

# Town of Palmer Lake Development Review

## Role of Staff, Planning Commission, and Trustees

October 25<sup>th</sup>, 2023



Community  
Matters Institute

303 730 0396



# Priority Items

- Review Process
- Who does what?
- Role of the Master Plan
- PUD'S



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# Review Process



- Step 1: Applicant submits an application to Town Clerk**
- Step 2: Applicant must sign a cost reimbursement agreement to cover costs incurred by the Planner, Engineer(s), and Town Attorney.**
- Step 3: The application must be deemed complete by staff before any further review can occur.**

- **If an application IS NOT complete:**
  - **The applicant must provide the required missing material.**
  - **“The Town Administrator or designee shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied.”**



# Review Process

Ex-parte = Contacts between the applicant or opponents and the members of the public body outside of publicly scheduled hearings and meetings on the application after it has been accepted as complete by the Town.

**Step 4: The complete application is reviewed by Staff and Referral Agencies. The project becomes 'Public Information.' NO EXPARTE CONTACTS!**

- **During this period, no Planning Commissioner nor Trustee shall discuss this application with the applicant NOR with members of the public!**
- **Any question(s) from the applicant shall be directed to the Town Administrator.**
- **Applicant, Commissioners, and Trustees shall not send e-mails to ANYONE except the Town Administrator. The Town Administrator will respond by directing the question to the appropriate staff member or referral agency.**

**THIS IS CRITICAL TO AVOID ANY LEGAL CHALLENGE!**





# AVOID EX-PARTE CONTACTS

- Why?
- How?
- What if I have an ex-parte contact?

## Why should these contacts be avoided?

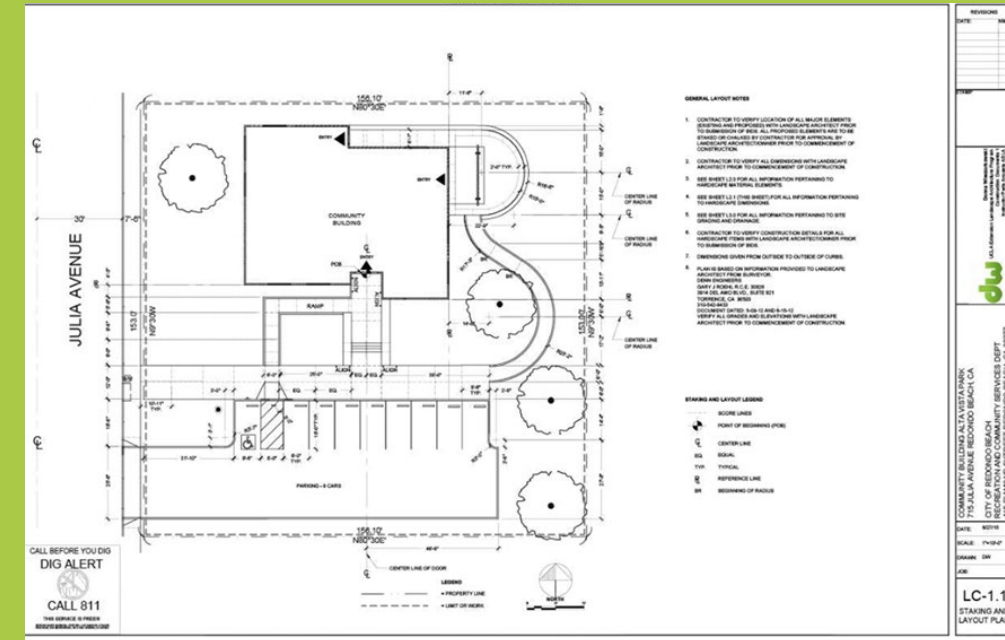
- ❖ Fairness to the applicant/other parties.
- ❖ Consequences of engaging in them can be as severe as invalidating the final action of the Commission/Trustees.

## How can ex-parte contacts be avoided?

- ❖ When approached or called by the applicant or opponent and the matter is identified, advise that it is improper for you to talk about the case outside of the hearing room.
- ❖ Urge them to bring their points of view to the hearing.
- ❖ The prohibition extends to written materials and e-mails: Make sure any materials you receive from applicants, opponents, or interested parties outside of the hearing room are given to staff –these are then copied and shared with everyone at the time of the hearing.



# AVOID EX-PARTE CONTACTS



Contact is limited to staff only!

## What to do if an ex-parte contact has occurred:

- ❖ Disclose the contact at the beginning of the hearing.
- ❖ Describe its content as completely as possible.
- ❖ In an extreme case, you may be required to step down – No participation.

## Site visits:

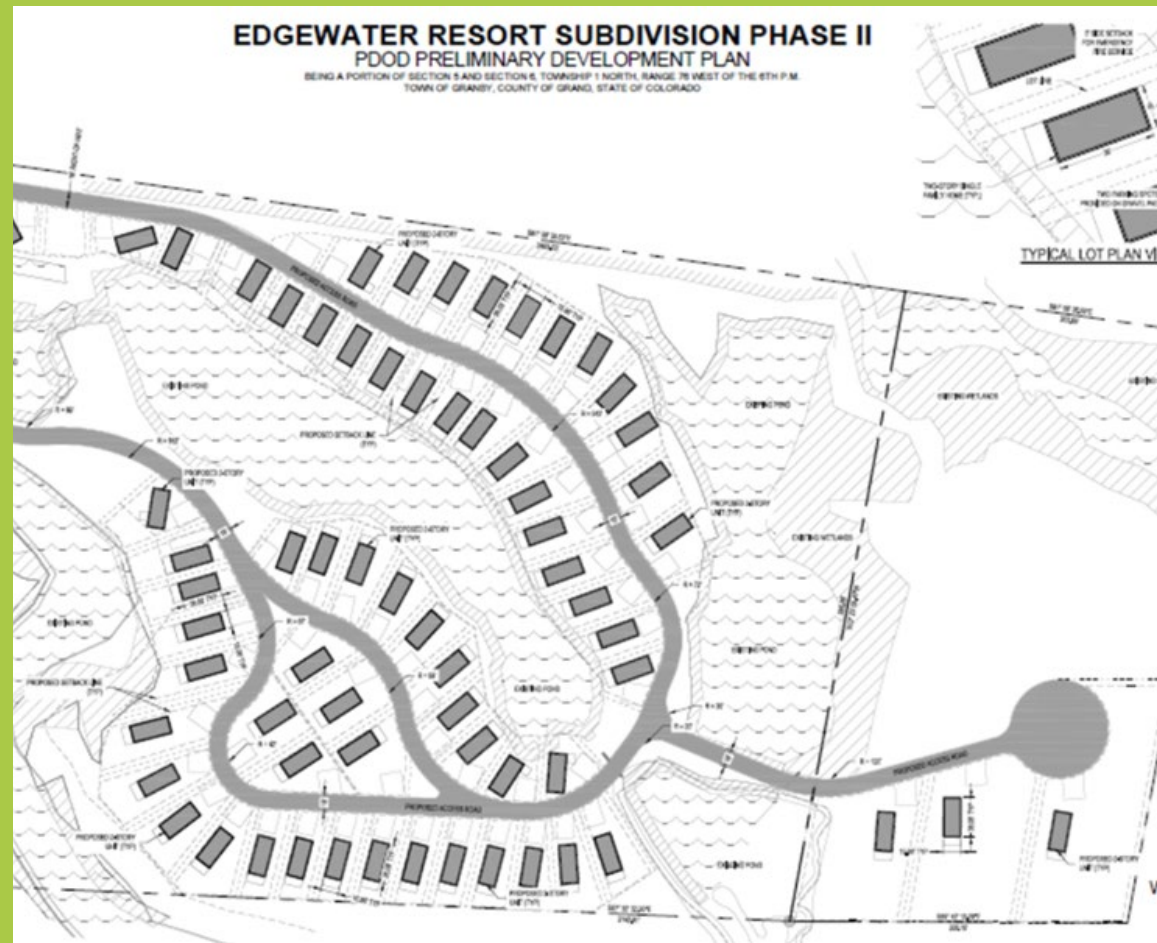
- ❖ Appropriate if you avoid any contact with either side at the site.
- ❖ Town Attorney advises against group site visit. Must be a compelling reason to conduct such a visit- must be noticed!
- ❖ Even "informational" contact at the site is still an ex-parte contact.

## Contact with staff:

- ❖ Permitted, so long as contact with staff is not used as a "human telephone" with which to communicate with the applicant or opponents.
- ❖ Town Administrator will direct questions to the appropriate staff.



# Review Process



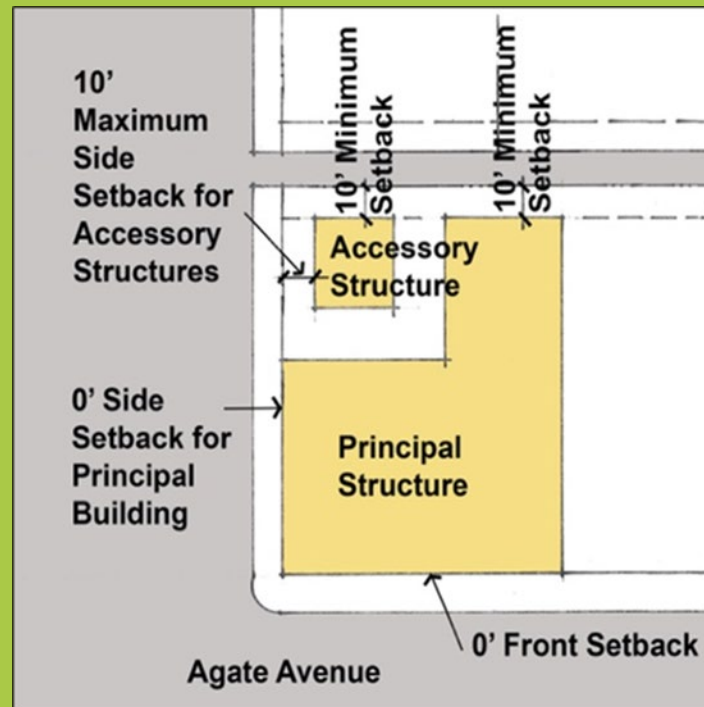
## Step 5: Review of Submittal

- **Staff review and sends letter to the applicant: Town Administrator assembles comments from Public Works, Fire, Town Planner, Town Engineer, Water, and Town Attorney.**
- **Subsequent Submittal(s) and Review.** It is not uncommon for a submittal to be amended and reviewed a number of times **BEFORE** the Public Hearing is scheduled.
- **HOWEVER, it is the applicant's decision to move to the Public Hearing even if all staff concerns have not been addressed. Staff does not provide a recommendation to approve. This is NOT ADVISABLE.**





# Review Process



BUILDING A UNIT MIX			
UNITS	TYPE	SIZE (SF)	TOTAL SF
27	1 BED/1 BATH	662	17,874
6	2 BED/2 BATH	1,040	6,240
3	2 BED/2 BATH	1,040	3,120
3	2 BED/2 BATH	998	2,994
			<b>30,228</b>
BUILDING B UNIT MIX			
UNITS	TYPE	SIZE (SF)	TOTAL SF
8	2 BED/2 BATH	977	7,816
<b>TOTAL UNIT SF FOR BUILDING A &amp; B:</b>			<b>38,044</b>
UNIT SIZE WEIGHTED AVERAGE			
UNITS	TYPE	SIZE (SF)	
27	1 BED/1 BATH	662	
20	2 BED/2 BATH	1,009	

PARKING CALCULATIONS			
BUILDING A			
33	COVERED GARAGE PARKING SPACES		
12	UNCOVERED SURFACE PARKING SPACES		
			<b>45 TOTAL PARKINGS SPACES AT BUILDING A</b>
BUILDING B			
8	UNCOVERED SURFACE PARKING SPACES		
			<b>53 TOTAL PARKING SPACES</b>
		NET RENTABLE AREA (SF)	GROSS BUILDING AREA (SF)
BLD A		30,228	39,305
BLD B		7,816	8,345
<b>TOTAL</b>		<b>38,044</b>	<b>47,650</b>
		PODIUM PARKING AREA (SF)	
		14,091	

## Step 6: Staff Analysis and Meeting with Applicant

- **Staff analysis of submittal and comments from other agencies.**
- **Code compliance**
- **Consistency with Master Plan/General Planning & Engineering Principles**
- **Ability to serve with utilities**
- **Staff meets with the applicant to discuss comments.**
- **Often a negotiation between code requirements, community vision, and applicant's interests**
- **1-2 weeks then schedule is established**
- **Public Notice per Code –usually 15 days, includes posting & mailing by applicant & newspaper notice**





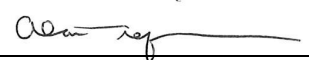
**CITY OF IDAHO SPRINGS, COLORADO  
NOTICE OF SITE PLAN TO ALLOW DUPLEX MODULARS**

NOTICE IS HEREBY GIVEN that an ordinance for a site plan on certain territory hereinafter described to the City of Idaho Springs, Colorado, shall be considered by the Idaho Springs City Council at a regular City Council meeting to be conducted on November 13, 2017, at 7:00 P.M., at Idaho Springs City Hall, 1711 Miner Street, Idaho Springs, Colorado 80452.

Description of territory proposed for rezoning:

302 Soda Creek Road  
Located in Section 36, Township 3S, Range 73 West of the Sixth Principal Meridian, in Clear Creek County, Colorado,

Given this 17 day of October 2017

By:   
Alan Tiefenbach, Community Development Planner

Date of Publication: October 25, 2017

# Public Notice Process Tables

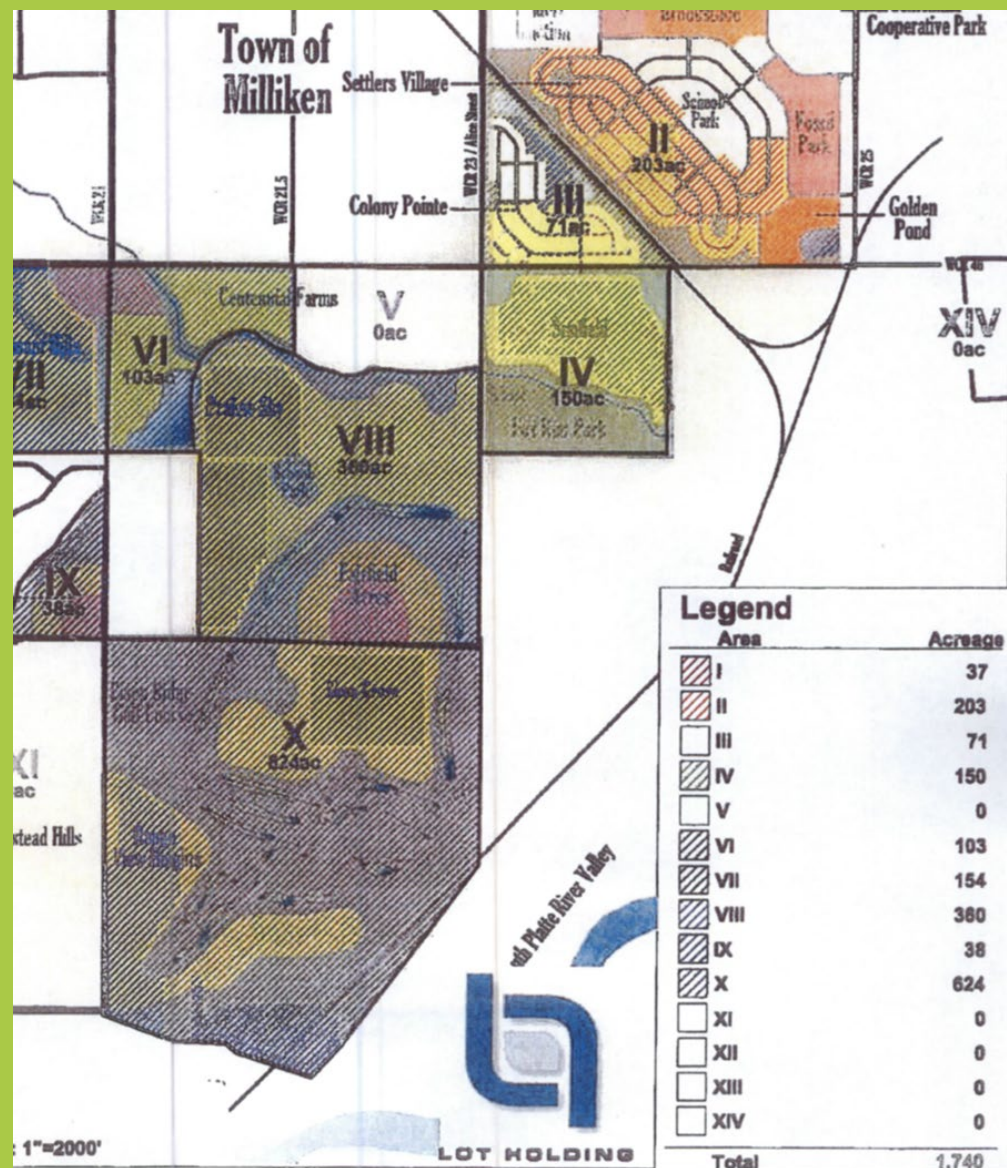
Code update will include a table indicating the following:

- Published Notice
- Applicant mails Notice (within X feet of site)
- Posted Notice
- Website Notice

**TABLE 6-103-2: PUBLIC HEARING NOTICE REQUIREMENTS**

APPLICATION TYPE	PUBLISHED NOTICE		MAILED NOTICE		POSTED NOTICE		[TOWN/CITY] WEBSITE NOTICE		SOCIAL MEDIA NOTICE	
	PC HPC BOA	BOCC	PC HPC BOA	BOCC	PC HPC BOA	BOCC	PC HPC BOA	BOCC	PC HPC BOA	BOCC
<b>Subdivision Procedures</b>										
Preliminary Plan for Minor Subdivision	x		x		x		x		OPT	OPT
Preliminary Plan for Major Subdivision	x	x	x	x	x	x	x	x	OPT	OPT
<b>Zoning and Site Planning Procedures</b>										
<b>Decision by Appointed Body</b>										
Appeal	x		x		x		x		OPT	
Certificate of Appropriateness			x		x		x		OPT	
Location and Extent Review of Public Facility	x						x		OPT	
Minor Oil and Gas Operation Permit	x		x				x		OPT	
Variance			x		x		x		OPT	
<b>Decision by Town/City Council</b>										
Annexation of Land	x	x					x	x	OPT	OPT
Comprehensive Plan Adoption/Amendment	x	x					x	x	OPT	OPT
Conditional Use Permit	x	x	x	x	x	x	x	x	OPT	OPT
Major Electric or Natural Gas Facility	x	x	x	x	x	x	x	x	OPT	OPT
Major Oil and Gas Operations Permit	x	x	x	x			x	x	OPT	OPT
Land Development Code Text Amendment	x	x					x	x	OPT	OPT
Rezoning	x	x	x	x	x	x	x	x	OPT	OPT
<b>Area or Activity of State Interest (1041) Procedures</b>										

# Review Process: Why a Staff Report is Important



**Step 7: Once hearing dates are established, the staff develops a 'Staff Report' for the PC packet**

- Staff synthesizes the submittal (**sometimes over 100 pages & technical**), referral comments, and staff comments.
- Staff creates a short report and notes **items to be decided**.
- Staff outlines choices for consideration.

**Step 8: Public Hearing by Planning Commission**

- Planning Commission shall approve, approve with conditions, or deny based upon the applicable standards and criteria in the Code OR continue the hearing.

# What should you do to prepare for the meeting?

- The staff report provides the basis for the Planning Commission and Board of Trustees to make an informed decision.
- Both the Commission and Trustees serve as the ‘judge’ after carefully considering the information provided.
- The staff report also assists future staff, future Commissioners, and future Trustees in understanding what was involved in the decision-making and why the officials made the decision they did.



## Commissioners should:

1. Read the packet **BEFORE** the meeting.
2. Contact staff with any clarifying questions **BEFORE** the meeting.
3. Show up and be on time.

# A few friendly reminders....



- I move to \_\_\_\_\_.
- Based on the following findings \_\_\_\_\_.
- Make sure you have evidence in the record in case there is an appeal of your decision.

1. A strong chair curbs digressions and keeps the meeting on track.
2. **Maintain a fair, open, and respectful forum.**
3. Don't allow for intimidation of any kind at the meetings.
4. **Remember that you represent the community and not your own personal views! Listen, don't argue. Just because you like it, isn't a reason to approve and vice versa!**
5. Make sure everyone has an opportunity to express their opinion but ensure that the same points aren't being repeated over and over.
6. **Keep to the agenda and stay on topic.**
7. Follow the ordinance criteria when making a decision.

## A few friendly reminders....

- Pre-Application meetings with staff and the Commission
- Neighborhood Meeting Option

1. **Pre-Application meetings occur BEFORE the submittal of a formal application.**
2. **A pre-application conference is a non-binding meeting held when an application submittal is imminent. The pre-application conference benefits the applicant by giving them the opportunity to discuss submittal requirements review procedures and code standards with Town Staff. It is not often conducted with the Commission and is discouraged by attorneys.**
3. **Many communities are requiring neighborhood meetings BEFORE the application is submitted for the applicant to share the goals of the proposed development. EX-PARTE does not apply because there is not an accepted application.**

# NEXT ITEM: PUD'S

Planning  
Commissioners  
requested  
specific guidance  
on the review of  
PUDs

## Palmer Lake Commissioners said “Clarify the PUD process”

- *“PUD rules not clear.”*
- *“Define public open space.”*
- *“Add additional criteria – not tract housing”*
- *“Add Landscaping requirements to PUD and generally to Code- look at El Paso County.”*
- *“Simplify and clarify definite requirements when dealing with PUDs- not specific enough”*
  - *17.72.060 Open Space*
  - *17.72.070 Setbacks*
  - *17.72.080- Regulations”*

# Planned Developments (PUD)

It must not be a  
workaround of  
existing zone  
districts!

## Overview of Colorado PUD Statute

- Enables municipalities to **negotiate** almost every aspect of the proposed development in return for PUD approval.
- **Greater flexibility in return for greater public benefit:** quality, amenities, or something else the community wants.
- **PUD is a ‘deal’** between Town and Developer:
  - Minimum number of units and acres
  - Densities allowed
  - Useable Public Open Space (subdivision)
  - Compliance with Master Plan/Comprehensive Plan
- Often includes **both a written zone submittal as well as a physical plan.**
- Statute requires **quantitative data!**



# EXAMPLE OF OUTSIDE NORMAL ZONES



*Mighty Argo & Virginia Canyon  
Mountain Park  
Mixed Use Development*

## Overview of PUD Statute

The PUD statute expressly recognizes the need for “innovation” and “variety” to meet “the growing demands for housing of all types and designs.” This means doing things outside the normal straight zone districts. 24-67-102(1)(d), C.R.S.

## Should common open space be available to all residents?

“Common open space” means a parcel of land, an area of water, or a combination of land and water within the site designated ... designed and intended primarily for the use or enjoyment of residents, occupants, and owners of the planned unit development [it does not say: “or portions thereof.”]

Section 24-67-103(1)

*Local Land Use regulations often provide further requirements.*

## When reviewing a PUD use the Purpose and Criteria (*these will be improved during code update*)

Ensure **conformance** with the Purpose (17.72.020) and criteria for review (17.72.100 (2)).

### Existing examples of Purpose:

- PC and BOT “shall consider the purposes of this chapter in approving or denying any requests for a planned unit development plan.”
- “To encourage flexibility, innovation of quality design, and variety of development types in order to promote the most suitable and appropriate use of a site.”
- “Useable Open Space and recreational areas”
- “Preserve unique, natural, scenic and historical and cultural features of the site.”

PUD's  
Example of  
a Rewritten  
PUD  
Purpose to  
avoid a  
workaround  
of regular  
zone  
districts

## Suggested NEW PUD Purpose

- “This district is intended to be used only when no other base or overlay district in this Code, and no combination of those districts, can be used to approve a new development that provides substantial additional benefits to the town that would not otherwise be required by this Code.”
- The PUD district is not intended to be used to approve types, mixes, patterns, or densities of development that would otherwise only be permitted.
- The PUD district is not intended to be used to approve variations from the criteria in this Code that would otherwise apply to the proposed development.
- Significant additional benefits to the community must be demonstrated.”

# PUD's:

- Use this section of the PL Code to inform your decision.
- Use code criteria in making any motion.

## Ensure conformance/utilize review criteria (17.72.100 (2))

### Examples from the Code:

- *“Compatibility of proposed plan with the surrounding area.”*
- *“Harmony of the proposed plan with the character of the neighborhood and the proposed site.”*
- *“Effect of the proposed plan upon the immediate area.”*
- *“Effect of the proposed plan on future development of the area.”*
- *“Whether or not an exception from the zoning ordinance requirements is warranted by virtue of the design incorporated in the development plan.”*
- *“Whether the proposed change is in conformance with the town comprehensive plan.”*

**IDAHO SPRINGS:** *Planning Commission and City Council have approved the following for this project:*

1. Two Annexation Agreements that established the foundation for development (2016 & 2019)
2. Recreational Facility Planning MOU (2018)
3. Public–Private Development Agreement (November 2019)
4. Conceptual Access Easements recorded ( 2019)
5. PD Zoning Approved (2019)
6. Final Development Plans (2020-2021)

## ***Does the PUD need to conform to the adopted Master Plan or Comprehensive Plan?***

- ❖ Approval of PUD plan “requires a finding by the county or municipality that such plan is in general conformity with any master plan or comprehensive plan for the county or municipality.”
- ❖ Strict conformity with the master plan is not required.

***General conformance with adopted plans and public benefit often requires negotiating items BEFORE the PUD is submitted to ensure it’s a win for both parties.***

# Palmer Lake subdivision & PUD regulations require open space !!!

## Subdivision: Land for public uses. (16.76.010).

“In addition to dedication of lands for roads and easements for drainage and utilities, every subdivider shall convey to the town, land for the purpose of providing parks, open space, trails, school sites, or other public purposes ...The total public land dedication (or the cash in-lieu market value), not including right-of-way, shall equal 20% of the total land area (gross area) for a residential development”

## PUD: Open Space Requirements (17.72.060)

- “30% of the gross acreage of the development; At least 25% of the usable open space shall be developed for active recreation uses.”
- “Usable open space shall be devoted to landscaping, patios, courts, walkways, trails, recreational areas, and facilities (including enclosed buildings), and preservation of natural features such as mature vegetation, steep slopes, rock outcroppings, etc. ”
- “For single-family detached residential areas developed within the PUD zone district, private yards of individual lots, not covered by building pads and driveways, shall be considered usable open space for the purpose of satisfying the 30% usable open space requirement of the PUD district.”  
*This is only for SF detached dwellings!*
- “Open space shall form an interconnected system with access to dwelling units.”

# In Palmer Lake, density is impacted by the amount of land dedication and the Master Plan

## Current Code (Density 17.72.050)

***Note this is net density, so if roads and open space are not dedicated, there is more density.***

1. "The maximum density for any PUD residential development shall be 12 dwelling units per net acre (net of all publicly dedicated lands within the proposed development, e.g., street rights-of-way, parks, school sites, etc.) for attached dwelling units and eight dwelling units per net acre for detached dwelling units."
2. "The density established on the approved comprehensive plan shall be considered the maximum allowed density unless the planning commission, based on the PUD plan or new evidence, finds that such density is not feasible or desirable."
3. Other considerations- "Amount of Open Space", "extent of innovative design features" or "methods used to mitigate the impact of the proposed density on the site and adjacent areas".

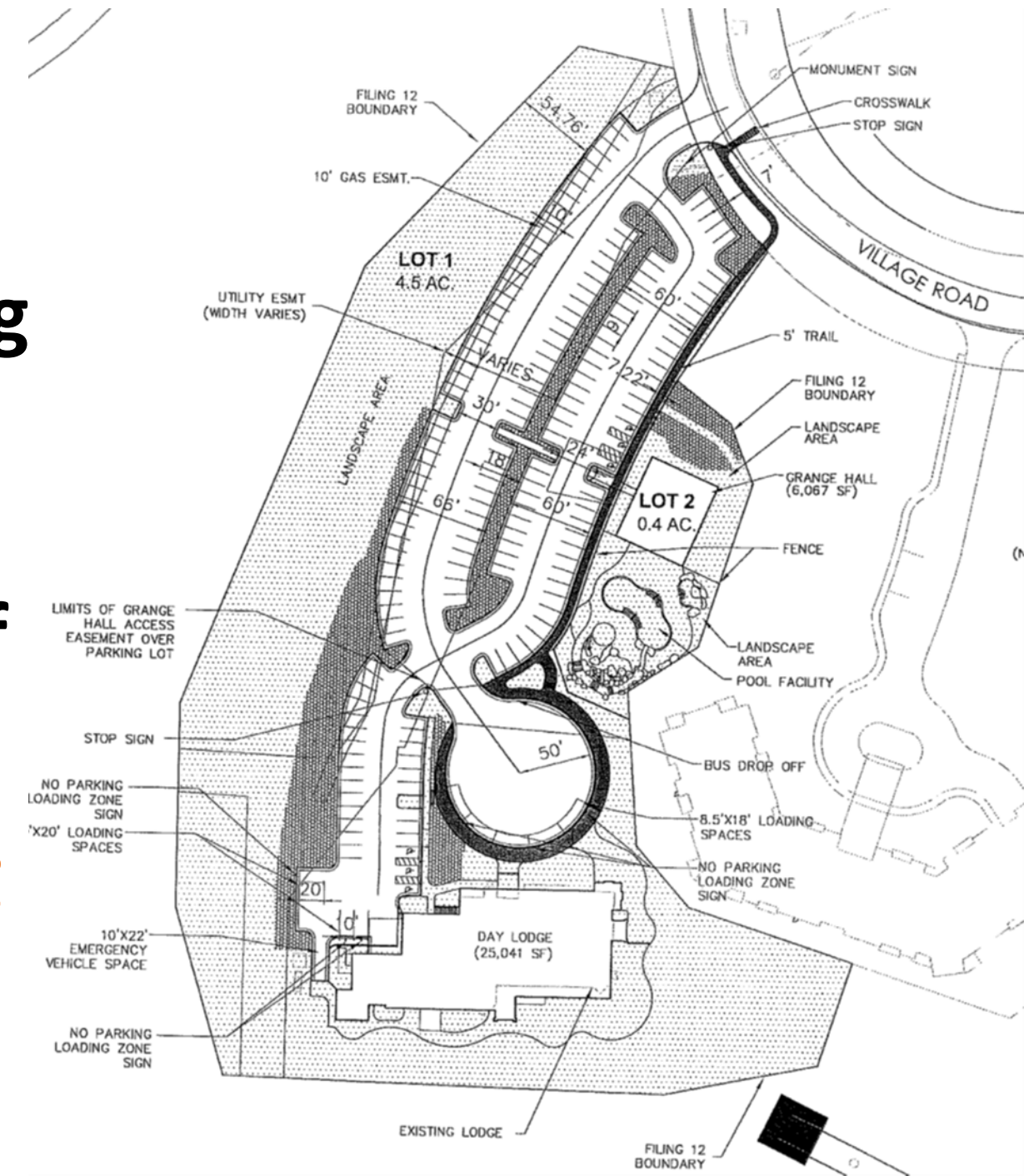
**Staff and Decision-makers: Use the Code to make your findings! These should be read into the record.**



# Approval of a PUD- legal considerations

## 2/3 requirement & 20% opposition- Section 31-25-305, C.R.S.

- Since the approval of a PUD plan is a change in zoning or a rezoning, if there is opposition to the PUD from more than 20% of surrounding landowners, then the PUD Plan must be approved by 2/3 of all members of the governing body.
- Vacancies and absences impact the 2/3's rule making it even tougher to pass a change in zoning.





# ENFORCING A PUD

## Remember:

- Periodic Reviews by Planning Commission:

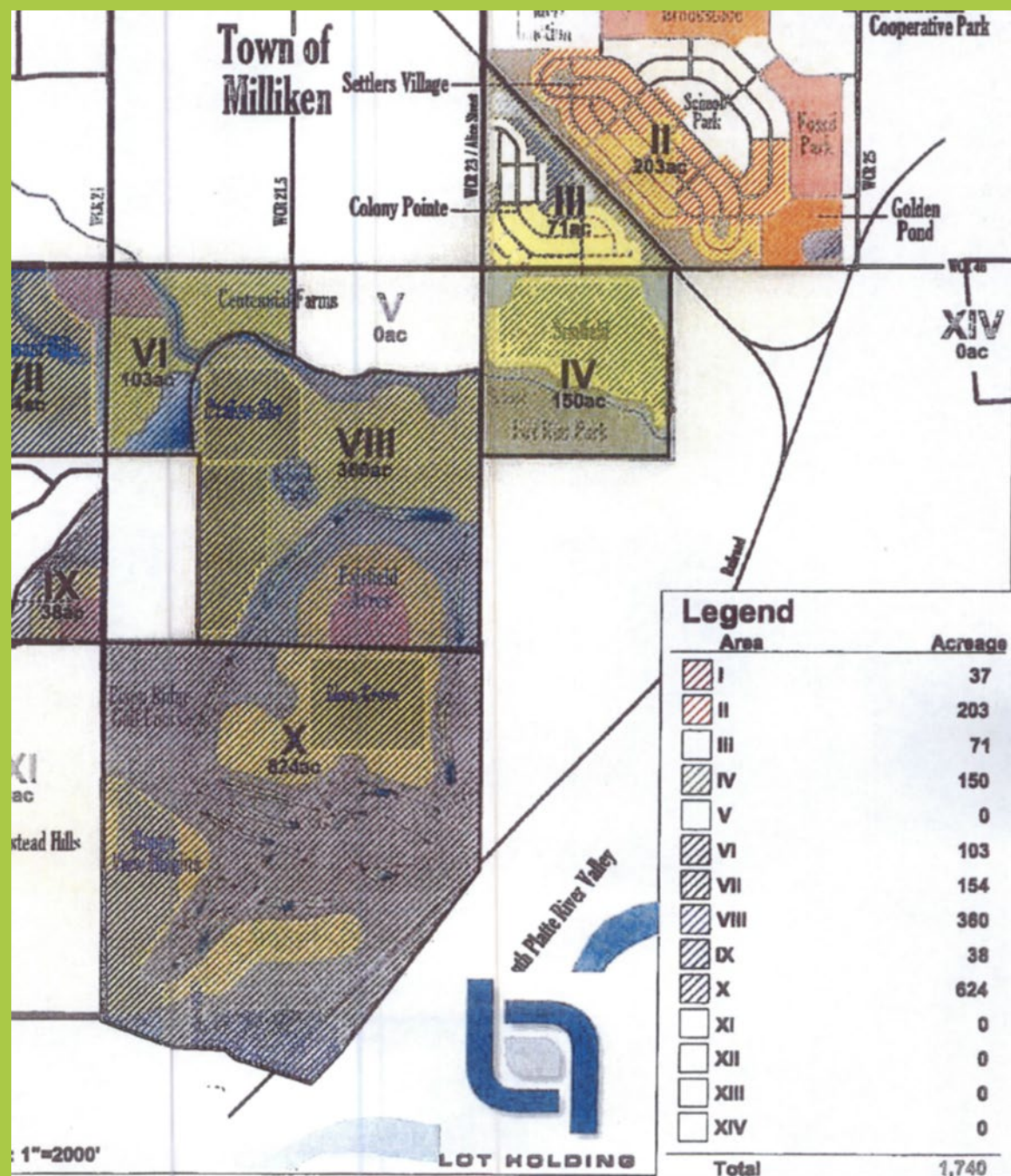
*“The Planning Commission will decide and so note in the minutes as to whether adequate or no progress has been made by the owner of record.”*

❖ *“To further the mutual interest of the residents, occupants, and owners of a planned unit development and of the public in the preservation of the integrity of the plan, the provisions of the plan relating to the use of land and the location of common open space shall run in favor of the county or municipality and shall be enforceable at law or in equity by the county or municipality without limitation on any power or regulation otherwise granted by law.” 24-67-106(1), C.R.S.*

*Those living in a PUD can complain and often do!*

❖ In addition to the rights of owners, residents, and occupants within the PUD to enforce the provisions of the PUD Plan, the approving municipality has an independent right to enforce the PUD plan with regard to land use and the location of common open space. Section 24-67-106(1),(2), C.R.S.

# Key Lessons Learned after 6 amendments over 20 years and countless large PUD's throughout the State .....Barb Cole



1. Memorialize the Deal and record what was approved!
2. Let the developer know upfront that there are many contracts in addition to zoning and subdivision approval. At minimum:
  - Annexation Agreement (if applicable)
  - Development Agreement
  - Subdivision Improvements agreement
3. Undertake a completeness review BEFORE starting the review process.
4. Clarify who has access to open space and amenities.
5. PUDs are usually not appropriate for small acreage developments- they are expensive for both the developer and applicant.

Key Lessons  
Learned after 20  
years and countless  
large PUD's  
throughout the  
State .....Scott Krob



- 1. Remember that everything CAN and SHOULD be negotiated- don't forget about roadway improvements, water or wastewater treatment facilities, non-potable water systems, or other infrastructure, etc.**
- 2. Be cautious in extending vested rights for long periods of time, particularly if the initial vested rights period was substantial.**
- 3. For longer-term developments, try to keep agreements as simple and clear as possible for ease of interpretation 20 years later.**
- 4. Anticipate amendments if the vesting period is long: market conditions, new engineering standards, and new State and Federal laws.**
- 5. Assemble a solid team of planner, manager, attorney and, when needed, engineer, finance person, and special districts counsel and have a clear, common understanding of what the municipality wants to achieve and what it is willing to give.**

# Commissioner Questions, Insights, and Opportunities



Community  
Matters Institute

303 730 0396

