



Posted \_\_\_\_\_  
Remove 5/11/17

**Town of New Castle Administration Department**  
450 W. Main Street **Phone:** (970) 984-2311  
PO Box 90 **Fax:** (970) 984-2716  
New Castle, CO 81647 [www.newcastlecolorado.org](http://www.newcastlecolorado.org)

## Agenda

New Castle Planning & Zoning Commission Regular Meeting  
Wednesday, May 10, 2017, 7:00 p.m., Town Hall

Call to Order, Roll Call, Meeting Notice

Conflicts of Interest (Disclosures are on file with Town Clerk & Secretary of State)

Citizen Comments on Items NOT on Agenda

Public Hearing

A. Brief description of application: zoning of a parcel of real property to be annexed into the Town of New Castle, Colorado

Legal description: A parcel or tract of land situated in the East 1/4 of the SE 1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the

Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

thence N90°00'00" E a distance of 162.87 feet;

**thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;**

thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141,006 square feet), more or less.

Common address: TBD, New Castle

Applicant: Turtlepoop, LLC

Landowner: Tuttlepoop, LLC

B. Resolution PZ-2017-03 Making Recommendation Regarding Zoning of Certain Real Property Proposed for Annexation into the Town of New Castle, Colorado

Items for Consideration

C. Brief description of application: Mixed Use Development Sketch Plan

Legal description: Lakota Canyon Ranch, Lot 2B, Phase 7

Common address: TBD, New Castle, CO 81647

Applicant: James P. Colombo

Comments/Reports

D. Items for Next Planning and Zoning Agenda

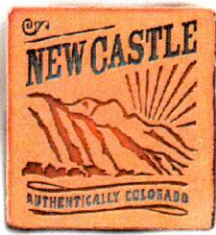
E. Commission Comments/Reports

F. Staff Reports

Review Minutes of Previous Meetings

G. February 22, 2017 Minutes

Adjournment



Town of New Castle Administration Department  
450 W. Main Street Phone: (970) 984-2311  
PO Box 90 Fax: (970) 984-2716  
New Castle, CO 81647 [www.newcastlecolorado.org](http://www.newcastlecolorado.org)

April 6, 2017

Turtlepoop, LL  
75 Buffalo  
Carbondale, CO 81623

Dear Mogli:

I have scheduled a public hearing on May 10, 2015 before the Planning and Zoning Commission on your Annexation application.

**By April 10, 2017**, please send a copy of the enclosed Notice of Public Hearing by certified mail to the owners of all property within 250 feet of the subject property, all owners of mineral estates with respect to the subject property, and to the Town of New Castle. For assistance in determining property owners, please contact the Garfield County Assessor's Office at 109 8<sup>th</sup> Street, Room 207, Glenwood Springs, ph. 945-9134. For assistance in determining mineral owners, please consult an attorney.

The Town of New Castle will post the attached Notice of Public Hearing on the Town's website 15 days prior to May 10, 2017

The notice you received from Assistant Town Attorney, Haley Carmer, must be posted at the property **by April 25, 2017**. The notice dimensions must be at least twenty-two (22) inches wide, twenty-six (26) inches high, with letters at least one inch in height. Post the notice on the property so that it is visible from a public street. The notice needs to remain posted until the public hearing is held. You may want to cover it with clear plastic to protect it.

Please complete and return the enclosed Affidavit as to Notice of Public Hearing to me **by 3:00 p.m., May 4, 2017**.

Please plan to attend the hearing before the Planning and Zoning Commission to present your request and answer the Commission's questions.

Thank you for your cooperation. If you have any questions about this, please call me.

Sincerely,

Tim Cain  
Town Planner/Code Administrator

RECEIVED

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TOWN OF  
NEW CASTLE, CO  
BUILDING DEPARTMENT



Administration Department  
(970) 984-2311  
Fax: (970) 984-2716  
[www.newcastlecolorado.org](http://www.newcastlecolorado.org)

Town of New Castle  
PO Box 90  
450 W. Main Street  
New Castle, Co 81647

**DEVELOPMENT APPLICATION**

Applicant: Turtlepoop LLC	
Address: 75 Buffalo Carbondale, CO 81623	Phone: 970-433-5838 FAX: E-mail: moglic@mac.com
Property Owner: Turtlepoop LLC, Mogli Cooper, sole member	
Address: same as above	Phone: FAX: E-mail:
Contact Person: Mogli Cooper	
Address: same as above	Phone: FAX: E-mail:
Property Location/Address: TBD Bruce Road, New Castle, CO 81647	
Legal Description: Lengthy, please see Exhibit "A" attached	Acres: 3.15 +/- acres
Existing Zone ( <a href="#">Not sure? Click here for help</a> ): Community Service Business District	
Existing Land Use: vacant land	
<b>TYPE(S) OF LAND USE(S) REQUESTED</b>	
<input type="checkbox"/> Pre-Annexation Agreement <input checked="" type="checkbox"/> Annexation <input type="checkbox"/> Subdivision (Including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations) <input type="checkbox"/> Amended Plat <input type="checkbox"/> Planned Unit Development (Including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) <input type="checkbox"/> Floodplain Development Permit	<input type="checkbox"/> Lot Line Adjustment or Dissolution <input type="checkbox"/> Site Specific Development Plan/Vested Rights <input type="checkbox"/> Variance <input checked="" type="checkbox"/> Zoning <b>C-2</b> <input type="checkbox"/> Zoning Amendment <input type="checkbox"/> Re-zoning <input type="checkbox"/> R-1-HC Identification <input type="checkbox"/> Conditional Use Permit or Special Review Use Permit <input type="checkbox"/> Other
This development would create <u>TBD</u> residences and <u>TBD</u> square feet of commercial space.	
Applicant must also complete and submit the appropriate <a href="#">checklist</a> for the type of land use requested. Both the applicant and the property owner must sign this application.	
Applicants are encouraged to schedule a pre-application meeting with the Town Administrator and/or Town Consultants prior to submitting this application.	

**AGREEMENT TO PAY CONSULTING FEES AND EXPENSES**

It is the policy of the Town of New Castle that all land use applications must be filed in the Office of the Town Clerk to receive formal consideration. Please refer to the Town Clerk's Office for all applicable procedures.

However, the Town encourages land use applicants to consult informally with members of the Town Staff, including outside consultants, prior to filing applications if the applicant has questions regarding areas within Staff members' particular expertise; PROVIDED THAT THE POTENTIAL APPLICANT AGREES TO REIMBURSE THE TOWN FOR ALL FEES AND EXPENSES RELATING TO SUCH INFORMAL MEETINGS.

The Town employs outside consultants for engineering, surveying, planning, and legal advice. These consultants bill the Town on an hourly basis as well as for expenses including but not limited to copies, facsimile transmissions, and long distance telephone calls.

It is the Town's policy that all persons wishing to hold informal meetings with members of the Town Staff acknowledge responsibility for all fees and expenses charged by outside consultants by signing this Agreement below.

**I acknowledge and agree to pay the Town of New Castle all actual costs incurred by the Town in relation to legal, engineering, surveying, planning, or other services performed by consultants to the Town as a result of such consultants' review and comment upon, or other services related to, land use proposals and/or applications proposed by me or on my behalf, regardless of whether or not such application is formally filed with the Town. Interest shall be paid at the rate of 1.5% per month on all balances not paid within thirty (30) days of the date of the statement. In the event the Town is forced to pursue collection of any amounts due and unpaid, the Town shall be entitled to collect all costs of collection in addition to the amount due and unpaid, including but not limited to reasonable attorney's fees and costs.**

SO AGREED this 17th day of March, 2017.

Maggi Cooper  
Print Name

Maggi Cooper  
Signature

366-6000  
Telephone

75 Buffalo, C'dale Co 81623  
Mailing Address

Turtlepean LLC (sole member)  
Relationship to Applicant or Potential Applicant

Type of application: Annexation

Property description: Kuersten Property 3.25 acres +/-

File No. 1608095-1

**EXHIBIT "A"**

A parcel or tract of land situated in the East  $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, being more particularly described as follows:

Beginning at the East one-quarter corner of said Section 32 which bears North  $7^{\circ}42'00''$  West a distance of 2488.46 feet from the SE corner of said Section 32; thence South  $7^{\circ}42'00''$  East and along said East line a distance of 429.10 feet to a point of intersection with the apparent Northerly right of way line of an existing County Road as constructed and in use; thence South  $68^{\circ}28'00''$  West and along said apparent Northerly right of way line a distance of 87.39 feet to a point of curve; thence along said apparent Northerly right of way line and a curve to the right having a radius of 873.77 feet; a central angle of  $6^{\circ}20'00''$ , an arc distance of 96.58 feet to a point of tangent; thence South  $74^{\circ}48'00''$  West and along said apparent Northerly right of way line a distance of 68.00 feet to a point of curve; thence along said apparent Northerly right of way line and a curve to the left having a radius of 265.23 feet, a central angle of  $24^{\circ}00'00''$ , an arc distance of 111.10 feet to a point of tangent; thence South  $50^{\circ}48'00''$  West along said apparent Northerly right of way line a distance of 160.00 feet to a point of curve; thence along said apparent Northerly right of way line and a curve to the right having a radius of 2515.17 feet, a central angle of  $4^{\circ}30'00''$ , an arc distance of 197.54 feet to a point of tangent; thence South  $55^{\circ}18'00''$  West and along said apparent Northerly right of way line a distance of 712.94 feet to a point of intersection with the West line of the East  $\frac{1}{2}$  of the SE $\frac{1}{4}$  of said Section 32; thence North  $5^{\circ}22'05''$  West and along said West line E $\frac{1}{2}$ SE $\frac{1}{4}$  a distance of 1185.37 feet to the NW corner E $\frac{1}{2}$ SE $\frac{1}{4}$  said Section 32; thence North  $89^{\circ}55'54''$  East and along the North line of the SE $\frac{1}{4}$  of said Section 32 a distance of 1257.98 feet to the Point of Beginning.

## PETITION FOR ANNEXATION

The undersigned Petitioner, in accordance with "The Municipal Annexation Act of 1965," Article 12, Title 31, C.R.S., as amended, hereby petitions the Town Council of the Town of New Castle, Colorado ("Town"), for annexation to the Town of the unincorporated territory (the "Property") more particularly described in Exhibit A attached hereto and made a part hereof by reference. In support of this Petition, the Petitioner alleges that:

1. The purpose of this Petition is to enable Petitioner to obtain municipal services within the municipal boundaries of the Town and to comply with the terms of an Annexation Agreement.
2. Petitioner is the record owner of the Property as of the date of this Petition.
3. It is desirable and necessary that the Property be annexed to the Town.
4. The requirements of C.R.S. §31-12-104 and §31-12-105, as amended, exist or have been met as set forth and shown herein.
5. Not less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the Town.
6. A community of interest exists between the Property proposed to be annexed and the Town.
7. The Property proposed to be annexed is urban or will be urbanized in the near future.
8. The Property proposed to be annexed is integrated with or is capable of being integrated with the Town.
9. No land in the Property sought to be annexed which is held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been or shall be divided into separate parcels without the written consent of the landowner(s).
10. No land in the Property sought to be annexed which is held in identical ownership and comprising twenty (20) or more acres and having an assessed valuation for ad valorem tax purposes in excess of \$200,000.00 has been included in the area without the written consent of the landowner(s).
11. The entire width of any portion of a platted street or alley to be annexed within the Property is included.
11. The proposed annexation will not result in detachment of the Property from any school district or attachment to another district.



12. The Property to be annexed is not presently a part of any incorporated city, city and county, or town; nor have any proceedings been commenced for annexation of part or all of the Property to any other municipality; nor has any election for annexation of such Property or substantially the same Property to the Town been held within the twelve (12) months immediately preceding the filing of this Petition.

13. The annexation of the Property proposed to be annexed will not have the effect of extending the boundary of the Town more than three (3) miles in any direction from any point of the Town's municipal boundary in any one (1) year.

14. The signers of this Petition comprise more than fifty percent of the landowners and own more than fifty percent of the Property, exclusive of public streets and alleys and any land owned by the annexing municipality.

15. The affidavit of the circulator of this Petition, stating that each signature herein is the signature of the person whose name it purports to be, is attached to this Petition, and made a part of this Petition by this reference.

16. Attached hereto and incorporated herein by reference are four (4) copies of an annexation map in the form required by C.R.S. §31-12-107(1)(d) and containing:

- a) a written legal description of the boundaries of the area proposed to be annexed;
- b) a map showing the boundary of the area proposed to be annexed;
- c) within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or lots and blocks; and
- d) next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

17. Each person signing this Petition for Annexation represents that they have full authorization to execute this Petition on behalf of the Petitioners.

18. The mailing addresses of the Petitioner is as follows:

Turtlepoop LLC  
281 Centennial Street  
Glenwood Springs, CO 81601



WHEREFORE, Petitioner requests that the Town of New Castle approve the annexation of the area described herein.

PETITIONER  
Turtlepoop LLC

Dated: 3/17/17

Mogli Cooper  
Mogli Cooper, Member/Manager

STATE OF COLORADO )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Petition for Annexation was subscribed and sworn to before me this 17 day of March, 2017, by Mogli Cooper.

Witness my hand and official seal.

My commission expires April 28, 2020

DARLENE F. HARRISON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20164015981  
My Commission Expires April 28, 2020

Darlene F. Harrison  
Notary Public

# - Exhibit A -

## ANNEXATION PARCEL DESCRIPTION

A parcel or tract of land situated in the East 1/4 of the SE1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

thence N 90°00'00" E a distance of 162.87 feet;

thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;

thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141006 square feet), more or less.

**Lien Holder on Turtlepoop LLC Property**

**Kathleen L. Kuersten and Robert E. Kuersten  
P.O.Box 670295  
Chugiak, AK 99567-0295**

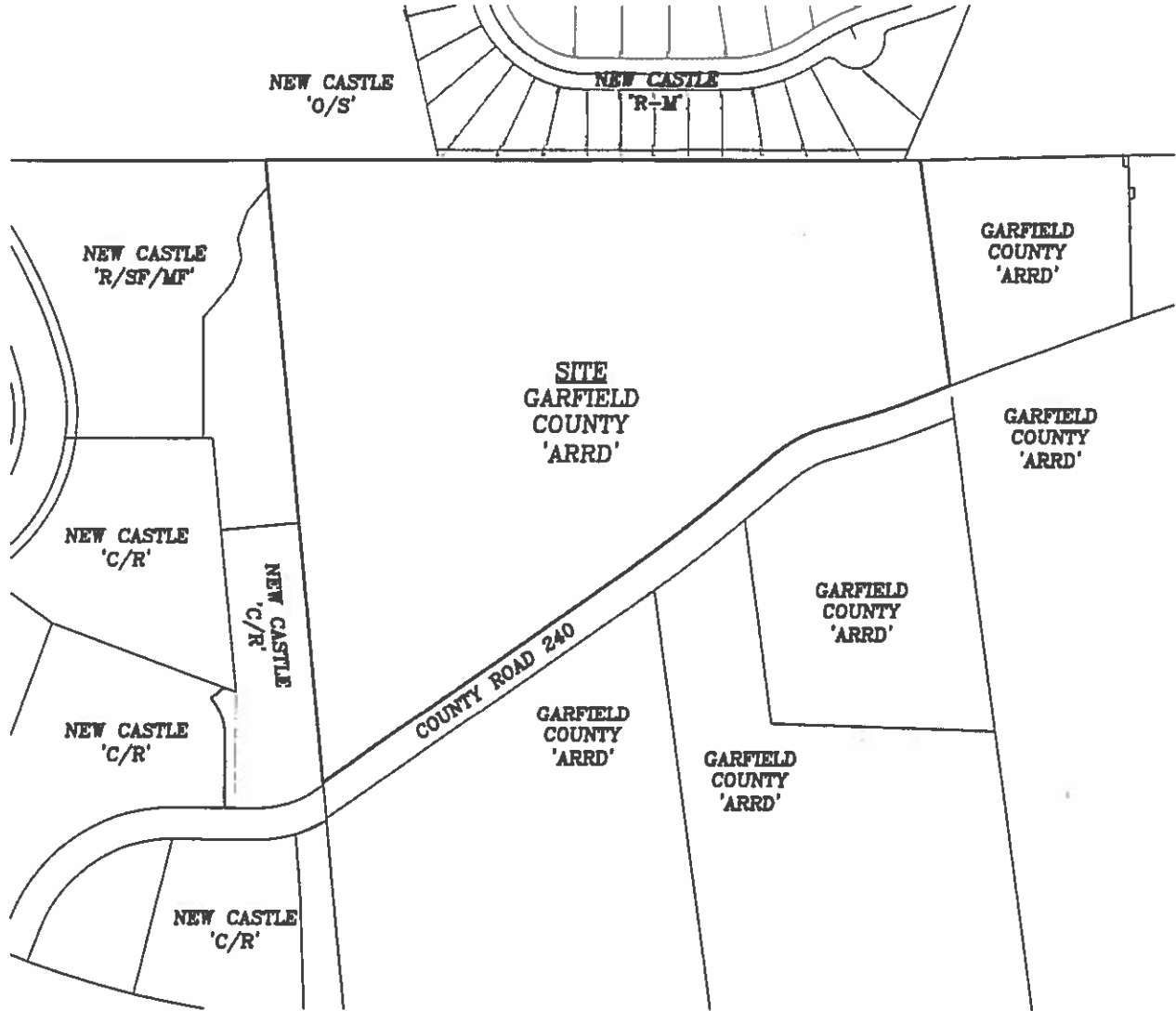
**Mineral Owners on Turtlepoop LLC Property**

**Turtlepoop LLC  
United States Patent recorded February 18, 1909 as Reception No. 36586**

EXISTING LAND USE MAP OF:  
**KUERSTEN PROPERTY**

LOCATED IN A PORTION OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 90 WEST,  
COUNTY OF GARFIELD, STATE OF COLORADO.

SHEET 1 OF 1



**SUMMARY OF ZONE DISTRICTS**

GARFIELD COUNTY-

'ARRD' - Agriculture Residential Rural Density

NEW CASTLE-

'R-M' - Residential Single Family, Medium Density

'O/S' - Open Space

'R/SF/MF' - Residential Single Family / Multi Family

'C/R' - Commercial Retail

SCALE: 1" = 300'

**SOPRIS ENGINEERING - LLC**

CIVIL CONSULTANTS  
502 MAIN STREET, SUITE A3  
CARBONDALE, COLORADO 81623  
(970) 704-0311

27171.02 04/02/08 27171-Grading.dwg

**Commonwealth Title Company  
of Garfield County, Inc.**

127 E. 5th Street  
Rifle, CO 81650  
(970) 625-3300 Phone  
(970) 625-3305 Fax

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Date: February 6, 2017

To: Turtlepoop LLC  
75 Buffalo Lane  
Carbondale, CO 81623

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**Thank you for your order.  
Enclosed please find the following  
in connection with our File No. 1608095-1:**

- Commitment
  - Title Policy
  - Endorsement
  - Tax Certificate
  - Other
- 
-



Policy No.: 42947-1-1608095-2017.8130606-210693427

## OWNER'S POLICY OF TITLE INSURANCE

Issued by

### COMMONWEALTH LAND TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

#### COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Nebraska company, (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed



or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused this policy to be signed and sealed by its duly authorized officers.

Countersigned:

*Patrick P. Burwell*

By: \_\_\_\_\_  
Authorized Officer or Agent  
Patrick P. Burwell  
Commonwealth Title Company of Garfield  
County, Inc  
127 E 5th St  
Rifle, CO 81650-2325  
Tel: 970-625-3300  
Fax: 970-625-3305



COMMONWEALTH LAND TITLE INSURANCE COMPANY

By:

*Raymond M. Quirk*

President

Attest:

*[Signature]*

Secretary

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
    - (i) the occupancy, use, or enjoyment of the Land;
    - (ii) the character, dimensions or location of any improvement erected on the Land;
    - (iii) the subdivision of land; or
    - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
  3. Defects, liens, encumbrances, adverse claims, or other matters:
    - (a) created, suffered, assumed, or agreed to by the Insured Claimant;

- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

### CONDITIONS

#### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this

policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

Form Code: 8130606

Form Description: ALTA Owners Policy 06/17/06 for CO\_306

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(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

(i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a

purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

## 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

## 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the



Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

#### **7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

#### **8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

#### **9. LIMITATION OF LIABILITY**

(a) If the Company establishes the Title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### **10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

#### **11. LIABILITY NONCUMULATIVE**

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or



lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

**12. PAYMENT OF LOSS**

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

**13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a)Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b)The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

**14. ARBITRATION**

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a)This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b)Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c)Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d)Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

(a)Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b)Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at COMMONWEALTH LAND TITLE INSURANCE COMPANY, Attn: Claims Department, P.O. Box 45023, Jacksonville, FL 32232-5023.

**NOTICE CONCERNING FRAUDULENT INSURANCE ACTS**

*(This Notice is Permanently Affixed Hereto)*

**It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the department of regulatory agencies.**

C. R. S. A. § 10-1-128 (6)(a).



**POLICY OF TITLE INSURANCE**

**SCHEDULE A**

Amount of Insurance: **\$850,000.00**

Policy No. **8130606-210693427**

Premium **\$2018.00**

File No. **1608095-1**

Date of Policy: **January 20, 2017 at 5:00 PM**

1. Name of Insured

**Turtlepoop LLC**

2. The Estate or interest in the land described herein and which is covered by this policy is Fee Simple and is at the date of Policy vested in:

**Turtlepoop LLC**

3. The land referred to in this policy is described in the said instrument, is situated in the County of Garfield, State of CO, and is identified as follows:

**See Attached Exhibit "A"**

*Patrick P. Burwell*

Countersigned:

\_\_\_\_\_  
Authorized Officer or Agent

EXHIBIT "A"

A parcel or tract of land situated in the East  $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, being more particularly described as follows:

Beginning at the East one-quarter corner of said Section 32 which bears North 7°42'00" West a distance of 2488.46 feet from the SE corner of said Section 32; thence South 7°42'00" East and along said East line a distance of 429.10 feet to a point of intersection with the apparent Northerly right of way line of an existing County Road as constructed and in use; thence South 68°28'00" West and along said apparent Northerly right of way line a distance of 87.39 feet to a point of curve; thence along said apparent Northerly right of way line and a curve to the right having a radius of 873.77 feet; a central angle of 6°20'00", an arc distance of 96.58 feet to a point of tangent; thence South 74°48'00" West and along said apparent Northerly right of way line a distance of 68.00 feet to a point of curve; thence along said apparent Northerly right of way line and a curve to the left having a radius of 265.23 feet, a central angle of 24°00'00", an arc distance of 111.10 feet to a point of tangent; thence South 50°48'00" West along said apparent Northerly right of way line a distance of 160.00 feet to a point of curve; thence along said apparent Northerly right of way line and a curve to the right having a radius of 2515.17 feet, a central angle of 4°30'00", an arc distance of 197.54 feet to a point of tangent; thence South 55°18'00" West and along said apparent Northerly right of way line a distance of 712.94 feet to a point of intersection with the West line of the East  $\frac{1}{2}$  of the SE $\frac{1}{4}$  of said Section 32; thence North 5°22'05" West and along said West line E $\frac{1}{2}$ SE $\frac{1}{4}$  a distance of 1185.37 feet to the NW corner E $\frac{1}{2}$ SE $\frac{1}{4}$  said Section 32; thence North 89°55'54" East and along the North line of the SE $\frac{1}{4}$  of said Section 32 a distance of 1257.98 feet to the Point of Beginning.

## SCHEDULE B

This Policy does not insure against loss or damage by reason of the following:

1. Rights or claims of parties in possession not shown by the Public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts, which a correct survey and inspection of the premises would disclose, and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Unpatented mining claims, reservations or exceptions in patents or in acts authorizing the issuance thereof.
6. Taxes and assessments for the year 2017, not yet due or payable.
7. Any and all water rights, claims, or title to water, whether or not the matters excepted are shown by the public record.
8. Right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted and a right of way for ditches or canals as constructed by the authority of the United States, as reserved in United States Patent recorded February 18, 1909 as Reception No. 36586.
9. Right of way for County Road No. 240.
10. Right of way for ditches and canals in place and in use.
11. Terms and conditions of Irrigation Easement Relocation Agreement recorded June 27, 2005 in Book 1700 at Page 367.
12. Possessory rights outside of fence, encroachment of fence onto adjoining property, apparent easement for overhead utilities and all matters shown on ALTA/ACAM Land Title Survey Plat prepared by Bookcliff Survey Services, Inc. dated March 6, 2008, Project No. 04009-03.
13. Deed of Trust from Turtlepoop LLC to the Public Trustee of Garfield County for the use of Kathleen L. Kuersten and Robert E. Kuersten, showing an original amount of \$600,000.00, dated January 20, 2017 and recorded January 20, 2017 as Reception No.887955.

**Exceptions Number 1,2,3 and 4 are hereby omitted.**

## Chapter 17.64 - COMMERCIAL GENERAL DISTRICT

### Sections:

#### 17.64.010 - Generally.

The commercial general zone district shall be governed in conformity with the following regulations.

(Prior code § 13-04-130 (part))

#### 17.64.020 - Description.

The purpose of the commercial general district is to provide an area for general commercial development within the town.

(Prior code § 13-04-130(A))

#### 17.64.030 - Permitted uses.

Permitted uses shall be as follows:

- A. Office for conduct of a business or profession;
- B. Retail sales establishments that sell the following: food, beverages, dry goods, furniture, appliances, hardware, clothing, books, petroleum products and supplies;
- C. Hotel, motel, or lodge;
- D. Eating establishments with or without a bar;
- E. Cabinet shop;
- F. Glass shop;
- G. Wholesale and retail establishments that sell the following: building construction products, materials and supplies; or electrical and mechanical supplies and equipment;
- H. Warehousing;
- I. Self-storage facility;
- J. Outdoor commercial recreational use;
- K. Recreation vehicle park;
- L. Bottling plant;



- M. Public park/open space;
- N. Fire station;
- O. Police station;
- P. Ambulance service.

(Prior code § 13-04-130(B))

#### 17.64.040 - Nonpermitted uses.

The following uses are not permitted:

- A. Auto wrecking and salvage yard;
- B. Auto storage yard;
- C. Truck repair and storage yard;
- D. Mobile home repair and storage;
- E. Mobile home park;
- F. Asphalt batch plant;
- G. Concrete block and mixing plant;
- H. Concrete storage yard;
- I. Gravel extraction;
- J. Gravel storage;
- K. Mining operations;
- L. Flea market.

(Prior code § 13-04-130(C))

#### 17.64.050 - Conditional uses.

Any use not specifically defined in the permitted or nonpermitted use categories shall be a conditional use.

(Prior code § 13-04-130(D))

#### 17.64.060 - Zone requirements.

- A. All service, fabrication, and repair operations and storage of materials shall be enclosed by a fence at least six feet in height. Fences and gates shall be constructed of galvanized chain link.
- B. All service, fabrication and repair operations are to be conducted within a building.
- C. All loading and unloading of materials shall be conducted on private property.
- D. All practical means shall be used to confine odor, noise, glare and vibration to the site, and to avoid excessive emission of fumes, gases, radiation, liquid waste, and smoke.
- E. All properties are required to be screened with trees and shrubs on at least twenty-five (25) percent of their private property lines in compliance with Chapter 12.20.
- F. All screening with trees and shrubs will be subject to approval of the New Castle parks and recreation committee prior to the issuance of a building permit.

(Prior code § 13-04-130(E))

#### 17.64.070 - Minimum lot area.

Minimum lot area shall be twenty thousand (20,000) square feet.

(Prior code § 13-04-130(F))

#### 17.64.080 - Minimum setbacks.

Minimum setbacks shall be as follows:

- A. Front: twenty-five (25) feet;
- B. Rear: ten (10) feet;
- C. Side: five feet.

(Prior code § 13-04-130(G))

#### 17.64.090 - Maximum building height.

- A. Maximum wall height of buildings, additional storage, or structural facilities shall be thirty (30) feet.
- B. Maximum number of building stories, excluding basements, shall be two stories.

(Prior code § 13-04-130(H))

### Chapter 17.68 - COMMERCIAL TRANSITIONAL DISTRICT

**Exhibit A**

A parcel or tract of land situated in the East 1/4 of the SE 1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the

Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

thence N 90°00'00" E a distance of 162.87 feet;

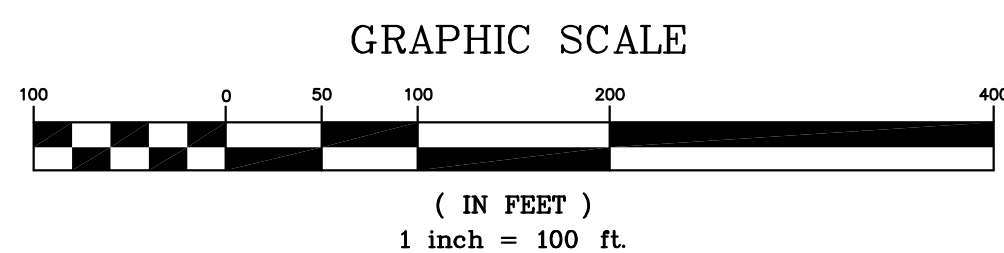
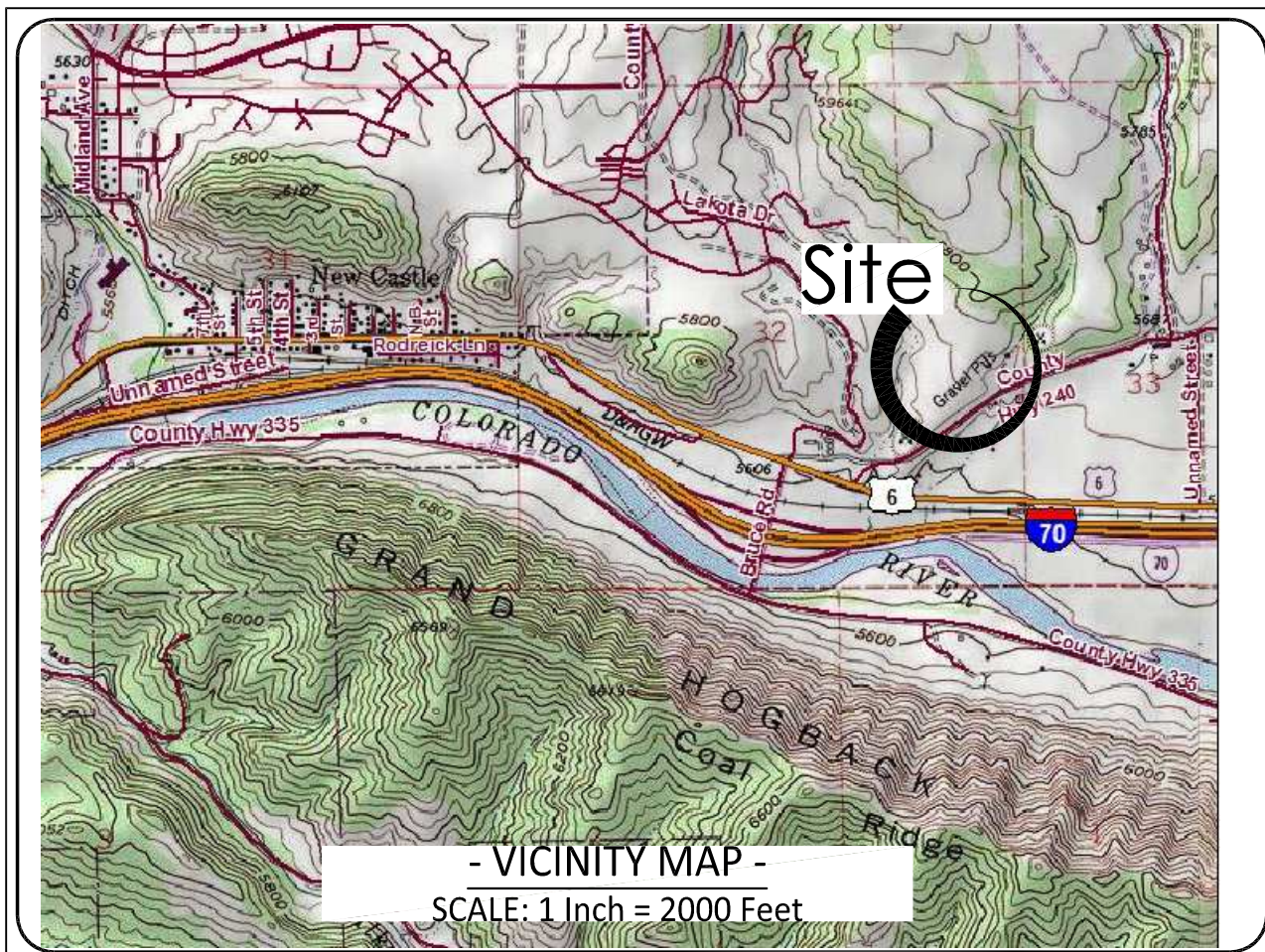
thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;

thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141,006 square feet), more or less.



# Kuersten Annexation Map

of 3.237 acres to be Annexed to the Town of New Castle, Colorado  
Section 32, T.5 S., R.90 W., of the 6th P.M.  
Garfield County, Colorado



**NOTES:**

- This map has been prepared pursuant to client request for an Annexation Map.
- Units of linear measurements are displayed in US Survey Feet.
- This map does not represent a complete boundary of the parcels depicted hereon, and some information has been prepared solely upon documents of record.
- SGM will not be responsible for any changes made to this document after it leaves our possession. Any copy, facsimile, etc., of this document must be compared to the original signed, sealed and dated document to insure the accuracy of the information shown on any such copy, and to insure that no such changes have been made.
- Property description shown hereon is based on Reception No. 887954 of the Garfield County records.

**ANNEXATION PARCEL DESCRIPTION**

A parcel or tract of land situated in the East 1/4 of the SE1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

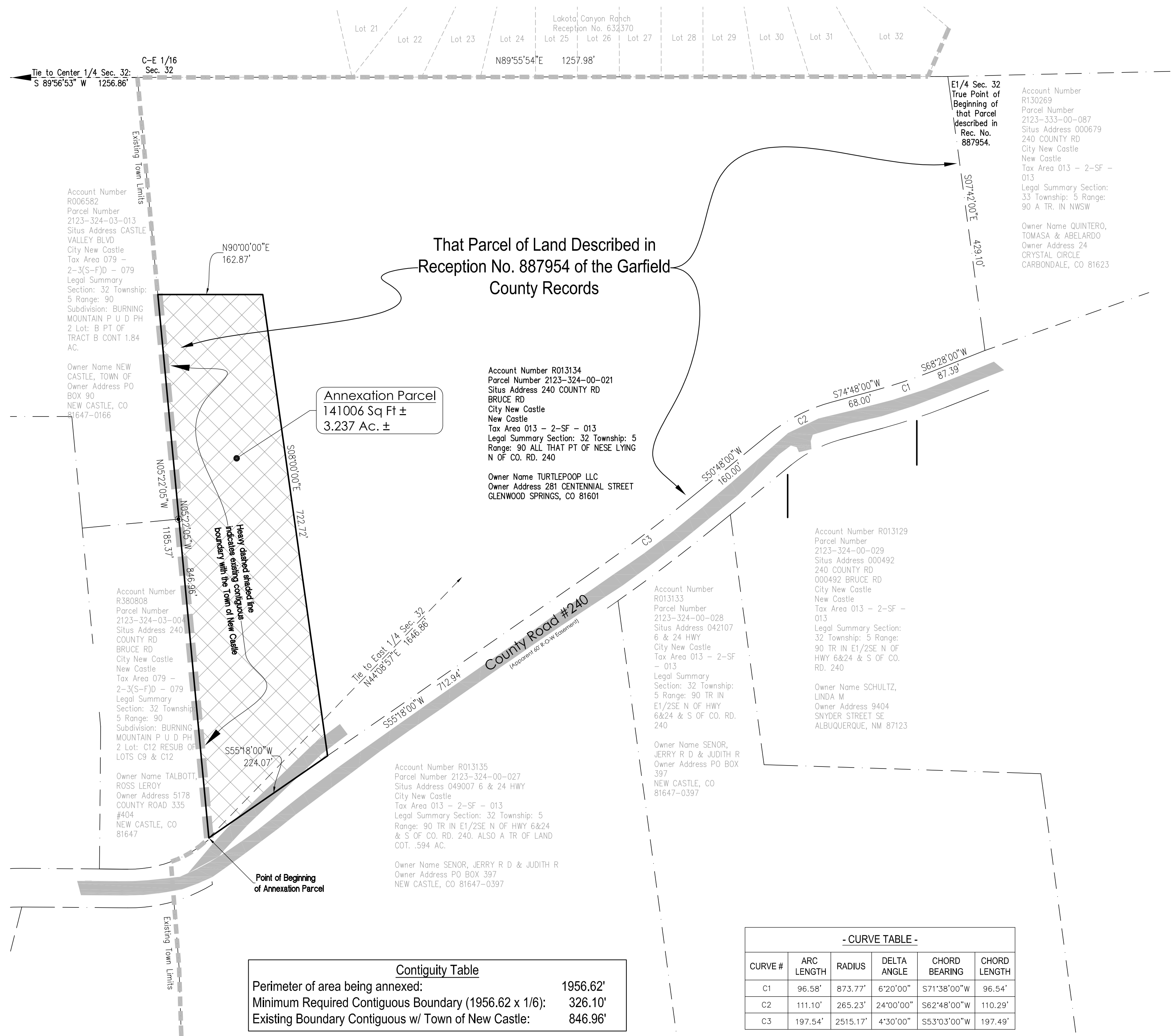
Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

thence N 90°00'00" E a distance of 162.87 feet;

thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;

thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141006 square feet), more or less.



Contiguity Table	
Perimeter of area being annexed:	1956.62'
Minimum Required Contiguous Boundary (1956.62 x 1/6):	326.10'
Existing Boundary Contiguous w/ Town of New Castle:	846.96'

- CURVE TABLE -					
CURVE #	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	96.58'	873.77'	6°20'00"	S71°38'00"W	96.54'
C2	111.10'	265.23'	24°00'00"	S62°48'00"W	110.29'
C3	197.54'	2515.17'	4°30'00"	S53°03'00"W	197.49'

**Town Council Certificate:**

This plat is hereby approved by the Town Council of the Town of New Castle, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 2017 for filing with the Clerk and Recorder of Garfield County, subject to the provisions that this approval does not obligate the Town of New Castle to finance or construct any improvements of the land, streets or easements which may be dedicated to the public, except as specifically agreed to by the Town Council. This plat is approved for filing pursuant to the terms and conditions of Ordinance No. \_\_\_\_\_ Series of 2017, as the annexation of unincorporated municipally-owned land pursuant to CRS 51-12-106(3).

Witness my hand and the seal of the Town of New Castle this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Mayor \_\_\_\_\_  
Attest: \_\_\_\_\_  
Town Clerk

**Title Certificate:**

\_\_\_\_\_ does hereby certify that I have examined the title to all lands shown on this plat and that title such lands is vested in \_\_\_\_\_ free and clear of all liens, taxes, and encumbrances, except as follows:

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**Clerk and Recorder's Certificate:**

This Plat was filed for record in the Office of the Clerk and Recorder of Garfield County, Colorado, at \_\_\_\_\_ o'clock \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, and is duly recorded as Reception No. \_\_\_\_\_

Clerk and Recorder \_\_\_\_\_  
By: \_\_\_\_\_ Deputy

**Board of County Commissioners Certificate:**

The Garfield County Board of Commissioners hereby consents to annexation by the Town of New Castle as depicted hereon.

Garfield County Board of County Commissioners  
By: \_\_\_\_\_ Chairperson

**County Surveyor's Certificate:**

Approved for content and form only and not the accuracy of surveys, calculations or drafting, pursuant to C.R.S. § 38-51-101 and 102, et seq.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2017.

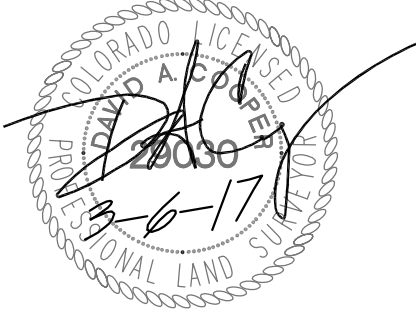
Garfield County Surveyor \_\_\_\_\_

**Surveyor's Certificate:**

I, David A. Cooper, a registered Professional Land Surveyor, licensed under the laws of the State of Colorado, do hereby certify that this annexation map was made under my direct supervision and that the information hereon is correct to the best of my knowledge and belief, and that no less than one-sixth (1/6) of the perimeter of the area as shown hereon is contiguous with the existing boundaries of the Town of New Castle, Colorado.

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017.

David A. Cooper  
Colo. Reg. P.L.S. # 29030  
For, and on behalf of SGM



DRAFT COPY ONLY

A:\2017\2017-157-KuerstenAnnexation\001-SumPlot\1-SumPlot\1-SumPlot\1-SumPlot\KuerstenAnnexationMap.dwg

**Notice:**  
According to Colorado Law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any legal action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

**SGM**  
118 West Sixth Street, Suite 200  
Glenwood Springs, CO 81601  
970.945.1004 www.sgm-inc.com

Kuersten Annexation  
New Castle, CO

#	Revision	Date	By
1			
2			
3			
4			
5			

Annexation Map

Job No.	2017-157-001	1
Drawn by:	dac	1
Date:	3/6/17	
Approved:		1
File:	KuerstenAnnexationMap	



## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT at 7:00 p.m. on May 10, 2017, at New Castle Town Hall, 450 West Main Street, New Castle, Colorado 81647, the New Castle Planning and Zoning Commission will hold a public hearing regarding the zoning of a parcel of real property to be annexed into the Town of New Castle, Colorado. The property that is the subject of the public hearing and related annexation and zoning application is commonly known as TBD Bruce Road, New Castle, Colorado, and legally described as follows, to wit:

A parcel or tract of land situated in the East 1/4 of the SE 1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the

Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

thence N 90°00'00" E a distance of 162.87 feet;

thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;

thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141,006 square feet), more or less.

Turtlepoop, LLC is the property owner and applicant. The complete annexation and zoning application is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, at the New Castle Town Clerk's office located at 450 West Main Street, New Castle, Colorado 81647.

TOWN OF NEW CASTLE, COLORADO  
RESOLUTION NO. TC 2017-8

A RESOLUTION OF THE TOWN COUNCIL OF TOWN OF NEW CASTLE,  
COLORADO, MAKING FINDINGS OF FACT AND CONCLUSIONS CONCERNING THE  
PETITION FOR ANNEXATION OF PROPERTY KNOWN AS THE  
KUERSTEN PROPERTY

WHEREAS, on March 17, 2017, Turtlepoop LLC (“Petitioner”) filed with the Town Clerk of the Town of New Castle, Colorado (“Town”), an annexation petition (“Petition”) and request that the Town Council commence proceedings to annex to the Town pursuant to C.R.S. § 31-21-104, a certain unincorporated parcel of land located in the County of Garfield, State of Colorado, at TBD Bruce Road, New Castle, Colorado, and described in **Exhibit “A”** attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, in order to initiate the annexation process, the Town must determine whether the Petition is substantially in compliance with the requirements set forth in C.R.S. § 31-12-107(1); and

WHEREAS, if the Petition is found to comply with C.R.S. § 31-12-107(1), the Town must also set a public hearing to determine whether the annexation complies with section 30 of article II of the State constitution and C.R.S. §§ 31-12-104 and -105; and

WHEREAS, Council has reviewed the Petition and makes the findings set forth in this Resolution.

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

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Board.

2. Petition Contents. After reviewing the Petition, the Town Council finds that the Petition contains:

- a. Allegations that the requirements of section C.R.S. §§ 31-12-104 and 105 exist or have been met;
- b. An allegation that the landowners that the signed the Petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed;
- c. A request that the Town approve the annexation of the area proposed to be annexed;

- d. The signatures, signature dates, mailing addresses, and property legal descriptions of the requisite number of landowners;
- e. An affidavit of each circulator of the petition stating that each signature therein is the signature of the person whose name it purports to be; and
- f. The requisite number of copies of the annexation map containing the information required under C.R.S. § 31-12-107(1)(d).


3. Finding of Substantial Compliance. Based on the findings set forth in Paragraph 2, the Town Council hereby determines that the Petition substantially complies with the requirements set forth in C.R.S. § 31-12-107(1).

4. Hearing Set. The Town Council will hold a public hearing on May 16, 2017, to determine whether the proposed annexation of the Property complies with section 30 of article II of the state constitution and C.R.S. §§ 31-12-104 and 105.

5. Direction to Town Clerk. The Town Council hereby directs the Town Clerk to publish notice as required by C.R.S. § 31-12-108(2) of the hearing established in Section 4 of this Resolution.

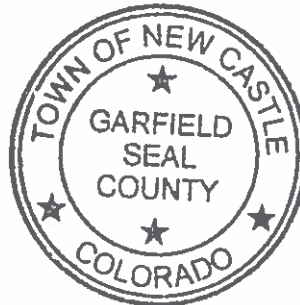
THIS RESOLUTION NO. TC 2017-8 was adopted by the Town of New Castle Town Council by a vote of 7 to 0 on the 4th day of April, 2017.

TOWN OF NEW CASTLE, COLORADO  
TOWN COUNCIL

By:   
Art Riddile, Mayor

ATTEST:

  
Melody Harrison, Town Clerk





## **Exhibit A**

The Property that is the subject of the Petition and this Resolution No. TC 2017-8 is fully described as:

A parcel or tract of land situated in the East 1/4 of the SE 1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the

Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

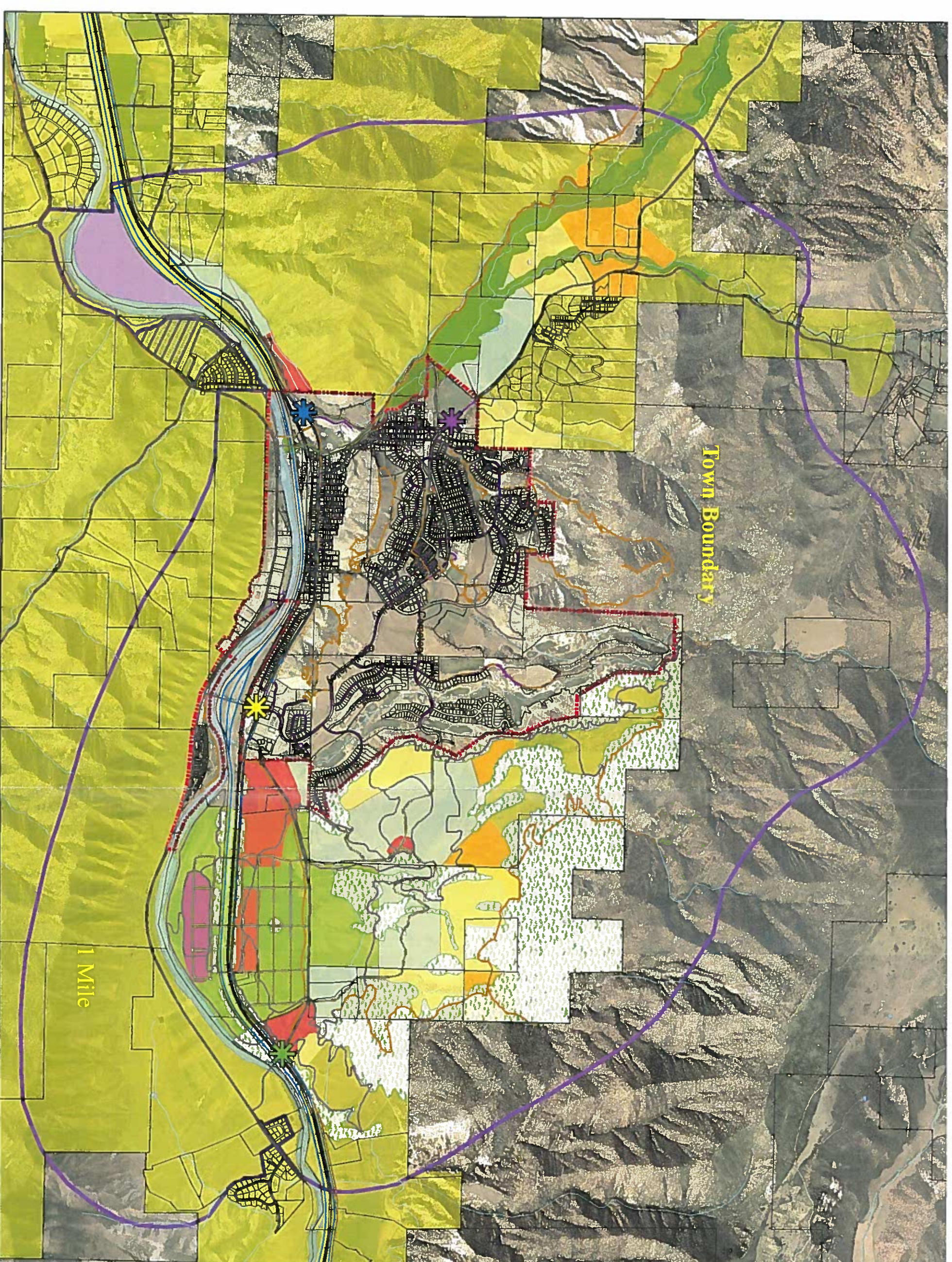
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thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;

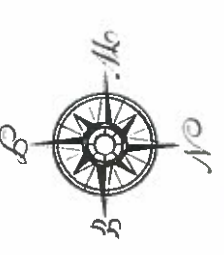
thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141,006 square feet), more or less.



# New Castle Comprehensive Plan Future Land Use



Legend	
	Business Campus
	Mixed Use-Commer Focus
	Industrial
	Mixed Use-Res Focus 6-10/Ac
	Mixed Use-Res Focus 4-6/Ac
	Rural Low Density
	Clustered Residential
	Planned Urban Center
	Open Space
	Environmental Protection
	East Gateway
	South Gateway
	West Gateway
	North Gateway
	County Roads
	Hard Surface Trails
	Soft Surface Trails
	Colorado NC Trails
	Madaras Trail
	Future_Collector
	Streams/Ditches
	UGB
	City Streets
	County Roads
	Railroads
	Highways
	Rivers/Lakes
	Subdivisions/Streets



1 Mile







**Town of New Castle**     **Planning & Code Administration**  
450 W. Main Street     **Department**  
PO Box 90     **Phone:** (970) 984-2311  
New Castle, CO 81647     **Fax:** (970) 984-2716

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**Staff Report**  
**Turtlepoop, LLC Application - Zoning - New Castle Planning and Zoning –**  
**Hearing May 10, 2017**

Report Date: 5/5/2017

**Project Information**

**Name of Applicant:** Turtlepoop, LLC (Mogli Cooper, sole member)

**Applicant’s Mailing Address:** 72 Buffalo, Carbondale, CO, 81623 Telephone – (970) 433-5838

**/Phone/Email** E-mail:moglic@mac.com

**Property Address:** TBD, New Castle, CO 81647

**Property Owner:** Turtlepoop, LLC (Mogli Cooper, sole member)

**Owner Mailing Address** 75 Buffalo, Carbondale, CO 81623. Telephone – (970) 433-5838

**Proposed Use:** TBD

**Street Frontage:** CR 240 aka Bruce Rd.

**Existing Zoning:** County - Rural

**Surrounding Zoning:** North – Residential (LCR – R/M), South – County (Rural), West – Commercial Retail PUD and East - County (Rural)

**I Description of application:**

This application is a request for zoning 3.2 acres (subject property) immediately east of New Hope Church’s vacant lot within the Town corporate limits. The applicant has stated that access to the subject property will be from the New Hope Church’s vacant lot. The applicant, Turtlepoop, LLC aka Mogli Cooper, is requesting the subject property be annexed into town. The P&Z Commissions’ priority is to recommend zoning to Town Council for this parcel. Ms. Cooper has the discretion to select the type of zone district and she has chosen the current Commercial General Zone District (CG). New annexations must substantially comply with the Town’s Comprehensive Plan (the Plan). The

Town supports Ms. Cooper's effort to relocate the CDOT engineers and State Patrol. However, the designation of the CG district is not compatible with Town Comprehensive Plan. Accordingly, Staff proposes two options for zoning the property as explained below.

## **II Comprehensive Plan overview**

Below are excerpts from the Plan:

### **Guiding Principles, Goals and Policies**

#### **1. Community Growth**

##### **Guiding Principle**

New growth and expansion New in Castle will maintain the concept of a compact community with a defined urban edge thereby avoiding sprawl. Ensuring a mix of uses both within the community as a whole and within individual developments will ensure the vitality of New Castle as it grows. This mix will allow housing, employment and service to coexist within walking/biking distance thereby reducing reliance on the automobile for all transportation.

**Goal CG-1:** Ensure that new development substantially conforms to the New Castle Comprehensive Plan principles, goals and policies.

**Policy CG-1B** Applicants will be required to clearly demonstrate substantial conformity with the comprehensive plan in all applications.

### **The following draft details the Future Land Use Plan as identified in the Town's Comprehensive Plan**

The Future Land Use Plan establishes a framework within which development plans must be designed, evaluated by New Castle and ultimately completed if approved.

#### **It is the goal of the Future Land Use Plan to:**

- \* Ensure a variety and mix of uses that complement the existing New Castle land-use patterns.
- \* Offer excellent non-motorized access and non-motorized traffic and interconnection between use areas for both motorized and non-motorized traffic.
- \* Guarantee a balanced mix of housing types that support a broad range of pricing within the market.
- \* Support development of activity centers that include a sense of place where the public can interact, find services, and secure employment, and that are sustainable in the long term.
- \* Allow for a feathered-edge community that transitions to rural areas where open lands and agricultural uses predominate.
- \* Concentrate development in areas where there is good access, efficiently provided services and cost-effective utility extensions.

#### **The Future Land Use Map identifies this property as Mixed Use-Commercial Focus**

The area has similar use characteristics to the Planned Urban Center, but in a less intensive setting. It includes a mix of compatible commercial areas including civic functions, restaurants, retail, office, services, entertainment and Transit Oriented Development (TOD). This mixed use commercial area builds a sense of “place” in a quality living environment ..... Residential uses exist on the upper level of buildings and enhance community living.

**Location:**

Mixed Use-Commercial Focus is located where there is good vehicular access near intersections and adjacent to other larger commercial sites. The location of these uses is designed to concentrate densities closer to the urban core where services, utilities, parks, road access and other necessary functions cost-effectively support the density.

Light industrial uses and other uses that require storage must enclose items in an architecturally compatible structure.

Business activities that generate excessive noise, odor, glare, smoke, vibration or unsightly outdoor storage should not be located in the Mixed Use-Commercial Focus area or otherwise sufficiently mitigated by strict standards so they are not a problem. Businesses that require deliveries by large semis should be located on the periphery where there is good access to the rear of the buildings.

**Types of Uses:**

The primary uses in this area are commercial (at least 70%) with other residential or noncommercial uses not exceeding 30% of the square foot occupancy. Uses include small and medium sized retail (not exceeding 20,000 square feet in a single structure), a variety of services, lodging, entertainment, ground level retail, offices, restaurants, entertainment, civic functions, lower and upper level offices, dining, and apartment/condo residential units. Upper-story residential uses include apartments, lofts and live/work units. Compatible light industrial activities are permitted in this district.

**Density:**

Net residential densities in this area may be up to 10 dwelling units per acre.

**In contrast to the Plan, there are unfavorable CG district permitted uses not in compliance with the Plan. In addition, these uses may not be palpable for New Castle residents living north of the subject property.**

**CG Zone District**

**17.64.020 - Description**

The purpose of the commercial general district is to provide an area for general commercial development within the town.

**Permitted uses** shall be as follows:

A. Office for conduct of a business or profession;

(4)

B. Retail sales establishments that sell the following: food, beverages, dry goods, furniture, appliances, hardware, clothing, books, petroleum products and supplies (definition needed);

C. Hotel, motel, or lodge; (This may not appeal to nearby residents on Faas Ranch Rd.)

D. Eating establishments with or without a bar; (a restaurant and bar could be objectionable from nearby neighbors on Faas Ranch Rd.- perhaps too much noise especially late night)

E. Cabinet shop;

F. Glass shop;

G. Wholesale and retail establishments that sell the following: building construction products, materials and supplies; or electrical and mechanical supplies and equipment;

H. Warehousing;

I. Self-storage facility;

J. Outdoor commercial recreational use;

K. Recreation vehicle park;

L. Bottling plant;

M. Public park/open space;

N. Fire station;

O. Police station;

P. Ambulance service.

The following uses are not permitted:

A. Auto wrecking and salvage yard;

B. Auto storage yard;

C. Truck repair and storage yard;

D. Mobile home repair and storage;

E. Mobile home park;

F. Asphalt batch plant;

G. Concrete block and mixing plant;

H. Concrete storage yard;

I. Gravel extraction;

J. Gravel storage;

K. Mining operations;

L. Flea market.

17.64.050 - Conditional uses.

Any use not specifically defined in the permitted or non-permitted use categories shall be a conditional use.

### **III Zoning Options**

Based on the above analysis of the Comp Plan, Staff proposes two options for zoning the property:

1. Create a new zone district to be known as the Mixed-Use Commercial district which the Town's Comprehensive Plan has determined to be most appropriate for this area as well as

other locations east and west of the subject property. The Mixed-Use Commercial district would incorporate the uses and density limits described in the Plan to provide a unique mix of compatible commercial uses with more limited residential and non-commercial uses.

2. Require applicant to proceed through the PUD process following annexation to ensure that uses appropriate to the area and compliant with the Comp Plan are conducted on the property.

**Staff Recommendation:** Staff recommends denial of the CG Zone District because it does not substantially comply with the Town's Comprehensive Plan. Staff recommends that the Commission recommend that the applicant submit a PUD application adopting the Comprehensive Plan *Types of Uses* (see above) and other compatible uses and/or that a new zone district known as the Mixed-Use Commercial Zone District be created.



**TOWN OF NEW CASTLE, COLORADO**  
**RESOLUTION NO. PZ 2017-3**

A RESOLUTION OF THE NEW CASTLE PLANNING AND ZONING COMMISSION MAKING RECOMMENDATIONS REGARDING ZONING OF CERTAIN REAL PROPERTY PROPOSED FOR ANNEXATION INTO THE TOWN.

WHEREAS, on or about March 17, 2017, Turtlepoop LLC (“Applicant”) filed with the Town Clerk of the Town of New Castle, Colorado (“Town”), an annexation petition (“Petition”) and request that the Town Council commence proceedings to annex into the Town pursuant to C.R.S. § 31-21-104 a certain unincorporated parcel of land located in the County of Garfield, State of Colorado, at TBD Bruce Road, New Castle, Colorado, and described in **Exhibit “A”** attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, the Municipal Annexation Act of 1965 governs the Town’s annexation process; and

WHEREAS, pursuant to C.R.S. § 31-12-115(1), the Town may initiate its procedures to zone property proposed for annexation at any time after an annexation petition has been found to be in substantial compliance with C.R.S. § 31-12-107; and

WHEREAS, at its duly noticed public meeting held April 4, 2017, the New Castle Town Council found Applicant’s annexation petition to be in substantial compliance with the requirements set forth in C.R.S. § 31-12-107 and set a public hearing regarding the annexation for May 16, 2017; and

WHEREAS, Applicant has requested that the Property be zoned Commercial General (CG) upon annexation; and

WHEREAS, pursuant to Section 16.08.050 of the Town Code, the Town Planning and Zoning Commission (“Commission”) held a duly-noticed public hearing to consider the proper zoning designation for the Property upon annexation thereof; and

WHEREAS, under the Municipal Annexation Act and the Town Code, the zoning designation for the Property must comply with the Town’s 2009 Comprehensive Plan (“Comp Plan”); and

WHEREAS, the Comp Plan designates the Property as an area of “mixed-use commercial” focus; and

WHEREAS, the CG zone district **does/does not** accommodate the uses contemplated in areas of mixed-use commercial focus and by Applicant for the Property; and

WHEREAS, zoning the Property as CG **does/does** not further the Town’s comprehensive zoning plan; and

WHEREAS, based on the Comp Plan and testimony presented by Applicant, Town staff, and the general public, the Commission recommends that the Town Council [approve/approve with conditions/deny] Applicant's requested zoning designation of the Property.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW CASTLE PLANNING AND ZONING COMMISSION AS FOLLOWS:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the Commission.

2. Recommendation. The Planning and Zoning Commission hereby recommends that the Town Council zone the Property as Commercial General and amend the Town zoning map accordingly.

[OR]

Recommendation. The Planning and Zoning Commission hereby recommends that the Town Council approve the Property as Commercial General and amend the Town zoning map accordingly, subject to the condition that the Town enter into an annexation agreement with Applicant that, among other things, prohibits the following uses on the Property:

- a. Recreation vehicle park;
- b. Bottling plant;
- c. ....

[OR]

Recommendation. The Planning and Zoning Commission hereby recommends that the Town Council deny Applicant's request to zone the Property as Commercial General and that Town Council zone the Property [through the PUD process] [as a new zone district] [ as \_\_\_\_\_]. The Commission finds that said zoning designation is consistent with and furthers the Town's comprehensive zoning plan and is the more appropriate designation considering the Comp Plan and Applicant's anticipated use of the Property.

THIS RESOLUTION PZ 2017-3 was adopted by the New Castle Planning and Zoning Commission by a vote of \_\_\_\_ to \_\_\_\_ on the 10<sup>th</sup> day of May, 2017.

NEW CASTLE PLANNING AND ZONING  
COMMISSION

By: \_\_\_\_\_  
Chuck Apostolik, Chairman

ATTEST:

\_\_\_\_\_  
Mindy Andis, Deputy Town Clerk

## **EXHIBIT A**

### Legal Description

The Property that is the subject of this Resolution No. PZ 2017-3 is fully described as:

A parcel or tract of land situated in the East 1/4 of the SE 1/4 of Section 32, Township 5 South, Range 90 West of the 6th Principal Meridian, County of Garfield, State of Colorado, said parcel being a portion of that parcel of land described in Reception No. 887954 of the Garfield County records, and being more particularly described as follows:

Beginning at the Southwest Corner of said parcel described in Reception No. 887954, also being at the

Northerly right-of-way of Garfield County Road No. 240, from which the East One-Quarter Corner of said Section 32 bears N44°08'57"E a distance of 1646.86 feet;

thence N 05°22'05" W along the Westerly Line of said parcel described in Reception No. 887954, distance of 846.96 feet;

thence N 90°00'00" E a distance of 162.87 feet;

thence S 08°00'00" E a distance of 722.72 feet to the Southerly Line of said parcel described in Reception No. 887954, also being the Northerly right-of-way of Garfield County Road No. 240;

thence S 55°18'00" W along said Southerly Line of said parcel described in Reception No. 887954, and also the Northerly right-of-way of Garfield County Road No. 240, a distance of 224.07 feet to the point of beginning, said parcel containing 3.237 acres (141,006 square feet), more or less.



**Town of New Castle Planning & Code Administration Department**  
450 W. Main Street  
PO Box 90  
New Castle, CO 81647  
**Phone:** (970) 984-2311  
**Fax:** (970) 984-2716

(1)

**Staff Report**  
**James P. Colombo – Sketch Plan – Mixed Use Development**  
**New Castle Planning and Zoning – Hearing – May 10, 2017**

Report Date: 5/6/2017

**Project Information**

**Name of Applicant:** James P. Colombo

**Applicant’s Mailing Address:** 300 Horseshoe Dr., Basalt, CO. 81621  
**/Phone/Email** Telephone – (970) 618-9222  
colombo@sopris.net

**Property Address:** TBD, New Castle, CO 81647

**Property Owner:** James P. Colombo

**Owner Mailing Address** 300 Horseshoe Dr., Basalt, CO 81621

**Proposed Use:** Mixed Use Development

**Legal Description:** Lakota Canyon Ranch, Lot 2B, Phase 7

**Street Frontage:** Castle Valley BLVD. and proposed street to the northwest of the subject property

**Existing Zoning:** Mixed Use (M/U/PUD)

**Surrounding Zoning:** North – Mixed Use/PUD (MU), South – R/2/PUD, West – Mixed Use (MU/PUD) and East Mixed Use (MU/PUD)

**I Description of application:**

This is an application for a Sketch Plan for property zoned M/U/PUD northwest and adjacent to the Fire Station on Castle Valley BLVD. The applicant, James P. Colombo is required to submit the Sketch Plan to the Town Planner (Planner) for a completeness review and the Planner refers it to the Planning & Zoning Commission (P&Z). There is no requirement to recommend approval or denial by motion of the P&Z. It merely is a chance for P&Z members to ask questions.

**II Development Application Contents:**

1. Development Application
2. Exhibit “A”
3. Vicinity Map
4. Checklist – Planned Unit Development Sketch Plan
5. Preliminary Site Plan
6. Preliminary Detailed Site Plan

**III Application Checklist Requirements:**

(1) Development Application

**Staff Comment** –Submitted

(2) Map of proposed area

**Staff Comment** – Applicant submitted site plan and a detailed site plan

(3) Size of site

**Staff Comment** – Submitted – 2.607 acres.

(4) Proposed uses:

**Staff Comment** – The detailed site plan shows Residential/Commercial, Residential Townhouses, and Residential/Shop

(5) Water and sewer line location maps with anticipated connection sites:

**Staff comment** – Shown on both site plans

(6) Location of proposed and semi-public uses (dedicated and otherwise)

**Staff Comment** – A park with a playground and gazebo is located on the detailed site plan. A 10’ wide “hike and bike” trail is also on the detailed site plan (to be dedicated to the Town)

**There is no recommendation required**

**Administration Department**  
 (970) 984-2311  
 Fax: (970) 984-2716  
[www.newcastlecolorado.org](http://www.newcastlecolorado.org)



**Town of New Castle**  
 PO Box 90  
 450 W. Main Street  
 New Castle, Co. 81647

## DEVELOPMENT APPLICATION

Applicant: JAMES P. COLOMBO	
Address: 300 HORSESHOE DRIVE BASALT, CO 81621	Phone: 970 618-9222 FAX: E-mail: colombo@sopris.net
Property Owner: JAMES P. COLOMBO	
Address: SAME	Phone: SAME FAX: SAME E-mail: SAME
Contact Person: JAMES P. COLOMBO	
Address: SAME	Phone: SAME FAX: SAME E-mail: SAME
Property Location/Address: LOT 2B, LAKOTA CANYON RANCH, PHASE 7	
Legal Description: SEE ATTACHED	Acres: 2.607
Existing Zone ( <a href="#">Not sure? Click here for help</a> ): M-U mixed use district	
Existing Land Use: VACANT	
<b>TYPE(S) OF LAND USE(S) REQUESTED</b>	
<input type="checkbox"/> Pre-Annexation Agreement <input type="checkbox"/> Annexation <input type="checkbox"/> Subdivision (including Minor and Major Subdivisions, Lot Splits, Sketch Plans, Subdivision Preliminary Plans, Subdivision Final Plans, & Condominiumizations) <input type="checkbox"/> Amended Plat <input checked="" type="checkbox"/> Planned Unit Development (including PUD Sketch Plans, Preliminary PUD Development Plans, PUD Master Plans and Final PUD Development Plans) <input type="checkbox"/> Floodplain Development Permit	<input type="checkbox"/> Lot Line Adjustment or Dissolution <input type="checkbox"/> Site Specific Development Plan/Vested Rights <input type="checkbox"/> Variance <input type="checkbox"/> Zoning <input type="checkbox"/> Zoning Amendment <input type="checkbox"/> Re-zoning <input type="checkbox"/> R-1-HC Identification <input type="checkbox"/> Conditional Use Permit or Special Review Use Permit <input type="checkbox"/> Other
This development would create <u>45</u> residences and <u>18,000</u> square feet of commercial space.	
Applicant must also complete and submit the appropriate <a href="#">charges</a> for the type of land use requested. Both the applicant and the property owner must sign this application.	
Applicants are encouraged to schedule a pre-application meeting with the Town Administrator and/or Town Consultants prior to submitting this application.	



"EXHIBIT A"

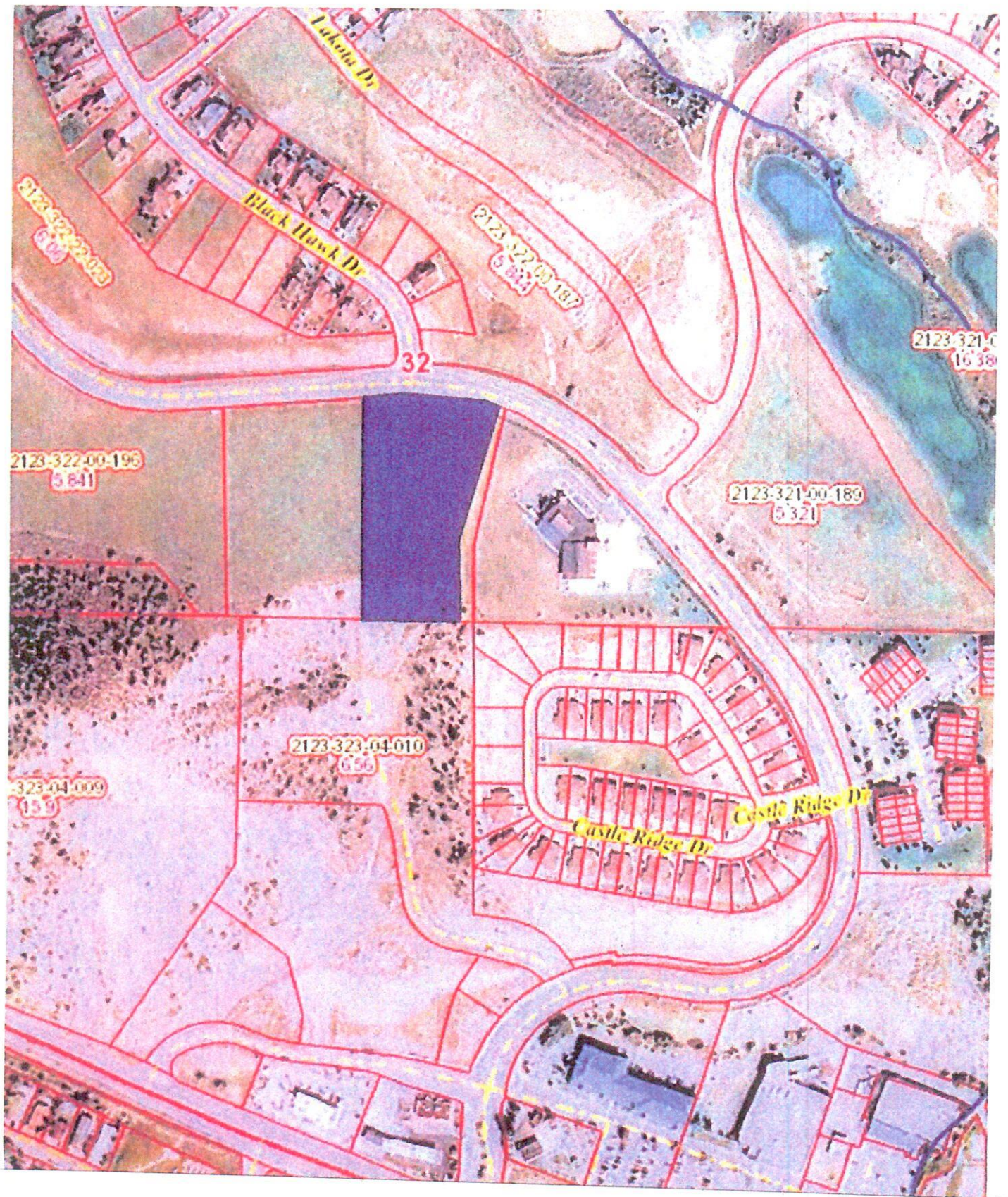
PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOT 2, LAKOTA CANYON RANCH, PHASE 7 RECORDED AS RECEPTION NO. 763774 IN THE OFFICE OF THE GARFIELD COUNTY CLERK AND RECORDER, SAID PARCEL SITUATE IN SECTION 32, TOWNSHIP 5 SOUTH, RANGE 90 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF GARFIELD, STATE OF COLORADO, ALL BEARINGS RELATIVE TO A BEARING OF N89°40'33"W BETWEEN THE EAST 1/4 CORNER OF SAID SECTION 32 AND THE CENTER 1/4 CORNER OF SAID SECTION 32, BOTH GARFIELD COUNTY SURVEYOR BRASS CAPS IN PLACE, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID CENTER 1/4 CORNER; THENCE N89°41'47"W 17.07 FEET TO THE TRUE POINT OF BEGINNING; THENCE N89°41'47"W 235.30 FEET; THENCE N00°00'00"E 447.87 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF CASTLE VALLEY BOULEVARD; THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING TWO (2) COURSES:

- 1.) N86°06'36"E 98.06 FEET
- 2.) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 532.92 FEET, AN ARC LENGTH OF 195.25 FEET (CHORD BEARS S83°23'37"E 194.16 FEET); THENCE DEPARTING SAID RIGHT-OF-WAY S12°25'54"W 278.62 FEET; THENCE S01°37'09"E 161.41 FEET TO THE TRUE POINT OF BEGINNING, SAID PARCEL OF LAND CONTAINING 2.607 ACRES MORE OR LESS.





**VICINITY MAP**

**EAGLES RIDGE RANCH**



Administration Department  
(970) 984-2311  
Fax: (970) 984-2716  
www.newcastlecolorado.org



Town of New Castle  
PO Box 90  
450 W. Main Street  
New Castle, Co 81647

## CHECKLIST PLANNED UNIT DEVELOPMENT SKETCH PLAN

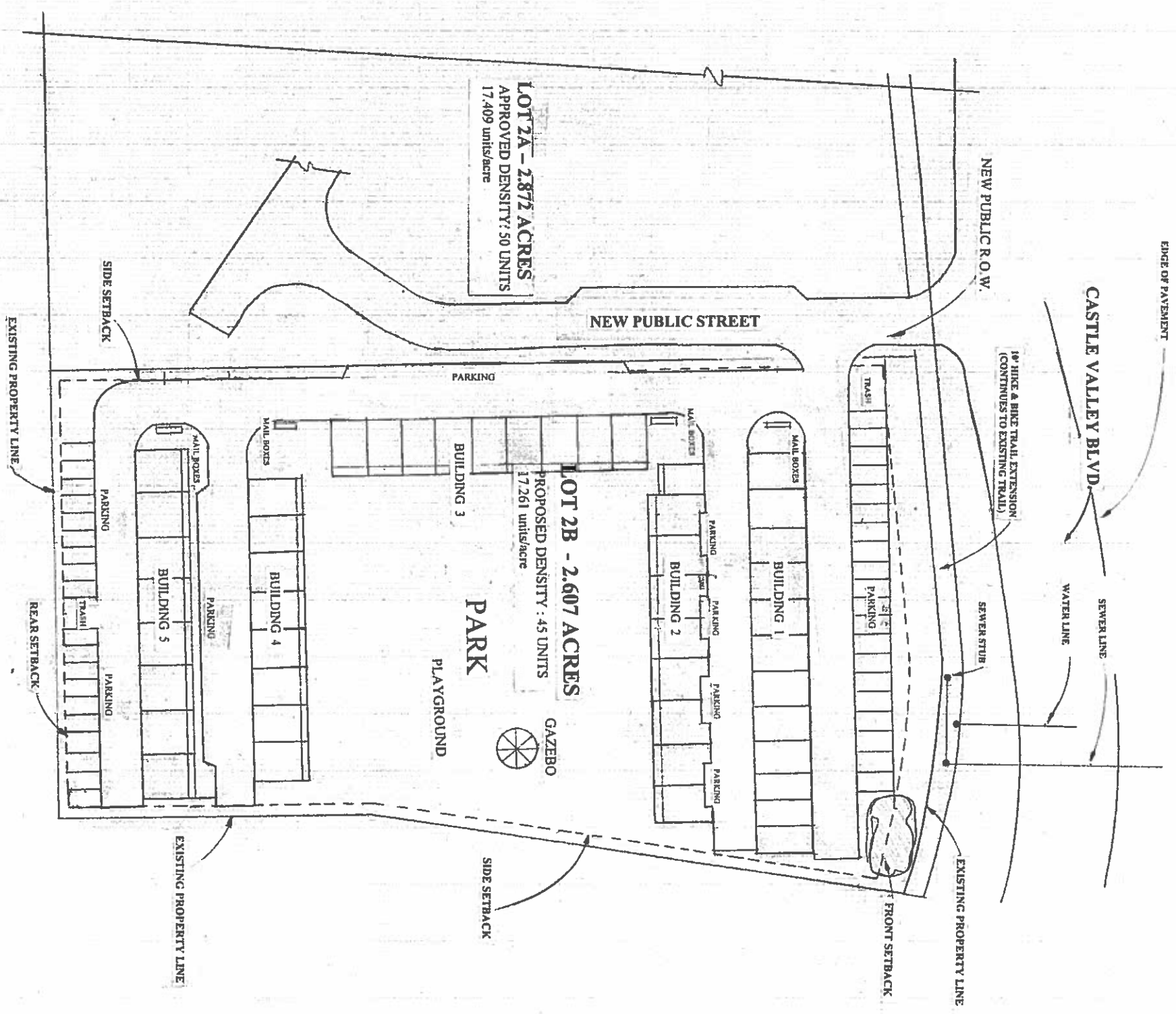
Authority: New Castle Municipal Code §§ 16.08.060 & 17-100-040

This is a helpful checklist and is not necessarily all inclusive for all Municipal Code requirements. It is still your responsibility to read and comply with all code requirements. All applications must include a non-refundable Application fee.

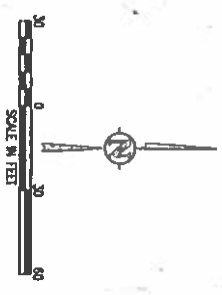
Signature [Handwritten Signature] Date 11/9/16

**An original and one (1) copy of the following items must be submitted to the Town Clerk:**

- Development Application
- Map of the proposed area
- Size of site
- Proposed land uses
- Water and sewer line location maps with anticipated connection sites
- Location of proposed public and semi-public uses (dedicated and otherwise)
- \$400.00 Non-refundable Application Fee



- EAGLES RIDGE RANCH**  
PROPOSED DENSITY : 45 UNITS  
17,261 units/acre
- UNIT TYPES**
- BUILDING 1 - TYPE A UNITS RESIDENTIAL/COMMERCIAL
  - BUILDING 2 - TYPE B UNITS - RESIDENTIAL TOWNHOUSES
  - BUILDING 3 - TYPE B UNITS - RESIDENTIAL TOWNHOUSES
  - BUILDING 4 - TYPE B UNITS - RESIDENTIAL TOWNHOUSES
  - BUILDING 5 - TYPE C UNITS - RESIDENTIAL/SHOP



**EAGLES RIDGE RANCH**  
**LOT 2B PHASE 7**  
**LAKOTA CANYON RANCH**

**COLOMBO**

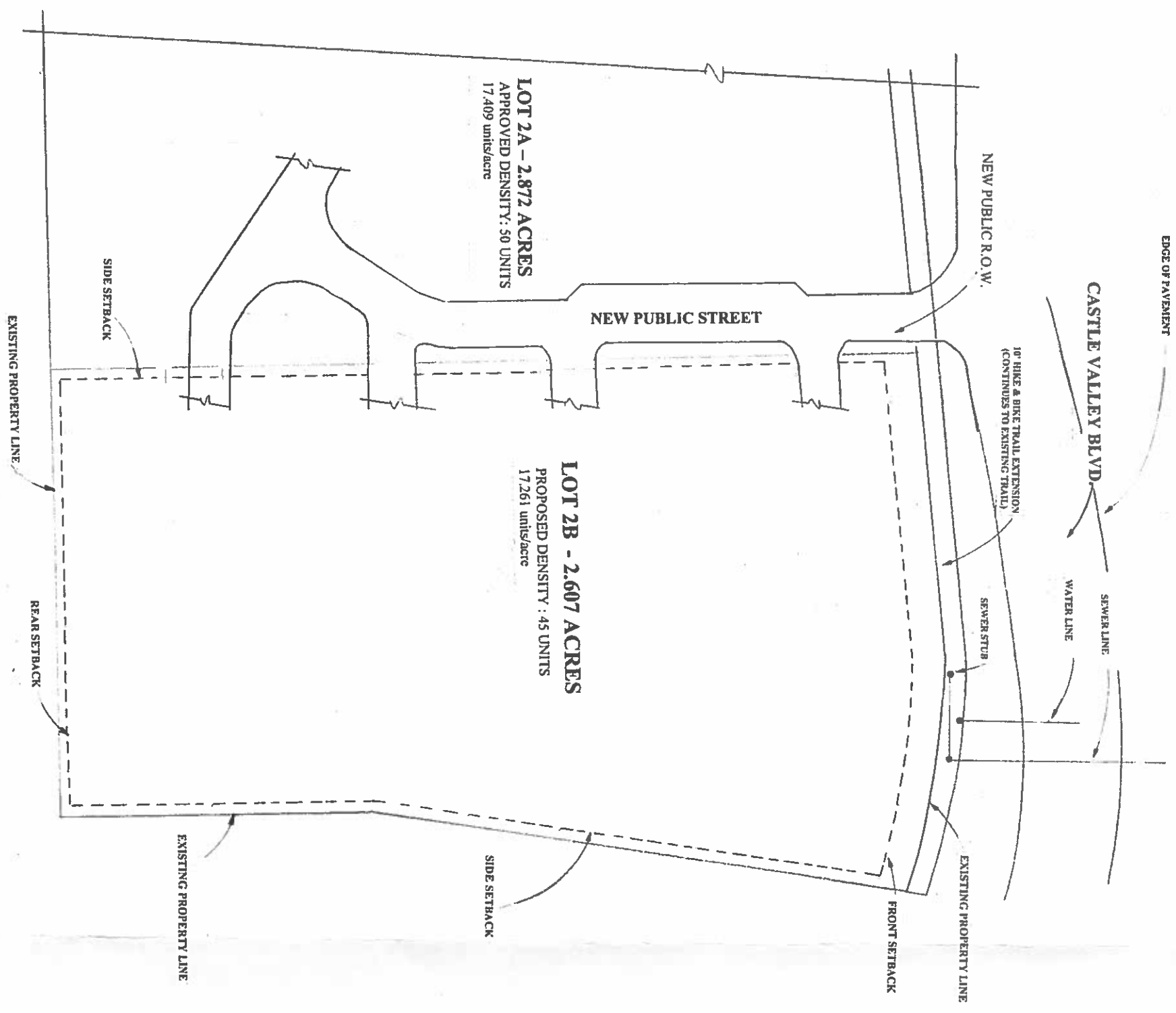
DATE: NOVEMBER 9, 2016

NO.	CHANGE	DATE	BY
1		11/10/16	JJC
2			
3			
4			
5			

DATE: NOVEMBER 9, 2016  
DRAWN BY: JJC  
REVISION/RECORD

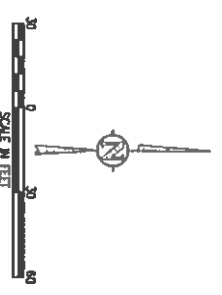
COMMENTS  
SCHEMATIC LEVEL

**SP1**



**EAGLES RIDGE RANCH**  
 PROPOSED DENSITY : 45 UNITS  
 17,261 units/acre

- UNIT TYPES
- TYPE A RESIDENTIAL / SHOP  
2 bedrooms
  - TYPE B TOWNHOUSES - 5 UNIT BUILDINGS  
2 bedrooms/3 bedrooms
  - TYPE C RESIDENTIAL / COMMERCIAL  
2 bedrooms / 3 bedrooms



**EAGLES RIDGE RANCH**  
**LOT 2B PHASE 7**  
**LAKOTA CANYON RANCH**

**COLOMBO**

ISSUE DATE: NOVEMBER 9, 2016

PROJECT TITLE	SITE PLAN		
JOB NUMBER	0005-20028		
DATE	NOVEMBER 9, 2016		
DRAWN BY	JTC		
REVISION RECORD	NO.	CHANGE	DATE BY
	1		
	2		
	3		
	4		
	5		

**SP1**

1  
2 New Castle Planning and Zoning Commission Meeting  
3 Wednesday, February 22, 2017, 7:00p.m., Town Hall

4  
5 Call to Order

6 Commission Chair Chuck Apostolik called the meeting to order at 7:00 p.m.

7  
8 Deputy Town Clerk Mindy Andis swore in Jeff Ellis as a new Planning & Zoning  
9 Commissioner.

10  
11 Roll Call

12 Present Chair Chuck Apostolik  
13 Commissioner Copeland  
14 Commissioner Ellis  
15 Commissioner Gates  
16 Commissioner Graham Riddile  
17 Commissioner Ruggles  
18 Commissioner Urnise

19  
20 Absent None

21  
22 Also present at the meeting were Town Planner Tim Cain, Town Attorney David  
23 McConaughy, Deputy Town Clerk Mindy Andis and members of the public.

24 Meeting Notice

25 Deputy Town Clerk Mindy Andis verified that her office gave notice of the meeting  
26 in accordance with Resolution TC-2017-1.

27  
28 Conflicts of Interest

29 There were no conflicts of interest.

30  
31 Citizen Comments on Items NOT on the Agenda

32 There were no citizen comments.

33  
34 MOTION: Commissioner Ruggles made a motion to appoint Commissioner  
35 Gates as Commission Vice-Chair. Commissioner Graham Riddile seconded  
36 the motion and passed unanimously.

37  
38 Public Hearing

39 Conditional Use Permit

40  
41 Purpose: Application for Multiple Lot Line Adjustment

42  
43 Legal description: Block 1, Lots 6 &7, and Block 2, Lots 1-6, **Coryell's Addition to**  
44 **the Town of New Castle, together with any and all interest in the vacated streets**  
45 **and alleys appurtenant to said Lots as shown on the recorded plat of Coryell's**  
46 **Addition and described in Town of New Castle Ordinance No. 500, Series 1997,**  
47 **recorded in the Garfield County real property records at Book 1032, Page 730.**  
48

1 Common Address: TBD, New Castle

2

3 Applicant: Grady & Suzanne Hazelton

4

5 Landowner: Grady & Suzanne Hazelton

6

7 Resolution PZ 2017-2 Recommending Approving A Multiple Lot Line Adjustment For  
8 Certain Lots And Blocks Of The Coryell Addition To The Town Of New Castle And An  
9 Amended Plat For The Same.

10

11 Chair Apostolik opened the Public Hearing at 7:01 p.m.

12

13 Town Planner Tim Cain reported that the application was a request for a Multiple  
14 Lot Line Adjustment to create five (5) building sites on vacant land adjacent to  
15 Shewana Lane, which served as a utility access road. Planner Cain said that the  
16 code required that all new lots have at least five-thousand square feet (5,000). He  
17 noted the following square footages for each proposed lot:

18

- 19 • Lot one (1) = 5,250
- 20 • Lot two (2) = 5,062.5
- 21 • Lot three (3) = 10,412.5
- 22 • Lot four (4) = 8,087.5
- 23 • Lot five (5) = 5,062.5

24

25 Planner Cain said that if the application were approved, it would amend the  
26 Original Coryell Addition Plat recorded in 1888. The amended plat must be recorded  
27 within one-hundred-fifty (150) days or the application approval will be voided.

28 Planner Cain said that access to the new lots will be from Shewana Lane and a  
29 newly created easement. Water, sewer and other utilities must be installed to serve  
30 the new lots.

31 Planner Cain said there were several policies in the Comprehensive Plan that were  
32 applicable to the application:

33

34

- 35 • Policy CG-5A (D): To create walkable communities.
- 36 • Policy CG-5A (G): To strengthen and direct development towards existing  
37 communities.
- 38 • Policy CG-5A (I): To make development decisions predictable, fair and  
39 cost effective.

40

41 The application will not create new lots but will condense nine (9) non-conforming  
42 lots to five (5) conforming lots. The lots are within a walkable distance to the  
43 downtown, schools and public transportation.

44

45 Development infill to support the local economy and allow future homeowners the  
46 ability to walk downtown to access public transportation and local restaurants, retail  
47 stores and other services, thereby increasing local revenue.

48

49 The lots could not build on until all public improvements were inspected and  
50 accepted by the town. The town will require there be a plat note stating that no

1 building permit may be issued until public improvements are installed.. In addition,  
2 all real estate transfer documents should include such notice as well as  
3 **Homeowner's Association covenants.**

4  
5 Planner Cain recommended that before the lots were marketed for sale, the  
6 applicant place a highly visible sign between lots two (2) and three (3) stating there  
7 is a ten (10) foot wide utility easement proposed. The easement service lines will  
8 connect to lots four (4) and five (5).

9  
10 The Comprehensive Plan section "Population & Demographics" (page 19) states:  
11 "The need for housing units in New Castle will increase as the population grows.  
12 Assuming an average growth of 4% from 2007 to 2030, population is expected to  
13 grow to 9,086 a net increase of 5,417 (people). Housing demand generated by  
14 population increase of 5,417 will require 2,037 new residential units based upon an  
15 average household of 2.66".

16  
17 Planner Cain said the Coryell Addition had prescriptive easements. Shewana Lane  
18 Serves as an access and utility easement serving the current adjacent properties  
19 and will serve the proposed five lots..

20  
21 Any construction upon the new lots will have to comply with the R-1 zone district  
22 setbacks, floor area ratio, lot coverage, maximum building height, minimum floor  
23 area, minimum off-street parking and architectural standards.

24  
25 Planner Cain said that written confirmation by a licensed engineer certifying that  
26 historic drainage patterns will not be altered or otherwise affected by the  
27 application.

28 Town Attorney David McConaughy reported if the application were a new  
29 subdivision of vacant land, the Town Code would require that each lot have a  
30 minimum of 25 feet of frontage on a dedicated public street. The Town Code  
31 included an exception where other arrangements were approved as part of a  
32 Planned Unit Development (PUD). NCMC § 16.28.030.

33  
34 Planner Cain suggested that the planning commission should consider the policy  
35 implications of allowing five (5) new lots to be served by a private roadway.  
36 Arrangements for road maintenance will need to be done, **via a homeowners'**  
37 association or a private maintenance agreement amongst lot owners. No proposed  
38 documentation had been submitted with the application. Private maintenance  
39 agreements were often neglected and private roads fall into disrepair. When that  
40 happens, the developer is typically no longer involved, and the lot owners will come  
41 to the town asking the town to help or take on ownership of a roadway that was  
42 never dedicated or constructed to town standards. The town will then face political  
43 pressure to solve the problem, incurring expenses that were avoided by the original  
44 developer. Code Section 16.28.030 was adopted to avoid the situation and to  
45 ensure that all new homes will be served by public streets built in accordance with  
46 Town standards. The commission should consider whether to require a public  
47 roadway built according to town standards.

48  
49 Planner Cain said that public improvements will be required as a condition of the  
50 development and occupancy of the proposed lots. The improvements will include



1 extension of the water main line, fire hydrants, and any work necessary to facilitate  
2 the connections of the private water and sewer service lines to the main line. There  
3 was no information concerning other public utilities such as gas, electric, or cable,  
4 which typically would be also installed as part of the public improvements.

5  
6 Planner Cain said that it is **town's policy to require** a contract obligating the  
7 developer to install all public improvements in accordance with engineered plans  
8 approved by the Town Engineer. No such plans were submitted. If a contract for  
9 public improvements was not done before recording the plat, then the obligation  
10 must be secured by a letter of credit or other collateral to ensure that the work was  
11 completed for the benefit of lot owners. The amount of security required will  
12 represent the cost the town would incur if the developer sold the lots and then  
13 failed to complete the improvements necessary to serve them. It will also including  
14 a contingency amount. While cash or a letter of credit was preferred, town council  
15 had the discretion to approve other forms of security such as an arrangement with  
16 **a construction lender, a contractor's bond**, or a lien on the property. A lien may not  
17 be advisable because of an existing loan, unless the bank agreed to subordinate to  
18 the town.

19  
20 Planner Cain said it was illegal under Colorado Statutes to sell, contract to sell, or  
21 negotiate to sell an unplatted lot, which is why developers typically post security for  
22 the public improvements rather than waiting to record the plat until after the  
23 improvements are done. Developers typically want the revenue from lot sales to  
24 help fund their costs. If the lots cannot be accessed or served with utilities, then  
25 building permits and/or certificates of occupancy (CO) can be withheld.

26  
27 Attorney McConaughy recommend that the developer be required to provide  
28 engineered plans that included cost estimates for all public improvements; to enter  
29 into a development agreement with the town; and to post adequate security prior  
30 to recording the plat. Alternatively, the work could occur after approval and prior to  
31 recording, but no lots may be sold.

32  
33 Attorney McConaughy said that requiring engineered plans and security was an  
34 expense for the developer. Attorney McConaughy recommended that if the planning  
35 commission was inclined to waive the requirement that any such waiver be subject  
36 to review and confirmation by the town council.

37  
38 Attorney McConaughy said that alternative mechanisms to ensure completion of  
39 public improvements could be to refuse to issue building permits until the  
40 improvements were complete or adequate security was provided. Adequate  
41 disclosures and warnings would need to be provided to all potential lot purchasers  
42 that the lots may not be useable until the public improvements were complete,  
43 which could fall on the first lot to developed. That would raise other issues about  
44 contributions from subsequent lot purchasers. Such issues could be addressed via  
45 covenants or other agreements as mentioned above, but no such proposals had  
46 been received.

47  
48 Attorney McConaughy advised that the commission should decide whether to  
49 require access via a public street or private. If they agreed on a public street then  
50 the street design and costs should be included as part of the public improvements.

1  
2 Attorney McConaughy recommended that the application be continued until such  
3 time that the applicant provided engineered plans for all public utility connections;  
4 that the applicant provided proposed documentation for either a Home Owners  
5 Association (HOA) or a shared utility/driveway maintenance agreement; and that a  
6 development agreement with the town had been prepared that included  
7 requirements for adequate security for public improvements.  
8

9 Attorney McConaughy recommended the following alternatives:

10  
11 Alternative #1: All of the following conditions shall be satisfied prior to recording  
12 the plat and prior to the marketing or sale of any lots:  
13

14 A. The applicant shall submit engineered plans for all public improvements for  
15 review and approval by the Town Engineer, including access, water and sewer,  
16 other utilities, and drainage improvements. The plans shall include as-built locations  
17 of any existing utilities and improvements in the construction area. Additional  
18 conditions may be imposed by the Town Engineer relating to construction details in  
19 connection with the review and approval of the engineered plans.  
20

21 B. The applicant shall submit documentation for review and approval by the  
22 Town Attorney **regarding either a homeowner's association or a shared access and**  
23 **utility maintenance agreement.** Either way, the documentation shall be approved  
24 and recorded simultaneously with the final plat and be referenced in a plat note.  
25

26 C. The applicant and the Town shall enter into a development agreement to  
27 provide for the construction of all public improvements and security therefore,  
28 generally consistent with Chapter 16.32 of the Town Code.  
29

30 D. The private water service lines to serve Lots 4 and 5 shall be extended  
31 through the easement on Lot 2 prior to sale of Lot 2 or, alternatively, the easement  
32 area on Lot 2 shall be visibly staked and signed as a utility easement with  
33 additional notation on the final plat.  
34

35 E. Unless the Commission requires a public roadway, the plat shall include  
36 notations concerning the private nature of the access road including a prohibition  
37 on accessing any of the subject lots via any other public street.  
38

39 F. A plat note shall be included to identify the need for private lift stations  
40 maintained by individual homeowners for sewer service on each lot.  
41

42 G. All representations of the applicant during the public hearing before the  
43 Planning Commission shall be considered additional conditions of approval.  
44

45 H. The applicant shall reimburse the Town for all consulting fees and other  
46 expenses incurred in connection with the application.  
47

48 Alternative #2: In lieu of providing security for public improvements, the  
49 completion and acceptance of all public improvements could be required prior to  
50 issuance of building permits for any homes on the individual lots, unless adequate

1 security is provided at a later date. As mentioned above, this approach may create  
2 a risk of shifting the obligation to construct improvements to the first lot purchaser,  
3 who may be in less of a position to recapture a share of costs from the other lots  
4 than the original developer. Therefore, if this is the **Commission's decision, then**  
5 Attorney McConaughy recommends that this approach be subject to review and  
6 approval by town council at a public meeting.  
7

8 Town Engineer Jeff Simonson has recommended that a new fire hydrant be installed  
9 with a six (6) inch new water main line. Individual service lines would tap into the  
10 new main line. Lots four (4) and five (5) would be served via private service lines  
11 through a utility easement over Lot two (2), which would be dedicated on the plat.  
12 If Lot two (2) sold and developed before the private lines were installed, then  
13 excavation and construction will be required through Lot two (2), which may impact  
14 improvements, landscaping, or at least yard area. If the service lines were not  
15 installed before lot sales, then specific disclosures should be required to ensure that  
16 Lot two (2) owner is on notice of the future disturbance. Notice might include plat  
17 notes, a disclosure in deeds or real estate contracts, or perhaps posting signs to  
18 identify the easement area. He felt a better idea to avoid future dispute among lot  
19 owners would be to require installation of the service lines prior to lot sales. Private  
20 service lines were not the **town's responsibility**.  
21

22 Engineer Simonson said the lots will require private pressurized sewer service lines  
23 to connect to the **town's sewer main line**. The pressurized service lines will be  
24 within the private roadway/utility easement, and at least two (2) other service lines  
25 either are or will be in the same area to serve adjacent property. Lots should not be  
26 allowed to share pressurized service lines, and for practical reasons they should all  
27 be installed in the same trench at the same time. The road maintenance agreement  
28 or HOA documents should include provisions regarding those utilities within the  
29 private roadway, including how the road will be repaired when excavation is  
30 needed.  
31

32 Engineer Simonson said that from a drainage perspective, a central ditch existed  
33 that drained through the site that is proposed to be relocated. It will be important  
34 to identify the timing and provide details for construction of that relocation prior to  
35 recording the plat to assure the defined plan can be implemented when on-lot  
36 development ensues as the feature also conveyed offsite drainage through the site.  
37 In order to avoid drainage trespass occurring, he recommended that the proposed  
38 access and utility easement be renamed to be a proposed access, utility and  
39 drainage easement. In that manner, assurance can be provided that allowed  
40 improvements to be constructed in the future (if necessary) to assure drainage  
41 from the site as a whole continued to exit the site in the south west corner of lot  
42 three (3) and the southeast corner of lot four (4).  
43

44 Applicant Grady Hazelton said his intention was to clean up the nine (9) small lots  
45 and make them into five (5) larger lots. In doing that, the lots will be better for  
46 resale. Also, he did not want to have a cluster of homes or the potential for a buyer  
47 to do so.  
48

49 He said the largest lot was 10,000 square feet because it has the most easements  
50 through it and that is why it was bigger than the other four (4) lots.

1 Chair Apostolik asked Mr. Hazelton if he had looked into the cost of utility extension  
2 would the street be maintained by the town. Mr. Hazelton said he had not because  
3 if it became a street to be maintained by the town, then the street would need to  
4 **be built to town's standard which** was not feasible. He said he wanted to go through  
5 the process to see if the proposed lots were acceptable.

6  
7 Marilyn Gleason, 980 W. 2nd Street. Ms. Gleason said there was an easement on  
8 her property which went to the river and was intended for a possible future trail and  
9 a utility easement. She was also concerned about the wetland with cattails on the  
10 subject property and she felt there were issues with wetlands being protected.  
11 Planner Cain said there was an easy solution for the wetland in that a permit could  
12 be obtained from the Army Corps of Engineers to move the natural runoff from the  
13 existing location to another. There was also a pond on the one of the lots which  
14 would need to stay and not to be moved.

15  
16 Nancy Daniels, 445 Shewana Lane. Ms. Daniels said that her concern was that  
17 there was no fire hydrant on Shewana Lane and adding 5 more homes would add  
18 more impact to the area. Her second concern was that the existing road was narrow  
19 and **2 cars can't pass at the same time**. She felt the road would need to be widened  
20 to keep people safe.

21  
22 Attorney McConaughy said that the resolution required actual plans to be submitted  
23 to Engineer Simonson who could impose other conditions. They could include snow  
24 storage, fire truck turn around and more.

25  
26 Scott Daniels, 445 Shewana Lane. Mr. Daniels said his concern was also the impact  
27 the new homes would have on the road. He said that he and Mr. Hazelton maintain  
28 the road. Mr. Daniels said he would stop maintaining the road if the five lots were  
29 added because the liability would go up. He also said that currently there was no  
30 place for a fire truck to turn around, and the runoff drained onto his property, and  
31 any changes to the drainage would affect his property. Mr. Daniels said he was  
32 afraid that when a lot is sold that it will turn into a junk yard for the owner. Planner  
33 Cain said there was code prohibiting junked vehicles to be stored on property,  
34 however, code enforcement was complaint driven.

35  
36 Rob Matthews, 480 Shewana Lane. Mr. Matthews' concern was being forced into an  
37 HOA to have the road maintained, which was an easement through his property.  
38 Mr. Hazelton explained the outer boundaries were not changing.

39 Chair Apostolik closed the Public Hearing at 7:56 p.m.

40  
41 Attorney McConaughy walked the commission through the two (2) similar  
42 resolutions for the application.

43  
44 Both resolutions stated under the town code the applicant was not creating new lots  
45 and the lots did meet the current town zoning for the district. The lot or lots that  
46 will have an infeasible building envelope pursuant to any town setback, floor area  
47 ratio, or other building/zoning requirement.

48  
49 All utility companies and/or any other beneficiaries having an interest in existing  
50 easements on the property have granted approval in regard to the disposition of

1 existing easements as a result of the application, if any.  
2  
3 All easements associated with Property are properly addressed and/or granted;  
4  
5 The Application does not alter or affect the location or arrangement of any other lot  
6 line within the subdivision;  
7  
8 No lot line adjustment or vacation has been granted by the Town with respect to or  
9 in connection with the Property or any adjoining property under common ownership  
10 or control of same person within the past one year; and  
11  
12 The Application does not in any way adversely affect any lot surrounding the  
13 Property.  
14  
15 The first proposed resolution said:  
16  
17 The Commission hereby approves the Application and amended plat, subject to the  
18 following conditions, all of which shall be fulfilled prior to recording the amended  
19 plat:  
20  
21 A. The Applicants shall submit engineered plans for all public improvements for  
22 review and approval by the town engineer, including access, water and sewer,  
23 other utilities, and drainage improvements. The plans shall include as-built locations  
24 of any existing utilities and improvements on the property. Additional conditions  
25 may be imposed by the town engineer relating to construction details in connection  
26 with the review and approval of the engineered plans.  
27  
28 B. The Applicants shall submit documentation for review and approval by the  
29 town attorney regarding either a HOA or a shared access and utility maintenance  
30 agreement. Either way, the documentation shall be approved and recorded  
31 simultaneously with the final plat and be referenced in a plat note.  
32  
33 C. Applicants and the town shall enter into a development agreement to provide  
34 for the construction of all public improvements and security therefore, generally  
35 consistent with Chapter 16.32 of the Town Code.  
36  
37 D. The private water service lines to serve Lots four (4) and five (5) shown on  
38 Exhibit A shall be extended through the easement on Lot two (2) prior to sale of Lot  
39 2 or, alternatively, the easement area on Lot two (2) shall be visibly staked and  
40 signed as a utility easement with additional notation on the final plat.  
41  
42 E. The roadway shown on Exhibit A shall be dedicated to the town as a public  
43 road and open for public use and a plat note to that effect shall be included on the  
44 final plat [OR] The final plat shall include notations concerning the private nature of  
45 the access road, including a prohibition on accessing any of the subject lots via any  
46 other public street.  
47  
48 F. A plat note shall be included on the final plat to identify the need for private  
49 lift stations maintained by individual homeowners for sewer service on each lot.  
50

1 G. The plat shall include a subordination and consent certificate to be signed by  
2 any lender holding a lien on the subject property.

3  
4 H. All representations of the Applicants made during the public hearing before  
5 the Commission and reflected in the minutes thereof shall be considered additional  
6 conditions of approval.

7  
8 I. The Applicants shall reimburse the town for all consulting fees and other  
9 expenses incurred in connection with the application.

10  
11 J. The final plat shall be reviewed and subject to approval by the town engineer  
12 and town attorney prior to recordation thereof.

13  
14 The second proposed resolution said:

15  
16 The Commission hereby approves the Application and amended plat, subject to the  
17 following conditions:

18  
19 A. No building permits shall be issued for any dwelling units on the property  
20 until and unless the town engineer has approved engineered plans for all necessary  
21 improvements, including access, water and sewer, other utilities, and drainage  
22 improvements and until all such improvements have been constructed, inspected,  
23 and accepted by the Town in accordance with the procedures and requirements of  
24 Section 16.32.020(B) of the Town Code, including a written warranty.  
25 Alternatively, building permits may be issued if the applicant and the town first  
26 enter into a development agreement with adequate security in general conformity  
27 with Chapter 16.32 of the Town Code. The construction plans shall include as-built  
28 locations of any existing utilities and improvements on the Property. Additional  
29 conditions may be imposed by the town engineer relating to construction details in  
30 connection with the review and approval of the engineered plans.

31  
32 B. The Applicants shall submit documentation for review and approval by the  
33 town attorney regarding either a HOA or a shared access and utility maintenance  
34 agreement. Either way, the documentation shall be approved and recorded  
35 simultaneously with the final plat and be referenced in a plat note.

36  
37 C. The approvals in this resolution shall be subject to, and contingent upon,  
38 review and approval of the conditions set forth herein by the New Castle Town  
39 Council by motion at a regular meeting.

40  
41 D. The private water service lines to serve Lots four (4) and five (5) shown on  
42 Exhibit A shall be extended through the easement on Lot two (2) prior to sale of Lot  
43 two (2) or, alternatively, the easement area on Lot two (2) shall be visibly staked  
44 and signed as a utility easement with additional notation on the final plat.

45  
46 E. The roadway shown on Exhibit A shall be dedicated to the Town as a public  
47 road and open for public use, and a plat note to that effect shall be included on the  
48 final plat [OR] The final plat shall include notations concerning the private nature of  
49 the access road, including a prohibition on accessing any of the subject lots via any  
50 other public street.



1  
2 F. A plat note shall be included on the final plat to identify the need for private  
3 lift stations maintained by individual homeowners for sewer service on each lot.  
4

5 G. The plat shall include a subordination and consent certificate to be signed by  
6 any lender holding a lien on the subject property.  
7

8 H. All representations of the Applicants made during the public hearing before  
9 the Commission and reflected in the minutes thereof shall be considered additional  
10 conditions of approval.  
11

12 I. The Applicants shall reimburse the town for all consulting fees and other  
13 expenses incurred in connection with the application.  
14

15 J. The final plat shall be reviewed and subject to approval by the town engineer  
16 and town attorney prior to recordation thereof.  
17

18 Attorney McConaughy said the commissions' three options were:  
19

- 20 1) Continue the application until there were more details,
- 21 2) Approve it subject to a development agreement with some type of security,
- 22 3) Approve it without security, but hold issuing building permits until everything  
23 got built.

24 He advised that the commission needed to decide if the road would be a public road  
25 or a private road.  
26

27 Commissioner Riddile asked Attorney McConaughy if the road improvement  
28 agreement would be between Mr. Hazelton and the town. Attorney McConaughy  
29 said no. It would work like an HOA, just there was no board. He said before lots  
30 were sold, there should be some recorded document to make sure the road got  
31 maintained and there was a way to pay for it. Once the lots were sold it would be  
32 too late to force someone into an agreement.  
33

34 Commissioner Graham Riddile asked Mr. Hazelton respond whether it would be a  
35 public or private road. Mr. Hazelton said there should be a road agreement between  
36 the five (5) lots and he would extend the offer to any of the current property  
37 owners that would be interested in the agreement. He felt the current property  
38 owners would benefit from the agreement whether they were a part of it or not. Mr.  
39 Hazelton said he was not intending to install curb, gutter and sidewalk because of  
40 the expense.  
41

42 Commissioner Riddile asked Planner Cain what he recommended. Planner Cain said  
43 he supported Attorney **McConaughy's option known** as Alternative 2 which met the  
44 policy goal of CG 5A (I). Planner Cain concurred with Attorney McConaughy that the  
45 burden of public improvements could fall upon the first lot owner. He felt it was  
46 very important that the first buyer be well-informed that s/he cannot gain a  
47 building permit approval until construction documents were approved, security was  
48 posted and an agreement with the town was in place. That will allow Mr. Hazelton  
49 to secure funding upon the sale of the lot and use the money for the infrastructure  
50 and improvements. A road maintenance agreement also needed to be done.

1 Planner Cain said the town could help with mediation to help prepare the  
2 agreement.  
3  
4 Motion: Commission Chair Apostolik made a motion recommending  
5 approval of Resolution PZ-2017-2, Alternate 2 Recommending Approving A  
6 Multiple Lot Line Adjustment For Certain Lots And Blocks Of The Coryell  
7 Addition To The Town Of New Castle And An Amended Plat For The Same.  
8 No Building Permit Will Be Issued. The final plat shall include notations  
9 concerning the private nature of the access road and town council review  
10 and approval of the conditions. Commissioner Ellis seconded the motion.  
11 The motion passed on a roll call vote: Commissioner Graham Riddile: Yes;  
12 Commissioner Urnise: Yes; Commissioner Ellis: Yes; Commissioner  
13 Ruggles: Yes; Commissioner Copeland: Yes; Commissioner Gates: Yes and  
14 Chair Apostolik: Yes.  
15  
16 Items for Consideration  
17  
18 Consider Appointing Vice-Chair and Appointing a Commissioner to the  
19 Historic Preservation Commission.  
20  
21 Motion: Commission Chair Apostolik made a motion to appoint  
22 Commissioner Gates as Commission Vice- Chair. Commissioner Ruggles  
23 seconded the motion and passed unanimously.  
24  
25 Motion: Commission Chair Apostolik made a motion to appoint  
26 Commissioner Gates as Commissioner to Historic Preservation  
27 Commission. Commissioner Graham Riddile seconded the motion and  
28 passed unanimously.  
29  
30 Items for next Planning and Zoning Agenda  
31 There were no items.  
32  
33 Commission Comments and Reports  
34 There were no comments or reports.  
35  
36 Staff Reports  
37 There were no reports.  
38  
39 Review Minutes from Previous Meeting  
40 Motion: Commission Chair Apostolik made a motion to approve the January  
41 25, 2017 meeting minutes as corrected. Commissioner Gates seconded the  
42 motion and it passed unanimously.  
43  
44 Motion: Chair Apostolik made a motion to adjourn the meeting.  
45 Commissioner Gates seconded the motion and it passed unanimously.  
46  
47  
48  
49  
50

1 The meeting adjourned at 8: 55p.m.

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4 Respectfully Submitted,

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Planning and Zoning Commission Chair  
Chuck Apostolik

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Deputy Town Clerk Mindy Andis

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DRAFT