

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. TC-2022-13**

**A RESOLUTION OF THE NEW CASTLE TOWN COUNCIL DENYING A
FINAL PUD DEVELOPMENT PLAN AND FINAL SUBDIVISION PLAT FOR
PORTIONS OF CASTLE VALLEY RANCH PA 17 AND PA 19.**

WHEREAS, CVR Investors, Inc. (the “Applicant”) is the owner of certain real property within the Town of New Castle described in the attached Exhibit A, which property is part of Planning Areas 17 and 19 of the Castle Valley Ranch Master Plan (the “Property,” or “Filing 11”); and

WHEREAS, the PA 19 portion of the Property is zoned Residential (R), and the PA 17 portion is zoned Mixed Use (MU); and

WHEREAS, the Applicant submitted a land use application for a 13.538-acre portion of the Property (“Filing 11”) seeking approval of a combined Preliminary/Final PUD Development Plan and a Preliminary/Final Plat for the first phase of Filing 11 (the “Original Application”); and

WHEREAS, the Original Application was filed prior to the adoption of Ordinance 2020-6, which repealed and replaced Sections 16.16.020, 16.16.030, & 17.100.050 – 17.100.090 of Town’s land use code. For purposes of this Resolution, the Council is applying the procedures and standards set forth in said land use code sections that were in effect prior to the enactment of Ordinance 2020-6 (the “Prior Code”); and

WHEREAS, the Original Application proposed the phased development of up to 91 residential units in up to 27 multi-family buildings located on up to 27 blocks, which blocks would be further subdivided into individual lots per residential unit, and the creation of three open space parcels; and

WHEREAS, the Town of New Castle Planning & Zoning Commission (“Commission”) held a duly noticed public hearing regarding the Application on May 13, 2020, that was continued to May 27, 2020, to consider the Original Application; and

WHEREAS, after the public hearing was closed on May 27, 2020, the Commission, as the governing body responsible for final decisions regarding preliminary PUD plans and subdivision plats, voted to deny the preliminary portion of the Application and take no action on the final portion of the Application until a preliminary plan and plat had been approved pursuant to Prior Code Sections 16.16.030(B) and 17.100.080(A);

WHEREAS, the Commission adopted Resolution PZ 2020-6 effective as of August 7, 2020, to document its decision regarding the Original Application; and

WHEREAS, pursuant to Prior Code Section 17.100.070(D), the Applicant took the Commission's decision regarding the preliminary PUD portion of the Application (the "original Preliminary Plan") to Town Council for review; and

WHEREAS, on July 21, 2020, Town Council reviewed the Commission's decision regarding the original Preliminary Plan and referred the original Preliminary Plan back to the Commission for reassessment; and

WHEREAS, at its August 26, 2020, meeting, the Commission reconsidered the original Preliminary Plan based on the information and evidence presented during prior public hearings and continued a decision regarding the original Preliminary Plan to September 23, 2020; and

WHEREAS, at the September 23rd meeting, the Applicant elected to amend its original Preliminary Plan, which amendments included a new narrative; a revised site plan reducing the number of units to 85 and converting the buildings along the western edge of the project to duplexes; a conceptual landscape layout; a revised snow storage plan; and 3-D renderings (the "Amended Preliminary Plan");

WHEREAS, a decision regarding the Amended Preliminary Plan and a public hearing regarding the same was continued to and held on November 23, 2020; and

WHEREAS, after the public hearing was closed, the Commission continued its consideration of the Amended Preliminary Plan to December 9, 2020, and again to January 13, 2021, with the consent of Applicant; and

WHEREAS, on January 13, 2021, the Commission adopted Resolution PZ 2020-9 recommending conditional approval of the Amended PUD Plan and directing applicant to submit an updated final PUD plan and preliminary/final Phase 1 subdivision application consistent with the conditions set forth in Resolution PZ 2020-9; and

WHEREAS, following the adoption of Resolution PZ 2020-9, Applicant asserted that it should not be required to proceed through the final PUD and combined preliminary/final subdivision application procedures but, instead, that it should proceed directly to Council because the Commission's decisions under Resolution PZ 2020-6 and 2020-9 were recommendations, not final decisions; and

WHEREAS, on January 4, 2022, Town Council considered Applicant's argument and determined that, all things considered, Applicant could proceed to Council review of the final PUD plan and combined preliminary/final Phase 1 subdivision plat without the need for a subsequent public hearing before the Commission, provided that (i) Applicant provide public notice of the Council meeting consistent with Section 16.08.040 of the Town Code; (ii) Council take public comment at the meeting; and (iii) a member of the Commission be given the opportunity to make a presentation to Council regarding the Application; and

WHEREAS, the Applicant agreed to and consented to this approach to proceed directly to the Town Council for final review of the PUD and subdivision application without further review by the Planning Commission; and

WHEREAS, on January 13, 2022, Applicant submitted additional PUD plan and Phase 1 subdivision materials and subsequently revised the same in response to Town comments (the “Supplemental Materials”); and

WHEREAS, on May 3, 2022, Town Council held a duly-noticed public meeting to consider the Application (defined below) and took comments from Town Staff, the Applicant, and members of the public and continued its decision regarding the Application to May 17, 2022; and

WHEREAS, after considering the Application materials and testimony and other evidence from Staff, the Applicant, and members of the public concerning the Application, a motion was made on May 17, 2022, to approve the Application and Ordinance TC 2022-9 as drafted by staff, which motion failed by a vote of 0 to 7; and

WHEREAS, a failed motion does not constitute final action by the Town Council on the Application; and

WHEREAS, now, based on the Application materials and the testimony and other evidence presented to the Commission and Town Council by Staff, the Applicant, and members of the public concerning the Application, the Town Council desires to deny the Application for the reasons set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF NEW CASTLE, COLORADO, TOWN COUNCIL AS FOLLOWS:

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Town Council.
2. Definition of the Application. The “Application” means and consists of, collectively, the Original Application, as amended and supplemented by the Amended PUD Plan, Supplemental Materials, and the documents and information listed on Exhibit B, which exhibit has been prepared by the Town Clerk based upon the materials properly submitted to the Town and entered into the record of the public hearings. Additionally, the “Application” includes all representations of the Applicant reflected in the minutes of the Planning and Zoning Commission public hearings referenced above and the Town Council public meetings held on July 21, 2020, May 3, 2022, and May 17, 2022. Copies of all exhibits to this Ordinance and the Application materials are available for inspection at the office of the Town Clerk.
3. Summary of Application: The Application (as amended by the Amended PUD Plan and Supplemental Materials) proposes:

- a. The construction, in up to three phases, of eighty-five (85) residential units in up to thirty-one (31) multi-family buildings on up to thirty-one (31) blocks/lots on 13.538 acres of land and the provision of four open space parcels, with the lots, roads, and open space to be platted and developed in accordance with the site/phasing plan dated February 17, 2022, that is part of the Application;
 - b. That the first phase of Filing 11 will include the construction of 31 residential units in 12 multi-family buildings located within 12 blocks, the creation of 2 open space parcels, and the construction of public improvements associated with all of the foregoing; and
 - c. That the development and use of the Property would be zoned as and subject to the restrictions and requirements of the MF-1 Zone District of the Castle Valley Ranch PUD Zoning Regulations, Section 17.104.080 of the Code (Zone District), as may be modified by the final plats for the Property; and
 - d. That the platting of future phases of Filing 11, including subdividing the Property into lots and amending final plats as the multi-family buildings are constructed, be approved at the staff level, provided that the future phase plats and amended final plats are in substantial conformance with the Application.
4. Review Criteria. The Application was originally submitted in February 2020. In September 2020, the Town adopted Ordinance 2020-6, repealing and replacing Sections 16.16.020, 16.16.030, & 17.100.050 – 17.100.090 of the Town Code to change the process and review criteria applicable to preliminary and final PUD and subdivision applications. Because the Application was submitted before the effective date of Ordinance 2020-6, the Application is being considered under the Prior Code review criteria set forth below. Additionally, the following criteria are, in substance, the same as the review criteria set forth in Sections 13-10-090 and 14-14-070 of the Town Code as those provisions existed in 2002 at the time of approval of vested rights for the Castle Valley Ranch PUD Master Plan as set forth in the Second Amended Annexation Agreement recorded April 256, 2002, at Reception No. 602245.
1. the Application is generally compatible with adjacent land uses;
 2. the Application is consistent with the Town's Comprehensive Plan;
 3. the Town has the capacity to serve the proposed uses with water, sewer, fire and police protection;
 4. the uses proposed within the PUD are uses permitted outright or by special review within the zoning district or districts contained within the PUD;
 5. the number of dwelling units permitted by the underlying zoning districts is not exceeded by the PUD plan; and
 6. the PUD utilizes the natural character of the land, includes compatible land uses, provides for fire and police protection, off-street parking, vehicular, pedestrian, and bicycle circulation, outdoor recreation, is of overall compatible architectural design, achieved adequate screening, buffering and

aesthetic landscaping, avoids development of areas of potential hazard, ensures compliance with performance standards, and meets all other provisions of Title 17; and

5. Decision. Town Council finds that the Application does not meet the approval criteria set forth above, including, without limitation, compliance with the 2009 Comprehensive Plan, compatibility with adjacent land uses, and satisfaction of the issues identified in Prior Code Section 17.100.090(A)(6). Town Council therefore denies the Application. The following is an illustrative but not exhaustive list of the reasons why the Application does not satisfy the applicable review criteria:

- a. The proposed style and intensity of the multifamily units in Filing 11 is out of balance and incompatible with the large, single-family residential homes on South Wildhorse adjacent to the western edge of Filing 11. Due to the grade difference between the homes on South Wildhorse and Filing 11, the trees and fencing proposed in the Application will not adequately screen and buffer the development to mitigate the adverse aesthetic and lifestyle impacts of Filing 11.
- b. The zoning of the Applicant's property to the north and east of Filing 11 allows for a variety of residential and commercial uses. Applicant did not provide evidence regarding the nature and intensity of possible development in those areas, making it difficult for Council to determine Filing 11's compatibility with those adjacent areas.
- c. The Application fails to meet at least the following provisions of the 2009 Comprehensive Plan, which is a document of general applicability throughout the Town, including to Filing 11. The Comprehensive Plan guides the nature, intensity, and design of development and does not infringe upon vested rights.
 - i. Goals CG-4A through E: Residential or commercial development of 50 lots/units or greater shall include a mix of land-use types that "provide effectively integrated convenience retail, employment, services, parks/open space/trails, public transit, and non-motorized access." Mixed-use development is desirable because it affords opportunities for local amenities, services, and possible employment. Two-thirds of Filing 11 is zoned Mixed Use, yet the Application proposes only multi-family residential development with limited trail and non-motorized circulation.
 - ii. Goal CG-5: Development should generate "hospitable, quality places in which people want to live, work, play, and learn." In light of the inadequate parking, insufficient usable open space and non-vehicular circulation, and inadequate provisions for snow storage proposed in the Application, the proposed large-scale, multifamily development presents a challenge to the livability of the community.

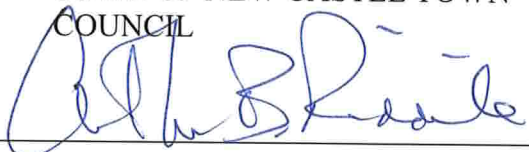
- iii. Goal EN-1 & Goal POST-4A-B: Sensitive environmental areas should be preserved, and open space corridors be used to break up continuous areas of development. Wildlife corridors should be protected. Under the Application, existing wildlife corridors would be displaced with little attention given to relocation of habitat.
 - iv. Goal HO-2A: New development should embrace affordability for the community. Applicant did not establish whether all or a portion of the units will be more affordable than other similar units in Town or make any accommodations for affordability.
 - v. Goal T-1F & Goal POST-3: Non-motorized trails, separated sidewalks, and generous open space which promote recreational value and livability should be promoted in a development. The east-west bike and pedestrian connectivity within Filing 11 is deficient, and the usability of the proposed open space for active use was not well-established in the Application. Further, while the Applicant has take the position that it is not required to construct “recreational facilities” pursuant to Section 7(b) of the Second Amendment Annexation Agreement, the proposed trail connection is not solely or primarily a “recreational facility” but rather an element of the pedestrian and bicycle circulation plan for the Property to be provided by the Applicant, and the Applicant proposed that the Town, not the Applicant, bear the cost of construction of at least a portion of such facilities.
 - vi. Goal T-1F: The Application does not comply with this goal for several reasons. The road designs do not adequately accommodate public safety access and will increase road maintenance. Single car garages often means that owners will habitually default to using the garage as storage and at least one vehicle will be forced to park on the street. Single car garages that are served by single car driveways can lead to vehicle stacking issues which often results in heavier parking loads on the streets. Evidence of this of this occurring in adjacent filings constructed by Applicant was presented at the hearings on the Application. Mobility will be tight even in the best conditions. The resulting congestion will lead to costly snow removal and at times generate obstacles for emergency equipment.
- d. Development of only residential units in the mixed-use zone does not comply with the purpose of the zone district. At the time of approval of the Castle Valley Ranch PUD Master plan in 2002, the approval criteria as then set forth in Section 13-10-090 included a finding that the application meet “all other provisions if this Title” (i.e., Title 13 as it existed at the time). Title 13 at the time provided that the “purpose of a PUD Master Plan process is to designate the general PUD zone districts and zone district requirements that shall apply to the site specific PUD development plan proposals for each phase of development of the planned unit development, unless thereafter modified in the approved final PUD development

plan.” Section 13-10-020(A) of New Castle Code as it existed in 2002. Further, in 2002, Section 13-10-202(C) provided that “uses permitted in the planned unit development shall be limited to those uses permitted outright or by conditional use in the underlying zone district or districts contained within the planned unit development or as permitted under the provisions of the ordinance approving zone district regulations of the PUD *and* specified in the development plan or guide for the PUD as part of the PUD Master Plan approval or the site specific PUD development plan approval.” (Italics added). While the Mixed Use zone specified in the Castle Valley Ranch PUD Master Plan allows both residential and commercial uses, as of the date of this Resolution, no commercial uses whatsoever have been approved or constructed in any area zoned Mixed Use in the Castle Valley PUD, and the Applicant has represented that it is prohibited from developing any commercial uses on its property within the Mixed Use zone by private contract to which the Town is not a party. The Council finds and determines that approval of zero commercial development within the entire Castle Valley Mixed Use zone would not be consistent with the PUD Master Plan guide and map.

- e. The notable cut and fill needed to construct the units at the south end of Filing 11 does not utilizes the natural character of the land.
 - f. The design and layout of the roads and sidewalks, coupled with single-car garages and driveways, will make it difficult and costly to provide snow removal services to the development.
 - g. All other grounds reflected in the record regarding the Application
6. Effective Date. This Resolution and Council’s decision regarding the Application shall be effective as the date of adoption of this Resolution.

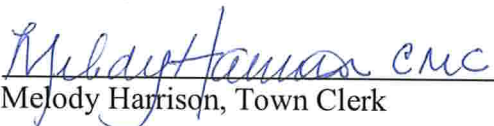
SO RESOLVED this 7th day of June, 2022, by a vote of 7 to 0.

TOWN OF NEW CASTLE TOWN
COUNCIL



Art Riddile, Mayor

ATTEST:



Melody Harrison, Town Clerk



EXHIBIT A
Legal Description

Parcel A: A PARCEL OF LAND SITUATE IN THE NE1/4 SECTION 31 AND THE NW1/4 SECTION 32, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M., COUNTY OF GARFIELD, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST 1/16 CORNER BETWEEN SAID SECTIONS 29 AND 32 A REBAR AND ALUMINUM CAP LS NO. 36572 SET IN PLACE; THENCE S 01° 19' 34" E 1570.62 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF LINE CASTLE VALLEY BOULEVARD, AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED JANUARY 9, 2001 UNDER RECEPTION NO. 574735, ALSO BEING A POINT ON THE EASTERLY BOUNDARY LINE OF CASTLE VALLEY RANCH PUD AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED AUGUST 10, 1983 UNDER RECEPTION NO. 344590 THE TRUE POINT OF BEGINNING; THENCE DEPARTING SAD RIGHT OF WAYS 01°19' 34" E AND ALONG SAID EASTERLY BOUNDARY LINE 1066.16 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF SAID CASTLE VALLEY RANCH, P.U.D.; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE THE FOLLOWING FOUR (4) COURSES: 1. N 89° 40' 24" W 1195.15 FEET; 2. N 00° 19' 36" E 120.00 FEET; 3. N 89° 40' 24" W 180.00 FEET; 4. N 00° 05'00" W 210.20 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE N 00° 05'00" W 983.59 FEET; THENCE S 89° 56' 5" W 552.43 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF CASTLE VALLEY RANCH, PA19A AND PA19B AS FILED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED NOVEMBER 29, 2005 UNDER RECEPTION NO. 687288; THENCE N 40° 33' 51" E ALONG SAID EASTERLY BOUNDARY LINE 283.40 FEET; THENCE CONTINUING ALONG SAD EASTERLY BOUNDARY LINE N 55° 43' 05" E 455.98 FEET TO A POINT ON SAID SOUTHERLY RIGHT OF WAY LINE OF CASTLE VALLEY BOULEVARD; THENCE DEPARTING SAD EASTERLY BOUNDARY LINE AND ALONG SAID SOUTHERLY RIGHT OF WAY LINE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 862,01 FEET; AN ARC LENGTH OF 591.51 FEET (CHORD BEARS S61° 39' 09" E 579.98 FEET); THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY LINE THE FOLLOWING SEVEN (7) COURSES: 1.S 81° 18' 39" E 261.25 FEET; 2. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 719.98 FEET, AN ARC LENGTH OF 342.58 FEET (CHORD BEARS S 67° 40' 47" E 339.36 FEET); 3. ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 115.42 FEET, AN ARC LENGTH OF 19.02 FEET (CHORD BEARS S 14° 30' 47" E 19.00 FEET); 4. ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 82.00 FEET, AN ARC LENGTH OF 110.68 FEET (CHORD BEARS S 48° 27' 33" E 102.47 FEET); 5. ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 115.42 FEET, AN ARC LENGTH OF 20.06 FEET (CHORD BEARS S 82° 08' 49" E 20.03 FEET); 6. ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 719.98 FEET, AN ARC LENGTH OF 57.30 FEET (CHORD BEARS S 41° 01' 02" E 57.29 FEET); 7. S 38° 44' 14" E 193.94 FEET TO THE POINT OF BEGINNING.

Parcel B: A PARCEL OF LAND SITUATE IN THE NE1/4 SECTION 31, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH P.M. COUNTY OF GARFIELD, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE WEST 1/16 CORNER BETWEEN SAID SECTIONS 29 AND 32, A REBAR AND ALUMINUM CAP LS NO. 36572 SET IN PLACE; THENCE S29° 45' 20" W 2647.04 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF CASTLE VALLEY RANCH, P.U.D. AS FLED WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED AUGUST 10, 1983 UNDER RECEPTION NO. 344590, THE TRUE POINT OF BEGINNING; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE THE FOLLOWING FOUR (4) COURSES: 1. N 89° 50' 34" W 450.00 FEET; 2. N 00° 09' 26" E 75.00 FEET; 3, N 89° 50' 34" W 275.00 FEET; 4, N 000 09' 26" € 150.00 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE N00° 47' 28" W 548.03 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF CASTLE VALLEY RANCH, PA 19A & WITH THE GARFIELD COUNTY CLERK AND RECORDER'S OFFICE RECORDED NOVEMBER 29, 2005 UNDER RECEPTION NO. 687288; THENCE ALONG SAID SOUTHERLY BOUNDARY LINE N 40° 33' 51" E 273.86 FEET; THENCE DEPARTING SAID SOUTHERLY BOUNDARY LINE N 89° 56' 25" E 552.43 FEET; THENCE S 00° 0500" E 983,59 FEET TO THE POINT OF BEGINNING

EXHIBIT B
Application Materials

- 1) PUD & Subdivision Combination Applications
- 2) Application Narrative
- 3) Applicant Response to Referrals - SGM
- 4) Public Notice (for May 13, 2020, and November 23, 2020 public hearings)
- 5) List of Property owners within 250' of Development
- 6) Affidavit as to Notice of Public Hearing (May 13 & November 23, 2020)
- 7) Agreement to Pay Consulting Fees & Expenses, February 15th, 2019
- 8) Title Commitment + Legal Description
- 9) Soils Report - A.G. Wassenaar
- 10) Drainage Calculations - SGM
- 11) Utility Report – SGM dated March 18, 2020
- 12) Traffic Impact Study - SGM dated March 18, 2020
- 13) Construction Drawings
- 14) Architectural Floorplans
- 15) Updated site/phasing plan dated May 27, 2020
- 16) Narrative submitted October 30, 2020
- 17) Amended/revised site plan submitted October 30, 2020
- 18) Conceptual landscaping plan submitted October 30, 2020
- 19) 3D renderings submitted October 30, 2020
- 20) Applicant Response to Recommended Conditions – November 16, 2021
- 21) Applicant's Attorney Response ("Myler Letter") to Procedures – December 11, 2021
- 22) Plat & Site Plan – February 18, 2022
- 23) Final Phasing & Snow Storage Plan - February 18, 2022
- 24) Final Civil Drawings – February 18, 2022
- 25) Final Landscaping Plan - February 18, 2022
- 26) Example Floor Plans - February 18, 2022
- 27) Draft Declaration of Covenants - February 18, 2022
- 28) Applicant PowerPoint Presentation – May 3, 2022
- 29) Applicant redline of draft Ordinance 2022-9 – May 16, 2022