID RIGHT OF WAY SOUTH 01°37'23" WEST 586.81 FEET;
THENCE LEAVING SAID RIGHT OF WAY NORTH 89°06'42" WEST 477.12 FEET;
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THENCE NORTH 89°01'46" WEST ALONG THE SOUTH LINE OF SAID NW1/4 SECTION 8, 2146.28 FEET BACK TO THE POINT OF BEGINNING,
COUNTY OF MONTROSE, STATE OF COLORADO.



CITY OF MONTROSE
Planning Services

MEMO

TO: City Council
FROM: Jace Hochwalt, Planning Manager
DATE: April 4, 2023
RE: Miami Business Park Rezone

ATTACHMENTS:

- Exhibit A: Maps
- Exhibit B: Photos of Project Area
- Exhibit C: Zoning Code Excerpt
- Exhibit D: Applicant Rezone General Project Report

City Council Consideration:

City Council is considering the approval of the Miami Business Park Rezone. City Council will consider all of the information in this memo in making a decision.

Applicant: ESC Partners LLC

Application Background:

The Applicant is proposing a request to rezone approximately 5.56 acres from “OR” Office-Residential District to “R-4” High Density District. The site area comprises 8 parcels and a trail and detention tract located along the 600 block of E Star Court, adjacent to the south of the Star Drive-In Theatre. The Applicant has expressed interest in constructing a multi-building multi-family development as outlined in their General Project Report (Exhibit D). In the current zoning district of OR, the Applicant is required to go through a Conditional Use Permit process for any multi-family construction, and density is limited to approximately 15.0 units/acre. However, the R-4 zone district would allow multi-family proposals as a use by right (a Planned Development is required if there are multiple buildings proposed on one parcel). Furthermore, the R-4 zone district



would allow a higher density of 18.9 units/acre. For these reasons, the Applicant is seeking a rezone from “OR” Office-Residential District to “R-4” High Density District. The property is more particularly described as follows:

LOTS 5, 6, 7, 8, 9, 10, AND 11, MIAMI BUSINESS PARK SUBDIVISION, FILING NO. 2, ACCORDING TO THE PLAT RECORDED OCTOBER 2, 2007 UNDER RECEPTION NO. 781539, COUNTY OF MONTROSE, STATE OF COLORADO.

AND

TRACT 1 AND 2, OPEN SPACE, MIAMI BUSINESS PARK SUBDIVISION, FILING NO. 2, ACCORDING TO THE PLAT RECORDED OCTOBER 2, 2007 UNDER RECEPTION NO. 781539, COUNTY OF MONTROSE, STATE OF COLORADO.

ALSO

LOT 12, MIAMI BUSINESS PARK SUBDIVISION, FILING NO. 1, ACCORDING TO THE PLAT RECORDED OCTOBER 29, 2004 UNDER RECEPTION NO. 727951, COUNTY OF MONTROSE, STATE OF COLORADO.

Proposed Zoning: “R-4” High Density District

Staff Analysis:

1. Municipal Code, Section, 4-4-29(A), Rezoning.

“Amendments to the Official Zoning Map involving any change in the boundaries of an existing zoning district, or changing the designation of a district, shall be allowed only upon findings as follows:

- a) The amendment is not adverse to the public health, safety and welfare; and
- b) The amendment is in substantial conformity with the master plan or,
 - i. The existing zoning is erroneous, or
 - ii. Conditions in the area affected or adjacent areas have changed materially since the area was last zoned.”

2. The Planning Commission should consider the merits of the proposed rezone only and make a recommendation to City Council based on whether it should be rezoned to “R-4” High Density District. The current zoning is “OR” Office-Residential District.

- Zoning Regulations. The "R-4" High Density District is intended to provide for high density multiple-family residences and to allow variable densities. This allows variety in the types of residences. (Section 4-4-8)



- Exhibit C includes an excerpt from the Municipal Code showing uses by right in the "R-4" Medium Density District.
3. The properties zoned immediately adjacent to the south and west are R-3 (Medium Density District), property to the east is zoned B-2 (Highway Commercial District) and OR (Office-Residential), and property to the north is zoned R-4 (High Density District).
 4. General Conformance with the Comprehensive Plan:
 - The Comprehensive Plan Future Land Use Map (Chapter 5) designates the areas to be rezoned as Residential Mixed Density Medium. The Residential Mixed Density Medium district provides for a variety of residential types mixed within a neighborhood, including single-family homes, townhomes, duplexes and triplexes.
 - Goal LU (Land Use) 3: Infrastructure: Manage growth to ensure sufficient and fiscally responsible infrastructure while minimizing future City operation and maintenance costs.
 - a) Objective 3.1: Plan for a sustainable variety of land uses, densities, and regulations that meet the demand for each type of use and provide a compatible transition between land uses.
 - b) Objective 3.6: Encourage compact and contiguous development in growth-efficient areas (in close proximity to existing streets, utilities, and public services) within the Urban Growth Boundary, including infill and redevelopment of older neighborhoods.
 - Goal LU (Land Use) 5: Infill & Redevelopment: Promote higher density infill and redevelopment of underutilized sites and support development in areas that can be easily accessed by foot, bike, and/or public transit.
 - Goal HN (Housing & Neighborhoods) 1: Housing Variety. Encourage a variety of housing types, tenure, and density to meet the needs of the community.
 - a) Objective 1.1 Promote a mix of residential housing types including single-family homes on a variety of lot sizes, multi-family housing, townhomes, apartments, senior housing, and transitional housing.
 - b) Objective 1.2 Encourage a variety of housing densities (low, medium, high) throughout the community, including mixed-density neighborhoods.
 - Goal HN (Housing & Neighborhoods) 2: Affordable Housing. Increase access to affordable housing.
 - a) Objective 2.1 Encourage a mix of housing price ranges, thereby providing choices for residents of all incomes and ages.



- b) Objective 2.2 Offer incentives and information to encourage affordable housing in new developments.
 - c) Objective 2.3 Support and work with housing agencies, organizations, private developers, and businesses to increase the amount of workforce housing.
 - As reflected above, Staff finds that the proposed zoning meets numerous goals and objectives of the Comprehensive Plan.
5. The “R-4” zoning designation does not appear to be adverse to the public health, safety and welfare, and is consistent with Municipal Code requirements, zoning in the surrounding area, and the Comprehensive Plan.

Planning Commission/Staff Recommendation:

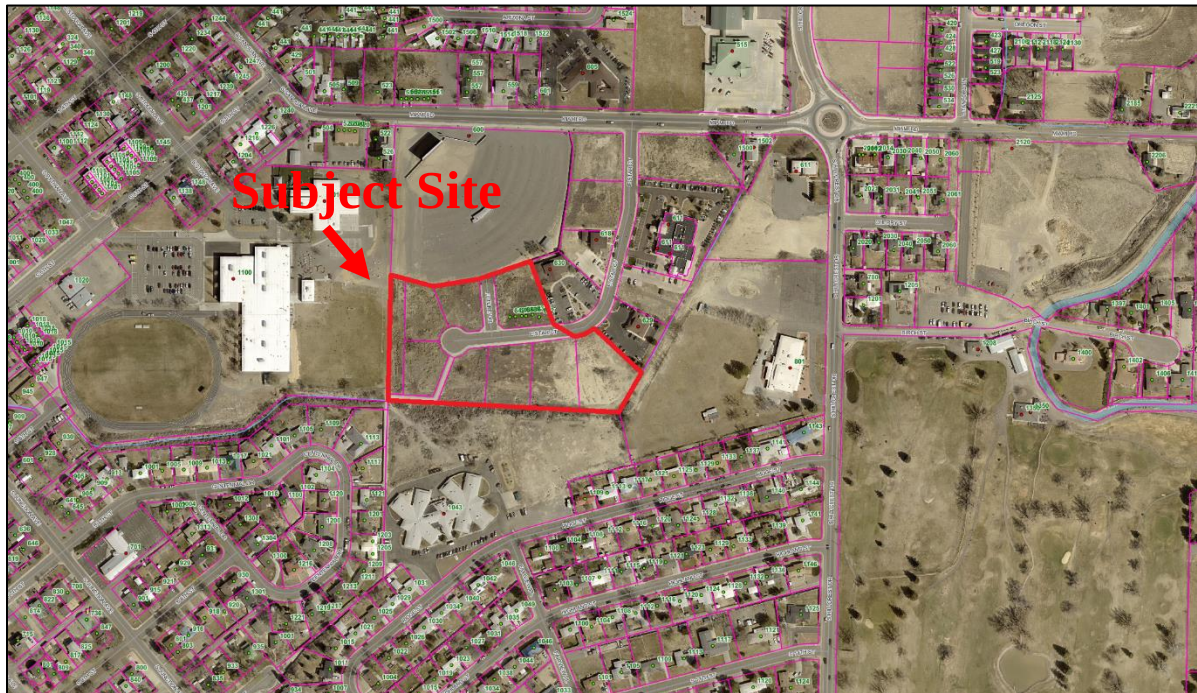
Planning Commission heard this item at their March 8, 2023 meeting and voted to unanimously approve the request, finding that the rezone criteria has been met; the request is in compliance with the Comprehensive Plan; it is compatible with existing uses in the surrounding area; and therefore, recommends approval of the "R-4" High Density District.

City Council Options:

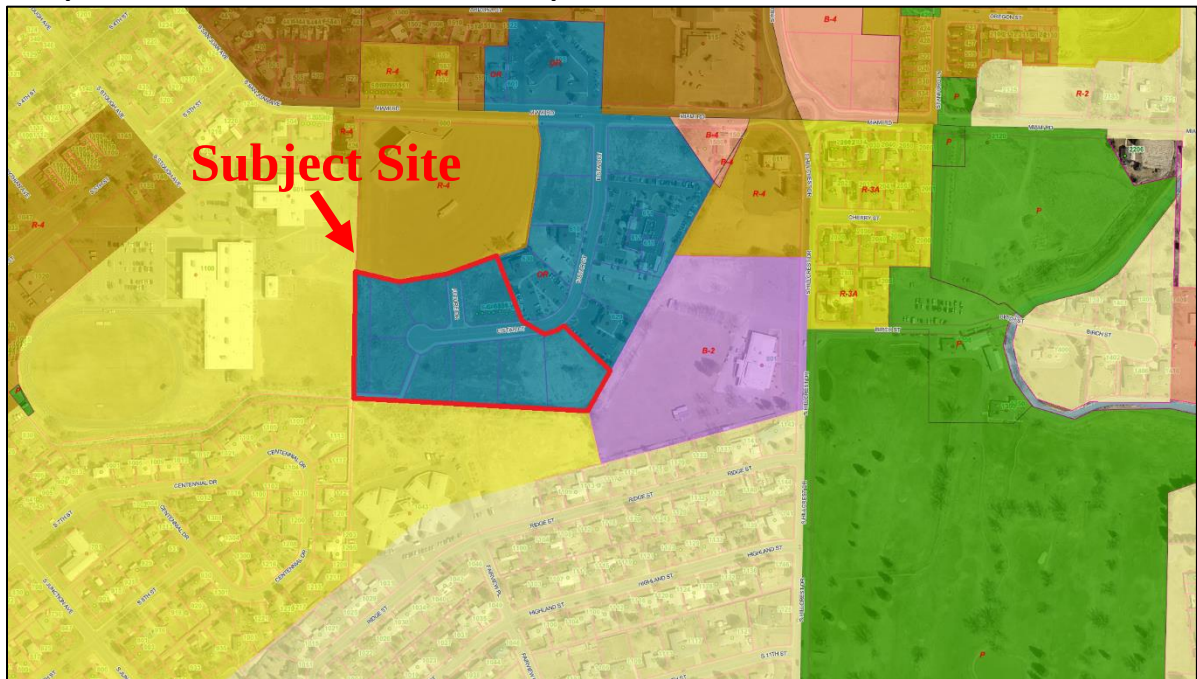
1. Accept the Planning Commission recommendation and approve the rezone.
2. Deny the request for a rezone and schedule a de novo hearing. The hearing date should be established in consultation with the City Attorney.



EXHIBIT A: Maps
Vicinity Map



Comprehensive Plan Future Land Use Map



Comprehensive Plan Future Land Use Map (Zoomed In)

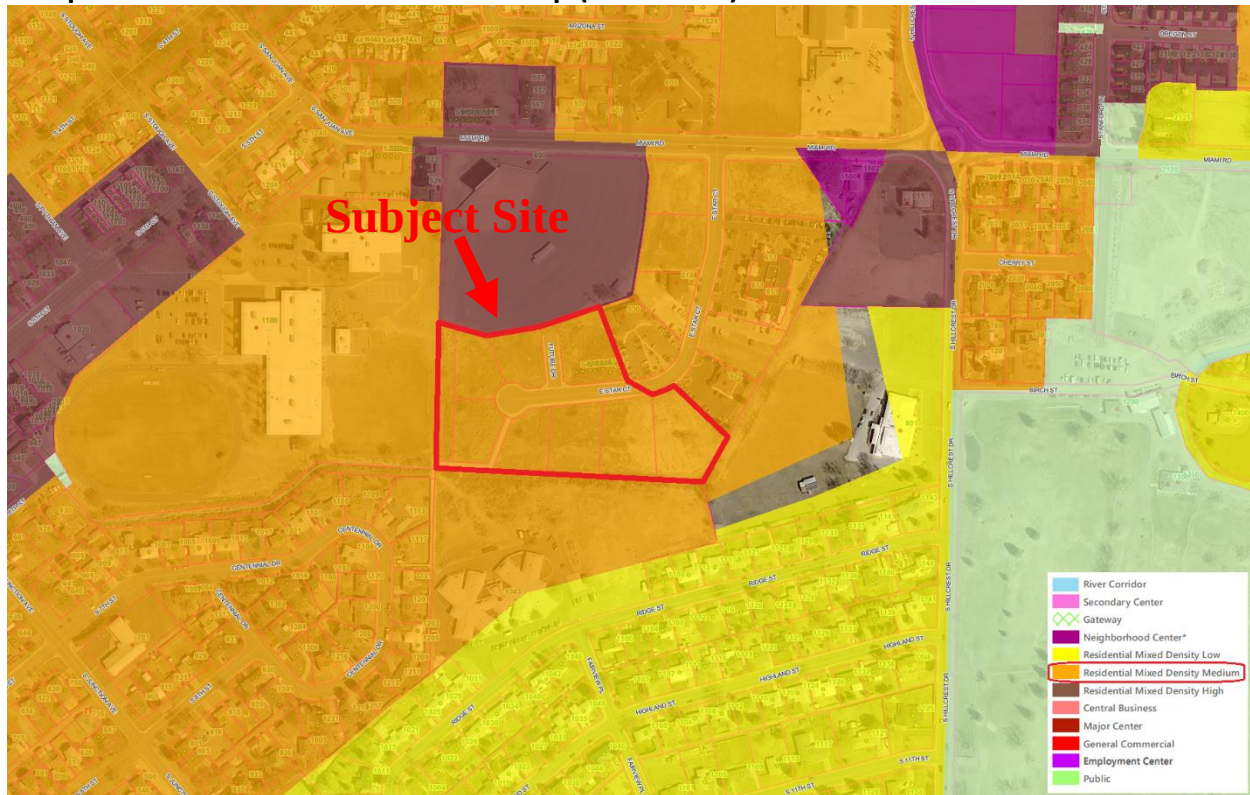


EXHIBIT B - SITE PHOTOS



Lots 10-12



Lots 8-9



Lots 7-8



Lots 6-7



6-plex under construction on Lot 5

EXHIBIT C: Zoning Code Excerpt

Sec. 4-4-8. "R-4" High Density District.

- (A) *Intent.* The "R-4" High Density District is intended to provide for high density multiple-family residences and to allow variable densities. This allows variety in the types of residences.
- (B) *Uses by Right.*
- (1) Single-family homes, duplexes, and multiple-family residences.
 - (2) Public utility service facilities.
 - (3) Government buildings and facilities.
 - (4) Parks and recreation facilities owned or operated by a homeowner association.
 - (5) Places of worship.
 - (6) Accessory uses.
 - (a) Bed and breakfast operations operated solely by the residents of a residence providing no more than four bedrooms for rent in the dwelling unit, and the only meal provided on the premises shall be breakfast to the renters. The lot shall be at least 6,250 square feet and at least 3,125 square feet per rental bedroom.
 - (7) Short-term rentals.
 - (8) Family child care home.
- (C) *Conditional Uses.*
- (1) Skilled nursing and assisted living facilities.
 - (2) Childcare facilities.
 - (3) Schools.

(Ord. No. 2472 , § 4-4-8, 5-7-2019; Ord. No. 2561 , 10-19-2021)



EXHIBIT D - GENERAL PROJECT REPORT



DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING

125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.del-mont.com ▼ service@del-mont.com

Jace Hochwalt/William Reis
City of Montrose Planning Department
433 S. First Street
Montrose, CO 81401

January 24, 2023

Re: Miami Business Park - Re-Zone Application

Jace/William,

As you are aware, the owners of the vacant land located within the western end of Miami Business Park are currently in the process of developing lots 5-12 into multifamily residences. To date, conditional use permits have been applied for and granted to allow multifamily on Lots 5 & 12, with a 6-plex currently under construction on Lot 5. A 4-plex is planned on Lot 6 and has submitted for Site Development but is on-hold while this re-zone application is processed. It is the desire to continue multifamily development on the remaining lots and the owners would like to re-zone the property to R-4, changing from existing zoning of OR, to allow multifamily as a use by right which would avoid a CUP on every lot moving forward, saving everyone time and effort. City of Montrose Site Development procedures will still be required for multifamily buildings but the planning and approval process will be removed for the CUP process.

Included with this letter is a conceptual layout of how the current owners envision the remaining property being utilized. Overall, they would like to continue the 2-6 plex units, similar to what is under construction, for the majority of the property and potentially a 32-unit building located on Lots 11-12. The current concept layout results in a total of 56 units which is well short of the allowable 78 units allowed under R-4 zoning.

Please let us know if you have any questions or need more information.

Sincerely,

David W. Schieldt, P.E.
Vice President, Del-Mont Consultants, Inc.

24 UNITS - (2-PLEX / 4-PLEX)
32 UNITS - (MULTI-FAMILY)
56 UNITS TOTAL

**EXISTING
4 UNITS**

**EXISTING
6 UNITS**

32 UNITS

ESC PARTNERS, LLC
STAR COURT DEVELOPMENT
MONTROSE, COLORADO

CONCEPTUAL LAYOUT

DMC JOB NO.: 22088

SHEET NO.: 1

OF 1 SHEETS



DEL-MONT CONSULTANTS, INC.
ENGINEERING ▼ SURVEYING
25 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX
www.del-mont.com ▼ service@del-mont.com

DESIGNED BY:	DWS/PJI	SCALE:	AS NOTED	CHECKED BY:	DWS
DRAWN BY:	PJI	FILE NAME:	220806_SKETCH4.DWG	DATE ISSUED:	1/9/2023

[illegible]

ORDINANCE NO. 2619

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, AMENDING THE ZONING DISTRICT DESIGNATION OF LOTS 5 - 12 AND TRACTS 1 AND 2 IN THE MIAMI BUSINESS PARK SUBDIVISION FROM "OR," OFFICE-RESIDENTIAL DISTRICT TO "R-4," HIGH DENSITY DISTRICT

WHEREAS, the Planning Commission met on March 8, 2023, to consider a rezoning of Lots 5 – 12 and Tracts 1 and 2 in the Miami Business Park Subdivision, City of Montrose; and

WHEREAS, the motion carried, and the Planning Commission has recommended the zoning changes provided herein; and

WHEREAS, the City Council has determined that such zoning will be consistent with the public health, safety and welfare, the City's Master Plan and changed conditions in the area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, that:

SECTION 1:

The Official Zoning Map is amended to designate Lots 5-12 and Tracts 1 and 2 of the Miami Business Park Subdivision, more particularly described as:

LOTS 5, 6, 7, 8, 9; 10, AND 11, MIAMI BUSINESS PARK SUBDIVISION, FILING NO. 2, ACCORDING TO THE PLAT RECORDED OCTOBER 2, 2007 UNDER RECEPTION NO. 781539, COUNTY OF MONTROSE, STATE OF COLORADO.

AND

TRACT 1 AND 2, OPEN SPACE, MIAMI BUSINESS PARK SUBDIVISION, FILING NO. 2, ACCORDING TO THE PLAT RECORDED OCTOBER 2, 2007 UNDER RECEPTION NO. 781539, COUNTY OF MONTROSE, STATE OF COLORADO.

ALSO

LOT 12, MIAMI BUSINESS PARK SUBDIVISION, FILING NO. 1, ACCORDING TO THE PLAT RECORDED OCTOBER 29, 2004 UNDER RECEPTION NO. 727951, COUNTY OF MONTROSE, STATE OF COLORADO.

as an "R-4," High Density District, according to the Official Zoning Map.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its passage on first reading on Tuesday, the 21st day of March, 2023, at the hour of 6:00 p.m. at Montrose Police Department Community Room at 434 S. 1st Street, in Montrose, Colorado.

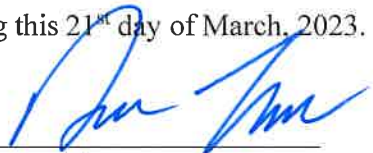
INTRODUCED, READ and PASSED on first reading this 21st day of March, 2023.

ATTEST:



Lisa DelPiccolo, City Clerk




David Frank, Mayor

INTRODUCED, READ and ADOPTED on second reading this 4th day of April, 2023.

ATTEST:

David Frank, Mayor

Lisa DelPiccolo, City Clerk



CITY OF MONTROSE
Planning Services

MEMO

TO: City Council
FROM: Jace Hochwalt, Planning Manager
DATE: April 4, 2023
RE: Dry Cedar Creek Final Planned Development

ATTACHMENTS

- Exhibit A: Area Maps
- Exhibit B: Excerpts from City of Montrose Municipal Code
- Exhibit C: Final Planned Development Plan
- Exhibit D: Site Development Plan

Public notice requirements have been fulfilled in accordance with Section 4-4-31(D) of the City of Montrose Municipal Code. A sign was posted on the property, letters sent to property owners within 100 feet, and an ad appeared in the Montrose Daily Press.

City Council Consideration:

City Council is considering approval of the Dry Cedar Creek Final Planned Development. City Council will consider all of the information in this memo in making a decision.

Applicant: RealAmerica Development, LLC

Application Background:

The Residences at Dry Cedar Creek is a proposed 60-unit multi-family development in southern Montrose. The site does not have an address, but is situated on the south side of Ogden Road, to the east of the Ogden Road and Woodgate roundabout, and directly adjacent to the east of the Montrose Recreation Center. The entire parcel is approximately 7.34 acres in size, although the Planned Development (PD) area proposed is the area north of Dry Cedar Creek, which encompasses 4.41 acres. The property is zoned "R-3A" Medium High Density District. The development proposal (as shown on the Site Plan attached as Exhibit D) includes three buildings. Building 1 is a three-story multi-unit residential building proposed to contain 36 units. Building 2 is a three-story multi-unit residential building proposed to contain 24 units. The third building is a clubhouse that will include amenities for the residents. The site is proposed to contain approximately 1.82 acres of open space, which accounts for 41.3% of the Planned Development area.



The Preliminary Planned Development was reviewed and approved by City Council at their March 21, 2023 meeting.

Planned Development Application Details:

Based on the current R-3A zoning, multi-family housing is allowed on the subject parcel. The applicant may place one apartment building on the lot without being required to go through the Planned Development (PD) process according to the City of Montrose Municipal Code. However, if the Applicant seeks to build more than one building on the lot (with each building containing more than one residential dwelling unit), the Planned Development process is required. The Planned Development process is a way for development of large areas of land to occur in a coordinated and planned manner that may include parks, open space areas, clustered and multi-building residential development, shared infrastructure and shared amenities that otherwise might not be achieved if smaller parcels were developed independently. Approval of a Planned Development by the City is purely discretionary. If the City and the Applicant do not agree on all required conditions and the plan, the City may deny approval, or the City may unilaterally impose conditions. If the Applicant does not accept all conditions, that development must adhere to standard subdivision and zoning requirements.

For this application request, City staff is noting that a minimum setback of two feet is allowed from the 50-foot wide Uncompahgre Valley Water Users Association (UVWUA) canal easement that sits on the eastern edge of the site. Should this easement ever be claimed in fee simple by the UVWUA or successors, then the setback will be recognized as conforming at a two-foot setback instead of the standard 10-foot side yard setback. Additionally, the Planned Development process is required to allow for the development, which includes multiple residential buildings.

Planned Development Process:

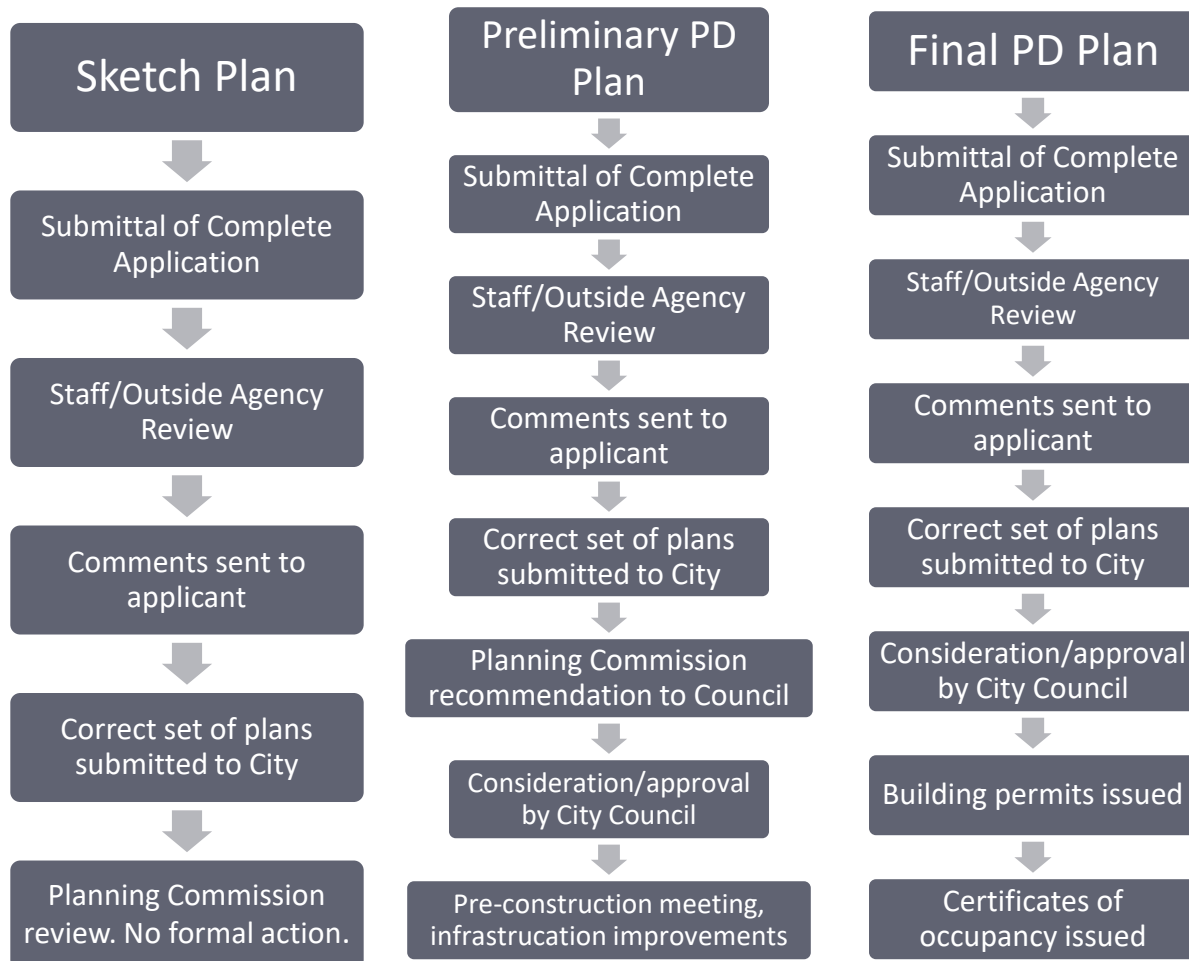
The City of Montrose Municipal Code outlines the process and standards for Planned Development applications. The City Council should consider whether the project meets the standards outlined within Section 4-4-24 and summarized below:

- A Planned Development must be in substantial conformity with the City's Master Plans.
- A minimum of 20 percent of the gross area of the Planned Development must be reserved as parks or open space.
- The Planned Development Plan must reasonably preserve and protect rural character, open space, scenic views, drainage areas and other valued resources.
- Residences may be clustered, including the use of duplexes and multifamily residences.
- Conditions may be imposed as appropriate to assure that the PD plan is consistent with the City's Master Plans and promotes the public health, safety and welfare.
- Flexibility in the scope and design of required improvements and design standards may be allowed to provide for innovative urban design which promotes the public health,



safety and welfare.

The City of Montrose Municipal Code Section 4-4-24 (Exhibit B) outlines the process and standards for Planned Development applications. The following flowchart shows this overall process.



Staff Analysis:

1. Planned Development Regulations:

- a. Municipal Code: Section 4-4-24 (Exhibit B): The Planned Development application has been reviewed by City staff and partner agencies and meets the City's design standards. A minimum of 20 percent of the gross area of the Planned Development must be preserved as parks or open space, and must reasonably preserve and protect rural character, open space, scenic views, drainage areas and other valued resources.
 - i. As previously indicated, the total Planned Development area proposed for



this application is 4.41 acres. Of that, 1.82 acres (41.3%) will be retained as open space. This open space area is better depicted in Exhibit C, and encompasses Dry Cedar Creek to the south, and the drainage and irrigation canal to the east. As such, staff finds this proposal meets the 20% open space minimum requirement, and also preserves and protects the character of the area by not modifying some of the natural and drainage features that currently exist on site.

2. Relevant Comprehensive Plan and Municipal Code References: To assist the Planning Commission, staff has provided the following relevant information from the City of Montrose Envision 2040 Comprehensive Plan and Municipal Code.
 - a. A Comprehensive Plan is not legally binding. It provides guidance for zoning and other land use decisions. It is possible for sections of the Comprehensive Plan to conflict, and it is reasonable that a decision may not satisfy every aspect outlined within the Comprehensive Plan.
 - b. The Future Land Use Map within the Comprehensive Plan illustrates general, somewhat flexible locations and extents for various land uses and densities.
 - c. The Municipal Code and Zoning regulations specify land uses, densities, bulk and height requirements, setbacks, and other development standards that are allowed within each zoning district in order to achieve the intent of the zoning district.
 - d. Development on this parcel may occur in accordance with the approved zoning and should also be in general conformance with the Comprehensive Plan.
3. Comprehensive Plan:
 - a. The Comprehensive Plan Future Land Use Map (Chapter 5) designates this area as Residential Mixed Density Low. This district provides primarily for single-family homes, as well as small amounts of attached residential dwelling units (such as duplexes and even small groups of townhomes).
 - b. Goal LU (Land Use) 3: Infrastructure: Manage growth to ensure sufficient and fiscally responsible infrastructure while minimizing future City operation and maintenance costs.
 - i. Objective 3.1: Plan for a sustainable variety of land uses, densities, and regulations that meet the demand for each type of use and provide a compatible transition between land uses.
 - ii. Objective 3.6: Encourage compact and contiguous development in growth-efficient areas (in close proximity to existing streets, utilities, and public services) within the Urban Growth Boundary, including infill and redevelopment of older neighborhoods.



- c. Goal LU (Land Use) 5: Infill & Redevelopment: Promote higher density infill and redevelopment of underutilized sites and support development in areas that can be easily accessed by foot, bike, and/or public transit.
- d. Goal HN (Housing & Neighborhoods) 1: Housing Variety. Encourage a variety of housing types, tenure, and density to meet the needs of the community.
 - i. Objective 1.1 Promote a mix of residential housing types including single-family homes on a variety of lot sizes, multi-family housing, townhomes, apartments, senior housing, and transitional housing.
 - ii. Objective 1.2 Encourage a variety of housing densities (low, medium, high) throughout the community, including mixed-density neighborhoods.
- e. Goal HN (Housing & Neighborhoods) 2: Affordable Housing. Increase access to affordable housing.
 - i. Objective 2.1 Encourage a mix of housing price ranges, thereby providing choices for residents of all incomes and ages.
 - ii. Objective 2.2 Offer incentives and information to encourage affordable housing in new developments.
 - iii. Objective 2.3 Support and work with housing agencies, organizations, private developers, and businesses to increase the amount of workforce housing.
- f. While the Future Land Use Map does reflect this area as Residential Mixed Density Low, it is noteworthy to mention that this property was recently rezoned in February of 2022 from R-2 (Low Density District) to R-3A (Medium High Density District). Based on all the preceding information, staff finds that the proposal is in substantial conformity with the Comprehensive Plan.

4. Zoning Regulations:

- a. The subject property is currently zoned R-3A (Medium High Density District). Per Section 4-4-7.1(A), the intent of the R-3A district is to provide an area which is suitable for single-family homes, duplexes and multifamily residences with intermediate overall density. This district provides for other uses which are compatible with such residential uses. Multi-family uses are a use by right in the R-3A district, with the exception that a Planned Development is required when multiple residential buildings are proposed, as outlined in Section 4-4-24(B)(1).
 - i. Per Section 4-4-22 of the Montrose Municipal Code. The dimensional requirements in the "R-3A" zoning district are included in the table on the following page:



	Minimum Lot				Minimum Setbacks				
District	Use	Width at Building Line	Depth	Size	Front	Rear	Side	Corner Lot	Maximum Building Height
R-3A	Single Family	N/A	N/A	6,250	15	25	5	15	35
	Duplex	N/A	N/A	9,375	15	25	5	15	35
	All Other	N/A	N/A	2,900 /unit	15	20	10	15	35

- b. Multi-family uses are a use by right in the R-3A zoning district. Based on the site area of 4.41 acres, the Applicant could accommodate up to 66 units. As such, the proposal of 60 units falls within the density requirements of the R-3A zone district. It should be noted that all setbacks are met as proposed, but should the UVWUA canal easement ever be claimed in fee simple ownership, one noted deviation from City Standards is that a minimum setback of two feet is allowed from said easement.

Staff Analysis of Planned Development:

The Dry Cedar Creek Final Planned Development Plan is in compliance with the Planned Development standards as set forth in the City of Montrose Municipal Code, Section 4-4-24. It is in substantial conformity with the City of Montrose Comprehensive Plan. The proposed use is compatible with existing zoning and general conditions in the area. It does not appear to be adverse to the public health, safety and welfare. Staff recommends approval of the Dry Cedar Creek Final Planned Development.

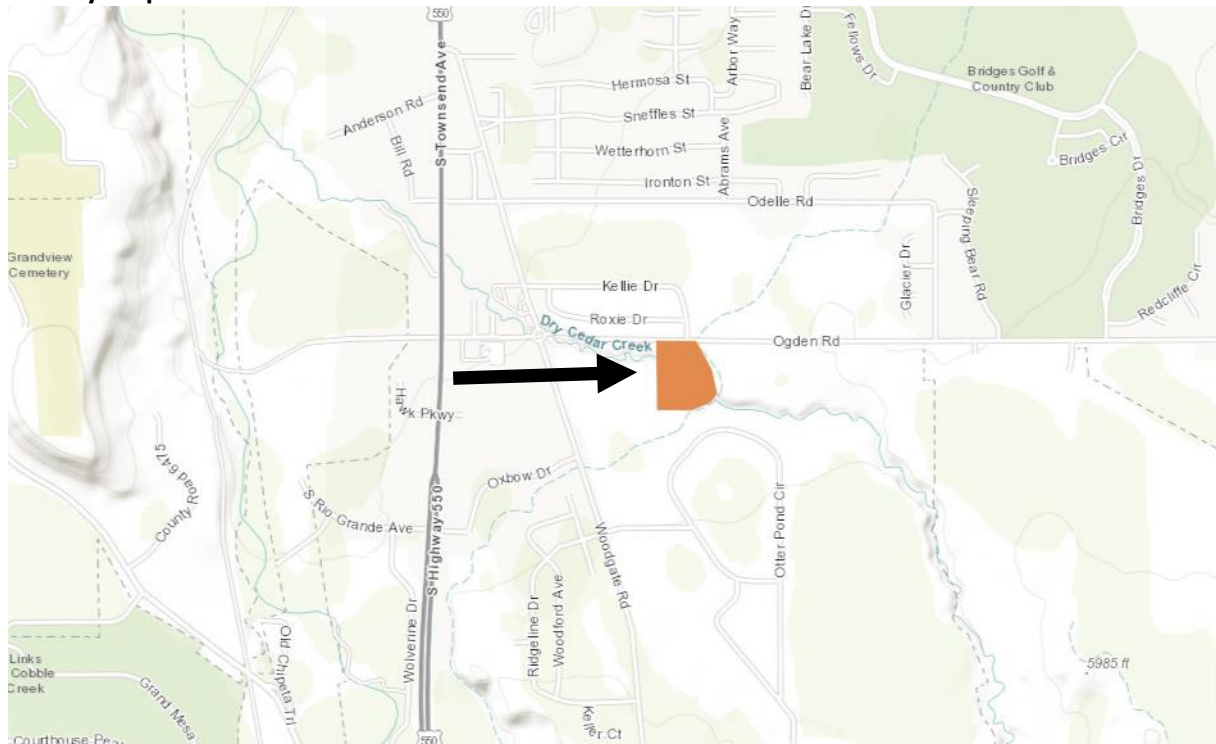
City Council Options for Dry Cedar Creek Final Planned Development:

1. Approve the Dry Cedar Creek Final Planned Development.
2. Disapprove the Dry Cedar Creek Final Planned Development if Council finds the requirements of the Planned Development regulations have not been met.

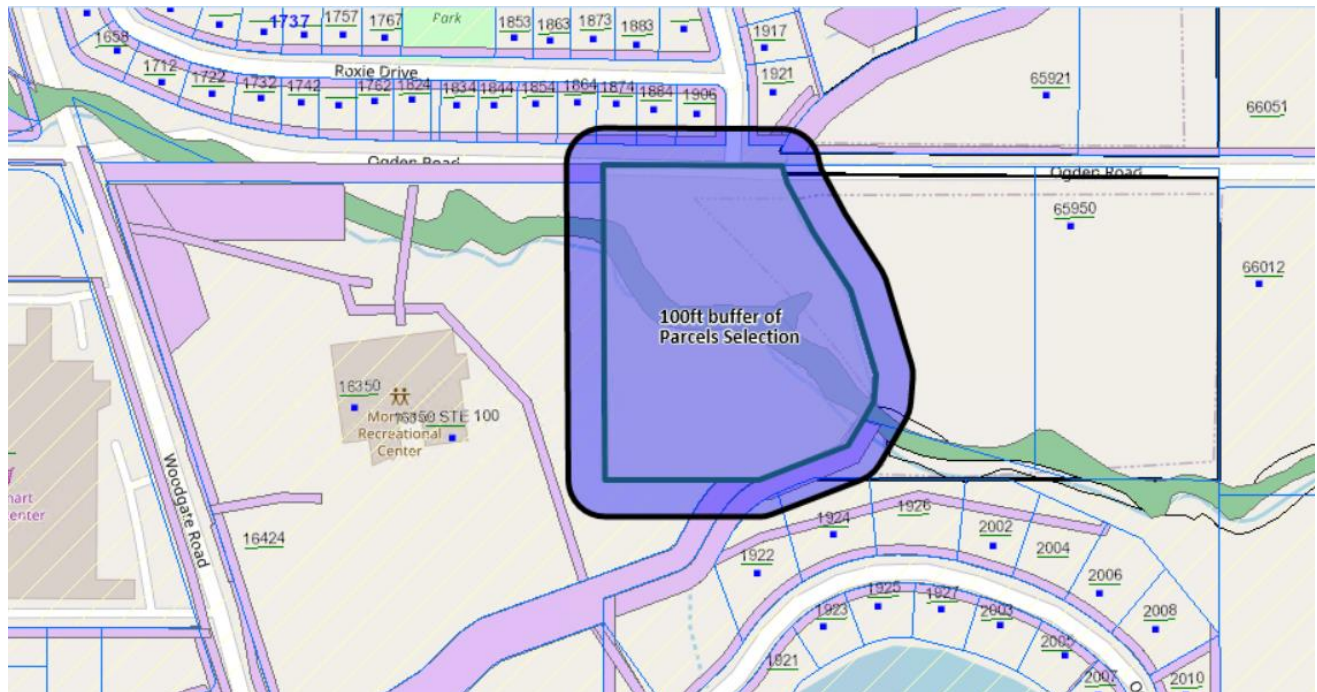


EXHIBIT A: Maps

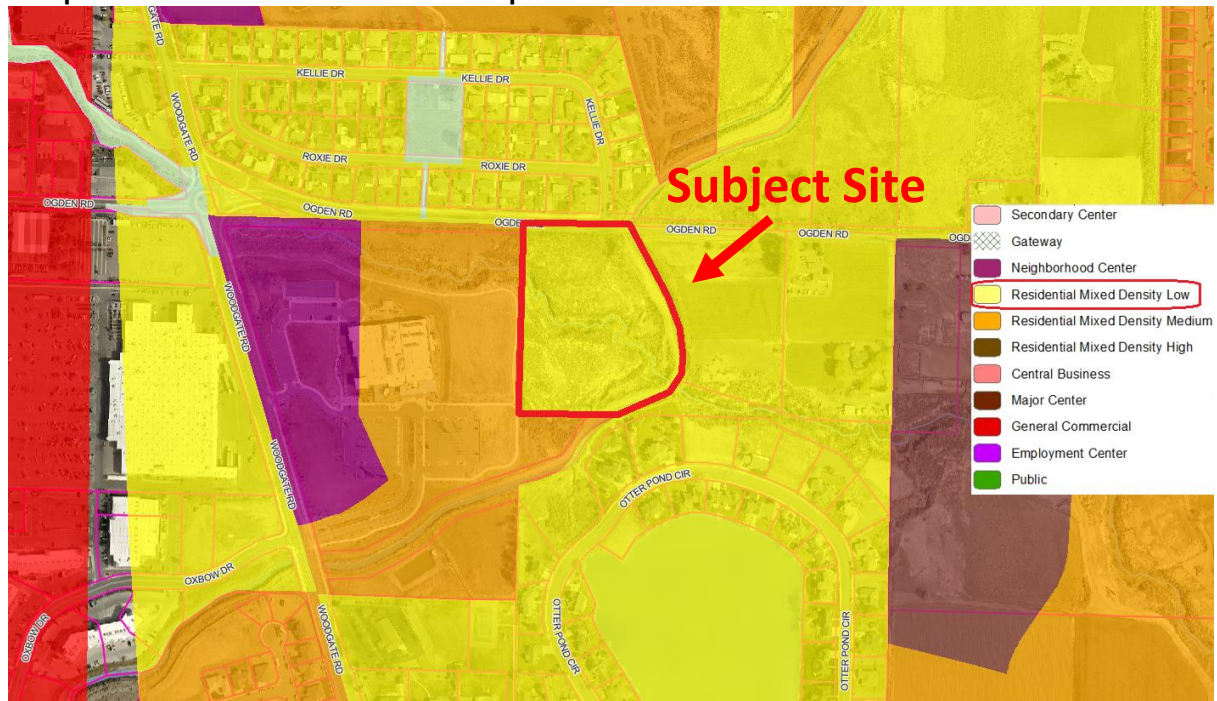
Vicinity Map



Notification Area



Comprehensive Plan Future Land Use Map



Current Zoning Map (R-3A – Medium High Density District)

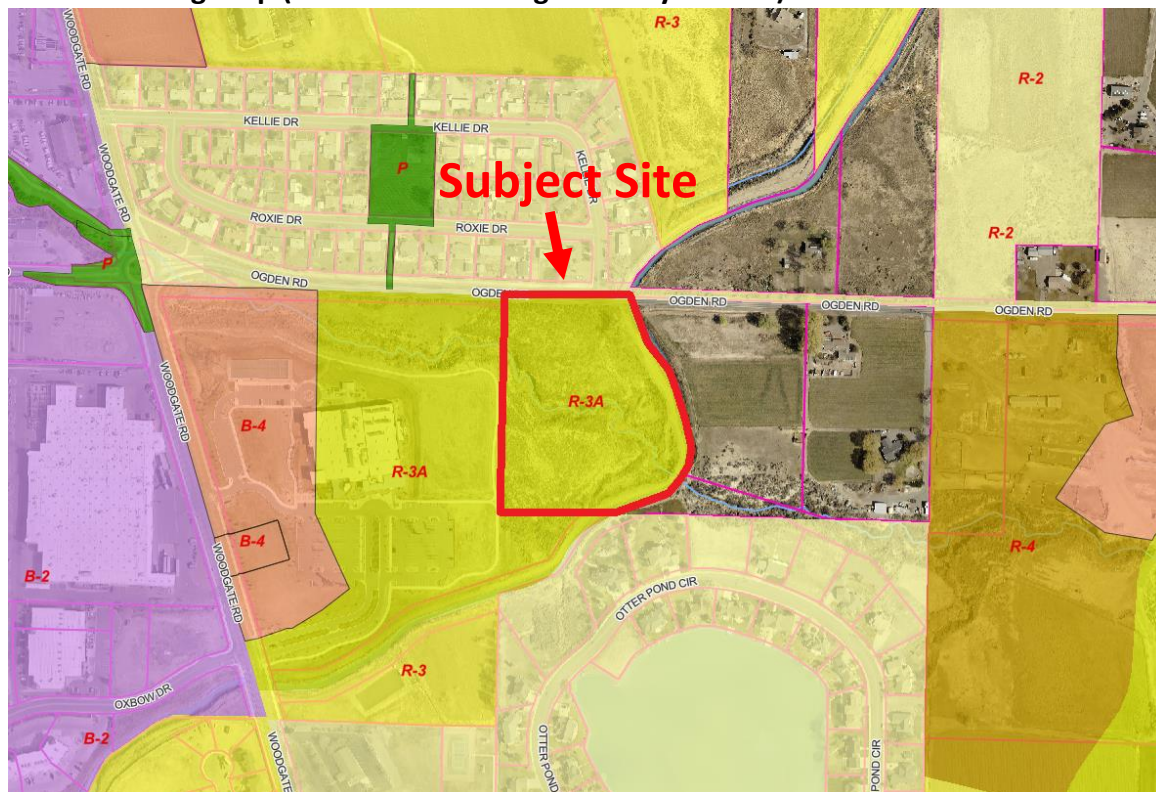


EXHIBIT B: Code Excerpts

Sec. 4-4-24. Planned Development (PD).

- (A) *Intent.* The intent of this Section is to encourage the development of tracts of land in accordance with an overall development plan by providing flexibility with respect to dimensional requirements of residential units and to provide for procedures and requirements for multi-building residential development. The City is authorized to enact and amend regulations for the establishment and control of planned developments pursuant to Article XX of the Colorado constitution and C.R.S. § 24-67-101, et. seq.
- (B) *General Provisions.*
- (1) A planned development must be in substantial conformity with the City's Master Plans. No development with more than one building, with one or more dwelling units therein, may be erected on a single lot, tract, parcel or site unless a PD Plan, providing therefore, is approved pursuant to this Section, or unless the property is subdivided pursuant to City Subdivision Regulations. Provided all other applicable municipal Code provisions are satisfied, this Subsection is not intended to prohibit the issuance of building permits for property that has obtained:
 - (a) A PD Plan;
 - (b) A subdivision Preliminary Plat; or
 - (c) An approved final plat.
 - (2) A minimum of 20 percent of the gross area of the planned development must be preserved as parks or open space.
 - (3) The PD Plan must reasonably preserve and protect rural character, open space, scenic views, drainage areas and other valued resources.
 - (4) Approval of a planned development by the City is purely discretionary. If the City and the applicant do not agree on all required conditions and the plan, the City may deny approval, or the City may unilaterally impose conditions. If the developer does not accept all conditions, that development must adhere to standard subdivision and zoning requirements.
- (C) *Permitted Uses in a PD.*
- (1) Parks, open space, growing of agricultural crops, golf courses; and "uses by right" and "conditional uses" in the zone or zones in which the PD is located shall be permitted when approved as part of the planned development.
 - (2) Modular buildings used for single family homes, duplexes or multiple family residences may be allowed in any zoning district, if approved as part of the planned development.
 - (3) Planned developments in the "RL" zoning district must consider and reasonably minimize adverse impacts on existing agricultural uses or other property in the area.
 - (4) Residences may be clustered, including the use of duplexes and multifamily residences.
 - (a) Planned developments containing six or fewer units may be approved by following the administrative procedures set forth in this Subsection (C)(4).
 - (b) The 20 percent open space requirement applicable to planned developments shall be optional for those planned developments meeting the standards set forth in Subsection (C)(4)(a) of this Section.



- (c) Developments containing airspace units with undivided interests in common areas, shall show and describe said airspace units in three dimensions on the plat thereof. Developments of this type shall be known as "condominiums" and shall be labeled as such on the plat thereof.
 - (d) Developments having zero lot-line setbacks, but containing non-airspace-only units, may not be required to show said units in three dimensions on the plat thereof, though certain party wall details may be required, in the City's sole discretion. Developments of this type shall be known as "townhomes" and shall be labeled as such on the plat thereof. Townhomes shall include the underlying real property, and shall typically include yard area not encumbered by limited or general common elements, when applicable.
- (5) Administrative PD Procedures:
- (a) All lots or tracts are adjacent to a dedicated and accepted public street;
 - (b) The lots are part of a subdivision or PD plat that has been previously approved and/or accepted by the City and recorded in the Montrose County Records;
 - (c) All improvements required by applicable City ordinances and regulations, including those related to PD Plans, are already in existence and available to serve each lot, or secured;
 - (d) No part of the Administrative PD has been approved as part of an Administrative PD within three years prior to the date of submission of the Administrative PD plat;
 - (e) No material changes to prior restrictions or easements are proposed; and
 - (f) Provisions of Section 4-7-9(B) through and including (E) shall apply.
 - (g) Approval of an Administrative PD by the City is purely discretionary. If the City and the applicant do not agree on all required conditions and the plan, the City may deny approval, or the City may unilaterally impose conditions. If the applicant does not accept all conditions, that development must adhere to standard subdivision or PD requirements, and proceed through the applicable approval process.
 - (h) Prior to any review of the Administrative PD, the applicant shall provide written consent of all property owners within the proposed Administrative PD plan area. To the extent only a portion of a prior-approved Administrative PD plan area is proposed to be amended by the Administrative PD Plan application, then only the consent of the property owners within such portion shall be required.

(D) *Dimensional Requirements, Densities.*

- (1) Dimensional requirements, except those relating to overall residential density, which would otherwise be required by the City Zoning Regulations, or other City regulations for the district affected, may be deviated from in accordance with the plan as approved, if the Review Board determines that such deviations will promote the public health, safety and welfare. The Review Board may impose conditions as necessary or appropriate. The total number of residential units shall not exceed the area of the site divided by the minimum lot sizes specified for the zoning districts included.

(E) *Review of Sketch, Preliminary and Final PD Plan.*

- (1) The sketch plan, preliminary plan and final PD plans shall be reviewed pursuant to the procedures and requirements for subdivisions as set out in Chapter 4-7. For the approval of any preliminary PD Plan or a substantial amendment to a PD plan, a hearing shall be held before City Council.
- (2) Prior to any review of the Sketch, Preliminary and Final PD Plan, the applicant shall provide written consent of all property owners within the proposed PD plan area. For the purposes of this Section 4-4-24, "PD plan area" is the entirety of the territory proposed to be included in a PD plan; provided, however, that for



applications for PD plan amendments, only the portion of the PD plan area being amended or affected shall constitute the PD plan area for such application.

- (3) Conditions may be imposed as appropriate to assure that the PD plan is consistent with the City's Master Plans and promotes the public health, safety and welfare.
- (4) The plan shall show the location, size, number of dwelling units, and other uses, and shall further set out the location of all parks, open space, parking areas, streets, sidewalks, trails, bike paths and other improvements and structures. All information necessary to show compliance with the requirements of this Section shall be submitted. Where appropriate, in lieu of exact locations, numbers and sizes, parameters or limits may be set out.
- (5) The planned development Plan as approved shall be recorded.
- (6) The final PD plan may be treated as a vested right if and only if the following procedures are met:
 - (a) A landowner seeking to have the PD plan vested shall submit a written application to the City requesting that the final PD plan be vested in terms of the rights relative to the type and intensity of usage thereof. The application for review and approval of the PD plan for the purpose of vesting the property may only be submitted and received by the City subsequent to the City approval of the preliminary plat concerning that same subdivision.
 - (b) If the requirements for the PD plan are otherwise met in accordance with all applicable City regulations and specifications, approval of the PD plan shall be deemed to create a vested right in said plan which shall be subject to the provisions and limitations of C.R.S. §§ 24-68-103, 104 and 105, as may be amended from time to time. For the purposes of these provisions, PD plan shall mean the same as a "site specific development plan" as defined in the aforementioned statutes.
 - (c) Vested rights shall include only the final PD plan as approved, and shall not include the sketch plan or preliminary plat thereof, architectural plans, construction plans, variances, conditional uses, public utility filings and other related documents.

(F) *Required Improvements.*

- (1) All PDs shall provide the same improvements as required for subdivisions in Chapter 4-7, and security therefore shall be provided as set out in Section 4-7-8.
- (2) All improvements shall be constructed in accordance with standard City design and construction specifications and standards, in substantial conformity with the PD plan, and in accordance with subdivision design standards as set out in Chapter 4-7 except as modified by the plan.
- (3) An entity shall be established or provided for ownership and maintenance of all facilities and open spaces, which are approved for common ownership or not dedicated to the City.
- (4) Flexibility in the scope and design of required improvements and design standards may be allowed to provide for innovative urban design which promotes the public health, safety and welfare. A public street shall be dedicated to the City and developed at the developer's cost to provide direct access to each building with residential units or to the parking lot serving the building.

(G) *Enforcement and Amendments.*

- (1) The PD plan may be enforced in accordance with or in the same manner as the provisions of the Planned Unit Development Act of 1972, as amended, C.R.S. 1973, § 24-67-101 et seq., as amended or in any lawful manner. In addition, no occupancy permit shall be issued for any building unless all site improvements to serve that unit and any commonly-owned facilities have been completed and approved unless security for completion is provided substantially similar to the security required for subdivision



improvements by Section 4-7-8 of the City's subdivision regulations, except that cash must be placed in the escrow account prior to issuance of the occupancy permit.

- (2) Amended PD plans may be submitted for review and approval in the same manner as the initial PD Plan. An applicant for an Amended PD plan shall submit written consent of the property owners of the portion of the PD plan area to which the application applies, prior to and as a condition of the initiation of review of the application. Written consent from all property owners within the prior-approved PD plan area is not required as part of the Amended PD plan application. Advance notice of any review of an Amended PD plan application by the Planning Commission shall occur pursuant to Chapter 4-7 with the added requirement that advance written notice shall be provided to all property owners of record within the prior-approved PD plan area, in addition to all property owners of record adjoining or within 100 feet of the proposed Amended PD plan area.

(Ord. No. 2472 , § 4-4-24, 5-7-2019; Ord. No. 2493 , 2-4-2020; Ord. No. 2589 , § 1, 5-17-2022)



CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO

DRY CEDAR CREEK PLANNED DEVELOPMENT LAND SUMMARY		
TOTAL ACREAGE:	REQUIRED OPEN SPACE:	TOTAL OPEN SPACE:
4.43 Acres	0.89 Acres	1.82 Acres

Notary

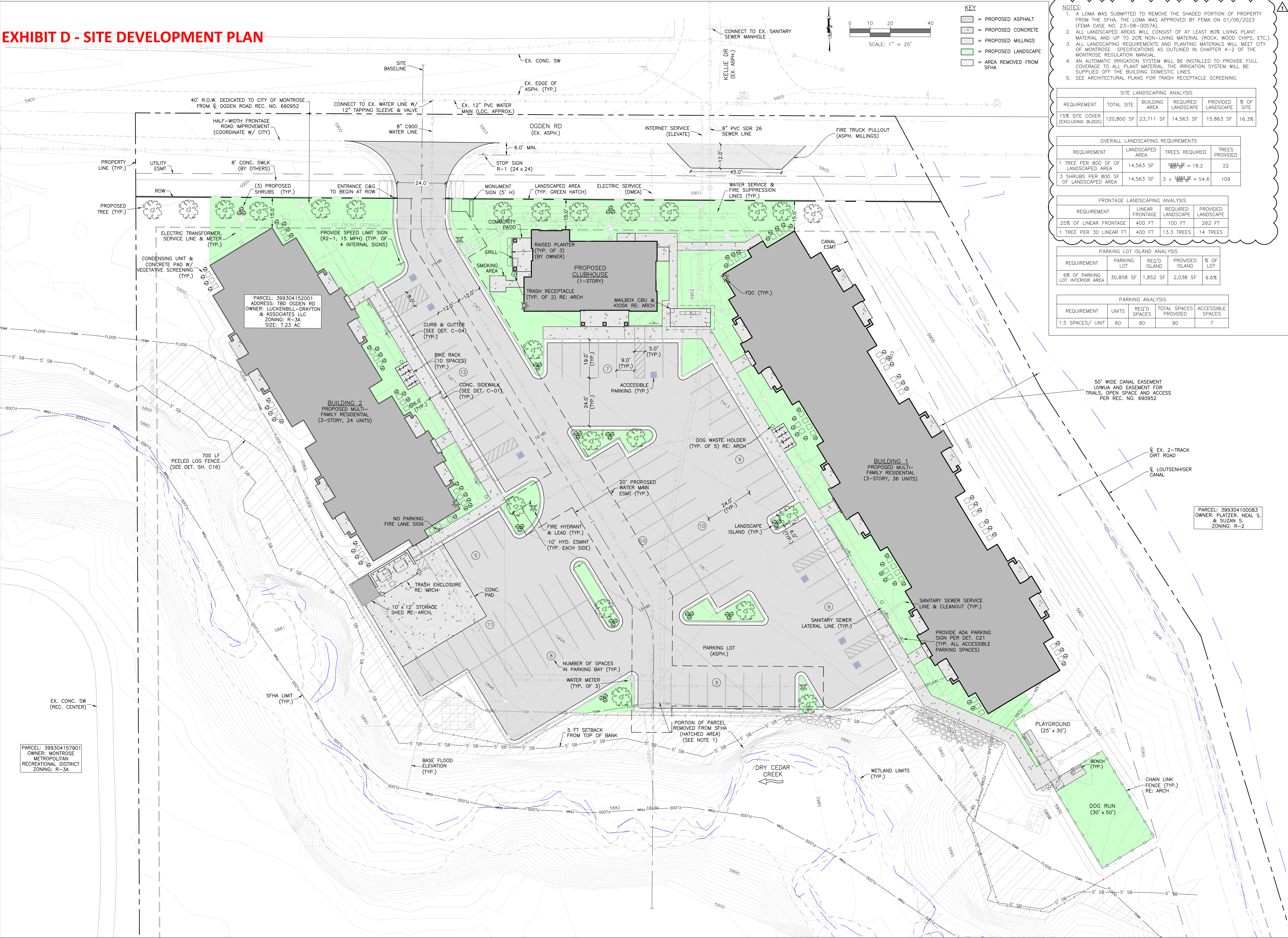
NOT A PART OF
DRY CEDAR CREEK
PLANNED DEVELOPMENT

City Mayor _____ Date _____
Dave Frank

_____, by _____
County Clerk & Recorder Deputy

 DEL-MONT CONSULTANTS, INC. ENGINEERING ▼ SURVEYING 125 Colorado Ave. ▼ Montrose, CO 81401 ▼ (970) 249-2251 ▼ (970) 249-2342 FAX www.dmc.com ▼ info@delmont.com				DATE DRY CEDAR CREEK PLANNED DEVELOPMENT PLAN	
FIELD BOOK:		DRAWN BY: <i>DCC</i>		CURT: <i>ROARING FORK ENGINEERING</i>	
DATE: <i>2023-03-29</i>		ADDRESS & PHONE: <i>592 HIGHWAY 133</i> <i>CARBONDALE, CO 81623</i> <i>970-340-4130</i>			
SHEET: <i>1 of 1</i>		FILE: <i>22143/ PD-PLAN</i>		TYPE: <i>PRELIMINARY P.D. PLAN</i>	
		JOB NO.: <i>22143</i>			

EXHIBIT D - SITE DEVELOPMENT PLAN



KEY

- [Symbol] = PROPOSED ASPHALT
- [Symbol] = PROPOSED CONCRETE
- [Symbol] = PROPOSED MILLINGS
- [Symbol] = PROPOSED LANDSCAPE
- [Symbol] = AREA REMOVED FROM SFHA

- NOTES:**
1. A LOMA WAS SUBMITTED TO REMOVE THE SHADED PORTION OF PROPERTY FROM THE SFHA. THE LOMA WAS APPROVED BY FEMA ON 01/06/2023 (FEMA CASE NO. 23-08-0057A).
 2. ALL LANDSCAPED AREAS WILL CONSIST OF AT LEAST 80% LIVING PLANT MATERIAL AND UP TO 20% NON-LIVING MATERIAL (ROCK, WOOD CHIPS, ETC.).
 3. ALL LANDSCAPING REQUIREMENTS AND PLANTING MATERIALS WILL MEET CITY OF MONTEROSE SPECIFICATIONS AS OUTLINED IN CHAPTER 4-2 OF THE MONTEROSE REGULATION MANUAL.
 4. AN AUTOMATIC IRRIGATION SYSTEM WILL BE INSTALLED TO PROVIDE FULL COVERAGE TO ALL PLANT MATERIAL. THE IRRIGATION SYSTEM WILL BE SUPPLIED OF THE BUILDING DOMESTIC LINES.
 5. SEE ARCHITECTURAL PLANS FOR TRASH RECEPTACLE SCREENING.

SITE LANDSCAPING ANALYSIS

REQUIREMENT	TOTAL SITE	BUILDING AREA	REQUIRED LANDSCAPE	PROVIDED LANDSCAPE	% OF SITE
15% SITE COVER (EXCLUDING BLDGS)	120,800 SF	23,711 SF	14,563 SF	15,863 SF	16.3%

OVERALL LANDSCAPING REQUIREMENTS

REQUIREMENT	LANDSCAPED AREA	TREES REQUIRED	TREES PROVIDED
1 TREE PER 800 SF OF LANDSCAPED AREA	14,563 SF	$\frac{14,563}{800} = 18.2$	22
3 SHRUBS PER 800 SF OF LANDSCAPED AREA	14,563 SF	$3 \times \frac{14,563}{800} = 54.6$	109

FRONTAGE LANDSCAPING ANALYSIS

REQUIREMENT	LINEAR FRONTAGE	REQUIRED LANDSCAPE	PROVIDED LANDSCAPE
25% OF LINEAR FRONTAGE	400 FT	100 FT	262 FT
1 TREE PER 30 LINEAR FT	400 FT	13.3 TREES	14 TREES

PARKING LOT ISLAND ANALYSIS

REQUIREMENT	PARKING LOT	REQ'D ISLAND	PROVIDED ISLAND	% OF LOT
6% OF PARKING LOT INTERIOR AREA	30,858 SF	1,852 SF	2,038 SF	6.6%

PARKING ANALYSIS

REQUIREMENT	UNITS	REQ'D SPACES	TOTAL SPACES PROVIDED	ACCESSIBLE SPACES
1.5 SPACES/ UNIT	60	90	90	7

REVISION NUMBER	REVISION DATE	REVISION DESCRIPTION
1	02/02/23	RESPONSE TO SITE PLAN REVIEW COMMENTS

Roaring Fork Engineering
592 HIGHWAY 133
CARBONDALE, CO 81623
PH: (970) 340-4130

3939 PRIORITY WAY SOUTH DRIVE
SUITE 200
INDIANAPOLIS, INDIANA 46240
Phone: (317) 844-6777
E-Mail: cripe@cripe.biz
• SURVEY • 3D LASER SCANNING
• CIVIL ENGINEERING
• REAL ESTATE SERVICES

Cripe
Solutions by Design Since 1937

SITE LAYOUT
REALAMERICA, LLC
RESIDENCES AT DRY CEDAR CREEK
MONTROSE, CO

PROFESSIONAL ENGINEER
2/10/23
58163

AWA
RBG
RBG

C4 OF 18
12.09.22
2022-16

CONTRACT AWARD CONSIDERATION



TO: Honorable Mayor and Members of the City Council
FROM: Scott Murphy, *City Engineer*
DATE: March 13, 2023
RE: Anderson Road Paving Project Construction Contract Award
CC: William Bell, Shani Wittenberg

Action

Consider the approval of \$679,873.30 in expenditures for construction of the Anderson Road Paving Project. This includes the award of a construction contract to Skip Huston Construction in the amount of \$639,873.30 and a survey/engineering support contract to Del-Mont Consultants in the amount of \$40,000.00.

Background

Anderson Road was originally built as a gravel-road commercial park directly off of Townsend Avenue sometime around the mid-80's (see location map as Figure 1). Since its initial construction, the roadway has remained more-or-less in its original configuration with gravel through lanes and no accommodations for pedestrians. This project would pave Anderson Road from Townsend Avenue to Commercial Way and add sidewalks down both sides of the roadway in order to reduce dust emissions, improve aesthetics, and improve pedestrian safety/connectivity. An overview drawing for the road paving is included as an attachment to this memo.

It should be noted that as development continues in the area and when Rio-Grande is extended between East Oak Grove Road and River Landing, Anderson Road will likely also be further extended to the west at some point in the future.

Project Bidding and Associated Expenditures

Construction of the Anderson Road Paving Project was put out for bid on February 14th and bids were publicly received on March 13, 2023 from four contractors as summarized in Table 1 below. Bid totals presented include a 10 percent contingency.

TABLE 1		
Summary of Bid Results		
Contractor	Location	Bid Total
Skip Huston Construction	Montrose, CO	\$639,873.30
Williams Construction	Norwood, CO	\$769,840.12
Oldcastle SW Group	Montrose, CO	\$776,572.23
Kuboske Construction	Montrose, CO	\$869,885.90

The City has recent positive experience working with the low bidder, Skip Huston Construction, and considers them qualified to perform the work. As a result, it is recommended that the construction contract be awarded to Skip Huston Construction. It should be noted that the City's local preference policy would not change the outcome of bidding in this case.

In addition to the award of a construction contract, we are also recommending award of an engineering support and survey stakeout contract to the project surveyor, Del-Mont Consultants. This scope of work is budgeted at \$40,000 on an as-needed, time-and-materials basis based negotiations with the consultant.

Project Schedule and Traffic Control

The construction project is scheduled to begin in April with preliminary utility relocation work along the shoulders of the roadway. Once that work is complete, the contractor will close the roadway to through traffic and start on the major earthwork elements around mid-summer. As written into the contract, once the roadway is closed to through traffic, they will have 75 calendar days to complete the work and reopen the roadway with all work scheduled to be completed by the end of October. Access to local residences and businesses will be maintained at all times throughout construction.

Contract Administration and Project Financials

Contract administration, project management, and inspection will be performed by the City of Montrose engineering department with support from the design engineer as needed.

The City budgeted \$500k for this project out of the City's capital improvement fund. This places the project approximately \$180k over the total budget. This overage is primarily due to general cost escalation within the construction industry and high demand for earthwork contractors within the region.

As mentioned above, the project includes approximately \$60k in contingency. The project also includes some inherent contingency in available aggregate quantity (road base and asphalt) that may be unused and could present additional savings on the project (projects are setup to only pay for what is actually used). With this, there is a chance that portions of the overage presented may not come to fruition. Over the past 10 years, it has not been uncommon for the City's roadway capital projects to come in 5 to 10% under final contract amount. However, if ultimately needed, this overage would come out of available fund balance within the City's capital budgets or a budget supplement if necessary.

Contract Award Consideration
Anderson Road Paving Project
March 13, 2023

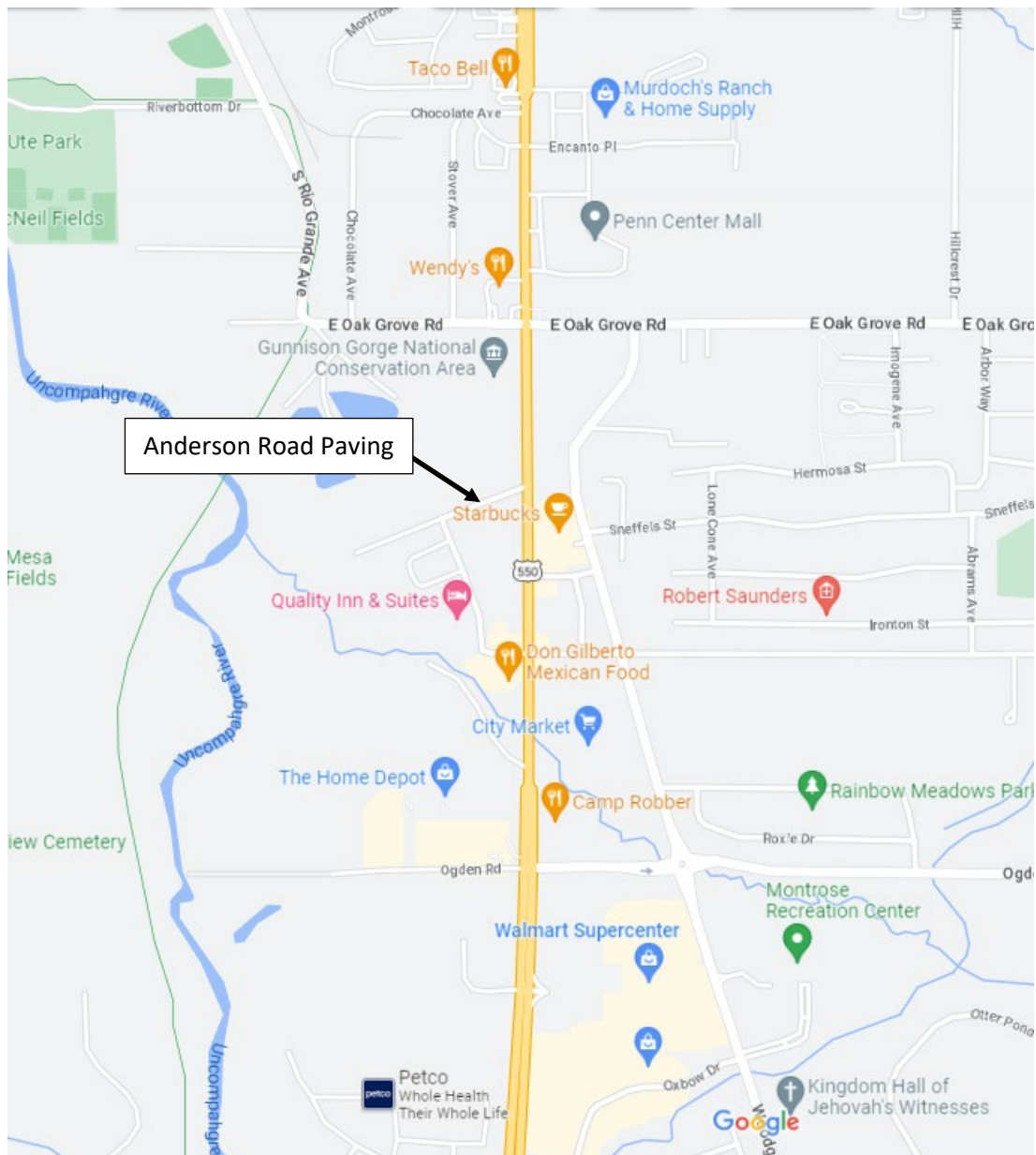


Figure 1: Project Location Map

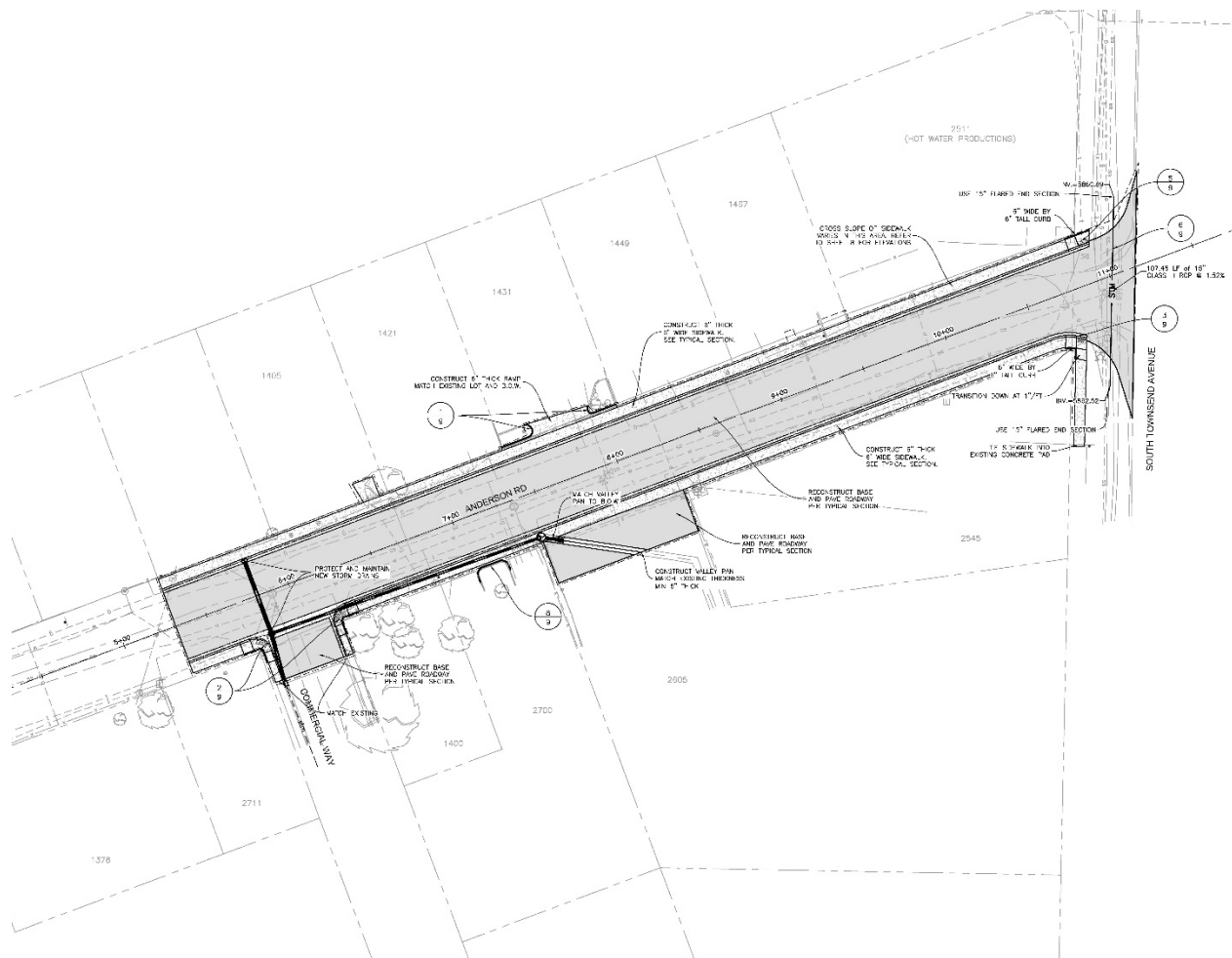


Figure 2: Anderson Road Paving Overview

PURCHASE RECOMMENDATION

TO: Honorable Mayor, and Montrose City Council
Cc: William Bell City Manager, Shani Wittenberg Finance Director,
Shane Brandt Fleet Superintendent
FROM: Jim Scheid Public Works Manager
DATE: March 20th, 2023
Subject: 2023 Parks Mowers Purchase Recommendation



Action

Consider the approval of purchasing three Toro mowers from Roaring Fork rentals in Glenwood Springs, CO for a total of \$51,423.00.

Background

The City's Fleet Division has budgeted to replace three riding mowers in 2023. These three mowers will be used to assist in the maintenance of the City parks that the City Parks Division maintains. The City crews maintain the turf in Cedar Creek Cemetery, Sunset Mesa Ball fields and about 25% of the turf area within the remaining parks system. This amounts to about 95 acres of total turf maintained by City crews and equipment.

All three mowers would be purchased through Roaring Fork Rentals which is the regional vendor for Toro mowers. The City has requested pricing for mowers that match what currently exists in the City's fleet. The Black Canyon Golf Course and the Parks Division both use Toro mowers. Due to this standardization, City staff recommends purchasing using a sole source. The pricing provided by Roaring Fork Rentals is utilizing Toro's "Tax-Exempt Bid Support Program". This program allows the City of Montrose to take advantage of government pricing offered through cooperative agreements.

Net Financial Impact

The Fleet Division included \$49,200 in the 2023 Budget in GL 600-8005-944-000 for the replacement of all three mowers. The budgeted amounts were based on quotes received in June of 2022 and included the anticipated inflationary increases that were known at that time. The Fleet Fund had collected \$56,391.00 over the last 8 years for these replacements. The purchase amount is over the budgeted by \$2,223.00 but is under the amount collected by the Fleet Fund.



Model 72961 shown with 72" deck



CITY OF MONTROSE

SOLE SOURCE WAIVER REQUEST

REQUESTING DEPARTMENT: Fleet DATE: 3-7-2023

REQUESTED BY: Jim Scheid BID NO. _____

VENDOR NAME: Roaring Fork Rentals COST: \$51,423.00

JUSTIFICATION

(INITIAL ALL ENTRIES THAT APPLY TO REQUEST)

PRODUCT OR SERVICE DESCRIPTION: 3 Toro Riding Mowers

1. _____ Vendor is the original equipment manufacturer and there are no regional distributors.
2. _____ The product, equipment or service requested is clearly superior functionally to all other similar products, equipment or service from another manufacturer or vendor.
3. x _____ The over-riding consideration for purchase is compatibility or conformity with City-owned equipment in which non-conformance would require the expenditure of additional funds.
4. _____ No other equipment is available that shall meet the specialized needs of the department or perform the intended function.
5. _____ Detailed justification is available which establishes beyond doubt that the vendor is the only source available to provide the item or service required.
6. _____ Detailed justification is available which proves it is economically advantageous to use the product, equipment or service.

I recommend that competitive procurement procedures be waived and the product or service described herein be purchased as a sole source.

DEPARTMENT HEAD AUTHORIZATION: _____
Authorized Signature Title Date

FINAL AUTHORIZATION: City Council Approval Required (\$50,000 +) YES NO City Manager Approval
Required (up to \$50,000) YES NO

MANAGER/COUNCIL AUTHORIZATION: _____
Authorized Signature Title Date **Attach detailed justification documentation**