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MEMORANDUM FOR Pagosa Springs Town Council and Planning Commission, 551 Hot Springs Blvd., Pagosa Springs, CO, 81147

SUBJECT: Letter in Response – Affidavit from Town Planning Commissioner

1. This memorandum is in response to the Affidavit written by Town Planning Commissioner Bill Hudson. The affidavit challenges the recommendation of the River Rock Estates’ (“RRE”) preliminary plan by the Town Planning Commission. Pursuant to the affidavit, Mr. Hudson is concerned with the preliminary plan being in violation of sections 6.6.3., 7.4.1., 7.3.3., and 7.4.4. of the Town’s Land Use Development Code (“LUDC”).
2. Mr. Hudson’s affidavit begins with the assertion that the Town Council must follow the compliance requirements of the LUDC, and the Town Council has approved previous developments in violation of the LUDC. Section 1.4.2. Compliance Required states that all development must occur in accordance with all applicable regulations and requirements established by the LUDC. The authority to enforce compliance with the LUDC is given to the Town, see LUDC Section 1.6 - Enforcement. Issues of compliance regarding the LUDC are thus left to the interpretation of the Town Council. Below is an analysis to aid Town Council in the interpretation of the sections called into question.
3. **Section 6.6.3.B.3.d. ACCESS**, states “There shall be no less than two (2) street rights-of-way accessing any subdivision to minimize traffic congestion and/or blockage in times of emergency. Additional access points are required for larger developments pursuant to Section 6.6.2.B.”
 - a. Mr. Hudson’s assertion is that the section of the code requires “two (2) street rights-of-way” into the development. This is not an unreasonable assertion considering the plain language of the section and if this section were read with exception to the rest of the LUDC.
 - b. The interpretation of the Town Planning Director is that the language “two (2) street rights-of-way” contains a plain error within the LUDC in that it should read “two (2) street access points.” This is a reasonable interpretation considering the inconsistencies in and by referencing other sections of the LUDC.
 - i. Section 6.6.3.B.3.d. states “two (2) street rights-of-way,” but then begins the next sentence with “Additional Access Points” and refers to “Section 6.6.2.B.” Section 6.6.2.B. states in pertinent part that “Any residential development of more than one hundred (100) units...shall be required to provide vehicular access to any adjacent public streets, and a minimum of **two (2) street access points**, unless such provision is deemed impractical by the Director...” This language coupled with the impossibility of many subdivisions having “two (2) street rights-of-way” make it likely there is an error in Section 6.6.3.B.3.d. ACCESS.

ii. The purpose of the LUDC as stated by the LUDC is to “protect the public health, safety, and welfare and to implement the Pagosa Springs Comprehensive Plan and other adopted plans.” To that end, the Planning Director’s interpretation also comports with International Fire Code and Local Fire Department requirements of “two points of access” into subdivisions for emergency response and ensuring continued ingress and egress access during emergencies. No other language in the Comprehensive Plan or other adopted plans requires “two (2) street rights-of-way” only “two access points.”

c. As discussed above, reasonable minds could differ on the interpretations of Section 6.6.3.B.3.d. However, given the discrepancy with other sections of the LUDC, the impossibility of having “two (2) street rights-of-way” in many developments, and the consistency with other codes adopted to protect public health, welfare, and safety, the Planning Director’s interpretation is supportable and not explicitly invalidated by the language of the LUDC.

4. **Section 7.3.3.B. LOTS**, states “Each lot shall have frontage on a public street right-of-way...”

a. Mr. Hudson’s assertion is that this language means all lots in a subdivision have driveways onto a public street or that any frontage street must be made a public right-of-way.

b. The Planning Director’s assertion is that private frontage road directly adjacent to the public right-of-way, Light Plant Road/C.R. 119 (“C.R.119”), fulfills the “frontage” requirement of the section.

c. The LUDC defines frontage as “Any boundary line of a lot or parcel of land that coincides with the right-of-way of a street.” The RRE’s preliminary plan proposes that the lots are separated from C.R. 119 by an adjacent private road, which averts 10 lots having 10 individual drive-way accesses to C.R. 119. Whether the private frontage road serves the purpose of a boundary line that coincides with the public right-of-way is a matter of interpretation. The definition of “frontage” delineates “the right-of-way of a **street**” and not a public right-of-way, indicating “frontage” could be a public or private street.

i. The primary purpose, as stated by Article 1.3 – PURPOSE OF THIS LAND USE CODE, is to “protect the public health, safety, and welfare and to implement the Pagosa Springs Comprehensive Plan and other adopted plans.” The language, “public health, safety, and welfare,” supports the Planning Director’s interpretation of the private road serving a safety ingress and egress purpose and fulfilling the “frontage” requirement.

ii. The primary purpose, as stated by Article 1.3, is also to “implement the Pagosa Springs Comprehensive Plan and other adopted plans.” Mr. Hudson’s interpretation requires that the Pagosa Springs Comprehensive Plan or other adopted plans intended **all** lots in Pagosa Springs be accessible only by public right-of-way, or in other words, private streets are strictly disallowed within Town developments. Again, this is not an unreasonable interpretation given the plain language of the section and if read with exception to the rest of the LUDC.

d. The reading of Section 7.3.3.B. is open to interpretation that heavily relies on the purpose of the LUDC. Mr. Hudson's interpretation requires that all Town lots have direct frontage to a public right-of-way, meaning the LUDC did not contemplate "private streets." The LUDC, however, refers to "private streets" multiple times including a definition as "Any right-of-way or area set aside to provide vehicular access within a development that is not dedicated or intended to be dedicated to the Town and that is not maintained by the Town." These references and this definition are inconsistent with Mr. Hudson's interpretation, as the LUDC does at least envision "private streets" by reference and definition. The references to "private streets" throughout the LUDC, including a definition of private "right-of-way...not dedicated to the Town," supports the interpretation that "private streets" are contemplated by the LUDC. For these reasons, the Planning Director's interpretation is supportable and not explicitly invalidated by the language of the LUDC.

5. **Section 7.3.4.B. STREETS**, states "Street design shall be coordinated with the Town's overall transportation system design and transportation systems on adjacent land." Mr. Hudson's concerns with this section were not clear but assumed the issue was RRE's preliminary plan did not use the established South Third Street public right-of-way.

a. The Planning Director's response (paraphrasing) was as follows: *Considering that Light Plant Road is an existing paved County public-right-of-way; the 3rd Street ROW, though platted, is unimproved and non-existent; the Alley has a narrow width of 20 feet wide; and the duplication of road networks, if the 3rd Street ROW was to be improved, the project is consistent with the intent of section 7.3.4.B and improving the 3rd Street ROW would be a needless infrastructure duplication and an ongoing maintenance obligation for the Town. Though C.R. 119 is a county road, it should be considered as part of the Town's or Community's transportation system.*

b. There is nothing in the LUDC that invalidates the Planning Director's response. Section 7.3.4.B. uses very general language indicating latitude in interpretation. With no conflicting interpretation put forward by Mr. Hudson, there is no reason to disclaim the Planning Director's.

6. **Section 7.4.1. STREETS** states "All street rights-of-way shall be dedicated to the public."

a. Mr. Hudson's interpretation is that even "private streets" must be dedicated to the public. This interpretation is reasonable considering the plain language of the section and is not inconsistent with the definition of "private streets" in the LUDC.

b. The Planning Director's interpretation is that this section of the LUDC contains plain error or the section is, at the least, inconsistent with other sections of the LUDC. It is possible that there is plain error in the language of this section, and there are many inconsistencies with the use of "rights-of-way" and "public" throughout the LUDC.

c. The definition of "private streets" states that the streets will "not be dedicated to the Town," but is quiet on the matter of dedication to the public. Thus, the plain language of the definition is not inconsistent with the interpretation that "private streets" still must be dedicated to the public. However, the definition does not indicate whether the dedication to the public is

for “public use” or for “public right-of-way,” so the interpretation of this section is debateable and heavily relies on the purpose of the LUDC.

i. “Public Use” is defined as “Uses that, unless otherwise stated herein, are owned and operated by a local, state or federal government.” The definition of “public use” is inconsistent with the definition of “private streets.” If “public use” was read in context with “private streets,” the definition of “private streets” would indicate that private streets are not meant for public use because they are not dedicated to the Town, i.e. “local government.” The definition of “public use” is also inconsistent with Section 7.4.1. STREETS. By the “public use” definition, if all street rights-of-way were dedicated to the public, they would also have to be dedicated to the Town as the “local government.” In other words, any street or right-of-way dedicated to the public, by definition, means said street or right-of-way is dedicated to the Town.

ii. Based on the above analysis, Section 7.4.1. STREETS would read as “All street rights-of-way shall be dedicated to the **TOWN**.” Again, if this is the correct interpretation and intended purpose of the section, it would mean that the LUDC does not contemplate “private streets” and that all streets within the Town must be public rights-of-way.

d. The reading of Section 7.4.1. is open to interpretation that heavily relies on the purpose of the LUDC. Mr. Hudson’s interpretation requires that all streets within the Town be public rights-of-way. The LUDC, however, refers to “private streets” multiple times including a definition previously outlined. These references and this definition, especially coupled with the definition of “public use,” support that the LUDC envisions “private streets.” For these reasons, the Planning Director’s interpretation is supportable and not explicitly invalidated by the language of the LUDC.

7. **Conclusion.** The Planning Director did not lead the Planning Commission to unsupportable or explicitly invalid conclusions. The logical inference is that the LUDC is internally inconsistent and needs to be reviewed and edited. It is further evident there are multiple interpretations of certain sections in the LUDC that must be viewed in context with the purpose of the document in mind.

8. POC for this Memorandum is cbuchner@pagosasprings.co.gov.


Clayton M. Buchner, J.D.

Encl(s)
Affidavit – Town Planning Commissioner Bill Hudson