

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

Timothy V. Corrigan
District I

Douglas B. Monger
District II

M. Elizabeth Melton
District III

Commissioners' Agenda September 24, 2020

Times listed on the agenda are approximations and may be longer or shorter, or being earlier than scheduled, with no notice. Agendas are subject to change 24 hours before the meeting start time. To ensure you have the most up-to-date information, please check the agenda after 24 hours of its start time.

If you are joining the meeting for a specific item, please join 10 minutes before the item to ensure you are present for the beginning of the item.

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/85106670945?pwd=UXZZSGx1Q01Mc0s2cklGVk13Qld5UT09>

Password: 522

Or Telephone:

Dial(for higher quality, dial a number based on your current location)

US: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or
+1 301 715 8592 or +1 312 626 6799 or +1 929 205 6099

Webinar ID: 851 0667 0945

Password: 522

The Routt County Board of County Commissioners or Board of Health may enter executive session pursuant to C.R.S. 24-6-402(4)(b) to receive legal advice related to specific legal questions concerning Routt County's COVID-19 response.

1. 9:30 A.M. CALL TO ORDER

2. 9:30 A.M. PLANNING
Kristy Winser, Director

CHRISTIANSEN PLAT NOTE REMOVAL; PL-20-150

Consideration to remove plat notes from the Iacovetto Exemption plat.

Documents:

[CHRISTIANSEN EXEMPTION PLAT STAFF REPORT 9.24.20.PDF](#)
[BCC COMM FORM CHRISTIANSEN 9.24.20.PDF](#)

COUNTY ROAD 34 (SPRING CREEK) RIGHT OF WAY VACATION; PL-20-149

Consideration to vacate the upper portions of County Road 34 right of way.

Documents:

- 3. 10:30 A.M. ROUTT COUNTY BOARD OF EQUALIZATION**
The Routt County Board of County Commissioners will convene as the Board of Equalization.

R6208119_COX_CBOE ACTION AGENDA ITEM
CBOE Action Agenda Item

Documents:

[R6208119_COX_CBOE.ACTIONAGENDA.COMMFORM_VACLANDRECLASS1.PDF](#)

- 4. 11:30 A.M. MEETING ADJOURNED**

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/85106670945?pwd=UXZZSGx1Q01Mc0s2ckIGVk13Qld5UT09>

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Password: 522

All programs, services and activities of Routt County are operated in compliance with the Americans with Disabilities Act. If you need a special accommodation as a result of a disability, please call the Commissioners Office at (970) 879-0108 to assure that we can meet your needs. Please notify us of your request as soon as possible prior to the scheduled event. Routt County uses the Relay Colorado service. Dial 711 or TDD (970) 870-5444.

Christiansen

(Iacovetto) Exemption Plat Amendment

ACTIVITY #: PL-20-150

HEARING DATES: Board of County Commissioners: 9/24/20 at 9:30 am

PETITIONER: Beau Christiansen

PETITION: Remove plat notes from the Iacovetto Exemption plat.

LEGAL: Parcel 1 and 2 Iacovetto Exemption

LOCATION: Approximately 4 miles south of Steamboat Springs on CR 14

ZONE DISTRICT: Agriculture/Forestry (A/F)

AREA: 2.14 acres

STAFF CONTACT: Alan Goldich, agoldich@co.routt.co.us

ATTACHMENTS:

- Narrative
- Vicinity map
- Development Agreement
- Iacovetto Plat

History:

This site has a complicated history behind it. As a summary, the land that this parcel contains was originally three lots, 2 of which were platted in 1909 as part of the town of Sidney. In 1972, the Agriculture/Forestry (A/F) zone district was assigned to this land. Because of the small lot sizes, none of the lots met the minimum lot size for the A/F zone district. In 1990 an application was submitted to the Board of Adjustment to grant a variance to the minimum lot size requirement. This application was for 2 residences on the 2 lots that were part of the Sidney plat. This application was denied. In 1992 an application was submitted to combine the three lots into one (a subdivision exemption) and re-zone to General Residential. The BCC approved the consolidation of the 3 lots into one and the zone change to General Residential. The BCC approval stated that the zone change would become effective unless a variance to build on the newly created non-conforming lot was granted by the Board of Adjustment. The reason the exception was included in the zone change approval was because the BCC desired to retain the A/F zoning on the property. One of the conditions of approval of the exemption was that a building envelope and a height restriction be included on the final plat. The BOA eventually granted a variance to build on the non-conforming lot on July 27, 1992. The plat was recorded on July 28, 1993.

Based on research done by staff, it appears that the neighbors' objections to the variance were based on the perception that a precedence was being set. At that time there were multiple other lots that were part of the original Sidney plat that were under various ownership interests. The neighbors' fear was that if a variance was approved on these lots, then the other small un-

developed lots would be allowed to be developed and the intent of the Master Plan, focusing residential development on the municipalities, would be negated. The County feared that if it did not approve the lots for development, it would be sued under a takings claim. The restrictions that are on the plat were a result of negotiations between the Iacovettos and the adjacent property owners at the time. These negotiations took place prior to and after the BCC approved the subdivision exemption (consolidation) and the zone change, but before the BOA hearing on July 27, 1992. In exchange for the restrictions on the plat, the neighbors dropped their opposition to the variance.

The resulting exemption (consolidation) plat depicts two parcels, Parcel 1 and Parcel 2, even though they are treated as one. This was done because the surveyor that prepared the plat stated that they could not be shown as one because CR 14 splits them. Since then, the County has adopted a definition of 'contiguous' that would allow these lots to be shown as one.

In 2016, the applicant applied for a Home Industry Special Use Permit on Parcel 2 (east side of CR 14). This was for a cabinet manufacturing facility. In addition to a SUP, a variance for the structure and removal of plat notes from the plat was needed. The Board denied the SUP application. Since the SUP was the crux of the project, the plat note removal application was not addressed and the Board of Adjustment never heard the variance application.

Site Description:

This land is located in the old town site of Sidney. It consists of 2 parcels. They are a .45 acre parcel (Parcel 2) on the east side of CR 14 and a 1.69 acre parcel (Parcel 1) on the west side of CR 14. The railroad runs to the east of this property and forms the eastern property line for Parcel 2. Parcel 1 contains a residence and garage. Parcel 2 does not have any improvements on it. A neighboring residence is located to the east of the railroad tracks. The residence and garage on Parcel 1 is directly across CR 14 from the neighboring residence.

Neither parcel has any significant vegetation. Parcel 1 (west side of CR 14) slopes upward away from the road. Parcel 2 slopes down away from the road and there is approximately 15'-20' of elevation loss from the road to the east property line of Parcel 2. There is an existing access to Parcel 1 but none for Parcel 2.

Project Description:

The applicant would like several of the restrictions on the plat removed. They include:

1. Modify note #2 to remove the first sentence: *~~"The dwelling unit is to be constructed within the building envelope shown on the plat. Improvements may be constructed only on that portion of the property that lies westerly of the county road."~~*
2. Remove note #6: *"A height limitation of 25 feet shall apply to the property."*
3. Remove the building envelope from the plat.

Staff Comments:

- The BCC has the option of removing none, all, or some of the requested notes.
- According to staff's research, it appears that the restrictions placed on the plat were a result of negotiations between the landowner and neighbor at the time this exemption was approved.
- Nothing in the Zoning nor Subdivision regulations specifically supports these type of restrictions. Typically, staff would rely on the Dimensional Standard Chart in the Zoning Regulations to determine setbacks and structure height. The height maximum is 40'. The

only time a height restriction is included is if the parcel is in a mapped skyline area. This site is not within the mapped area.

The Subdivision Regulations no longer require building envelopes, so if the building envelope is removed, “no build zones” will have to be identified on the plat. “No build zones” include steep slopes (>30%), waterbody setbacks, floodplains, critical wildlife habitat, etc.). Except for possibly steep slopes, none of these constraints are present on this land. For this zoning the setbacks are 50’ from the property line or 80’ from the centerline of the public road, whichever is more restrictive. Any structures proposed within the setback would have to obtain a variance from the Board of Adjustment. These factors will determine the land area that is available for development, similar to a building envelope.

- The Master Plan encourages the preservation of open spaces and the rural character of the County. Section 3.1.P of the Subdivision Regulations states, *“Proposed subdivisions shall be in substantial conformance with the Routt County Master Plan and all adopted sub-area plans.”*
- The documentation that resulted from the original project includes a plat and a Development Agreement. If the current request is approved, the existing Development Agreement will have to be modified to be consistent with the approval and the resulting plat.
- The current plat shows Parcel 1 and Parcel 2. According to the definition of ‘contiguous’ contained in the Zoning Regulations, Parcel 1 and Parcel 2 can be shown as a single parcel. A condition of approval addressing this is suggested.
- APO notices were sent out but no comments have been received to date.

*****Issues for Discussion*****

- Has the character of the area changed to such a degree that removal of the plat notes is warranted?

Subdivision Exemption

Pursuant to Section 30-28-101(10)(d), Colorado Revised Statutes, the Board of County Commissioners (BCC) may grant exemptions from the application of Routt County’s Subdivision Regulations if the BCC finds that a particular division of land is not within the purposes of Part 1 of Article 28, Title 30, Colorado Revised Statutes.



Date: Aug, 10 2020

Narrative for Planning Review: RCR 14 with the Parcel ID1340002

To Whom It May Concern:

My name is Beau Christiansen the property owner of the above-mentioned property as well as the single family house located across RCR 14.

This is the second time I have petitioned this board for a modification to the plat notes that exist on the property I own on County Road 14.

I would first like to address our first encounter where I asked for a special use permit to operate a business on my property. While I was in a desperate situation as my business had just been destroyed by an arsonist, your directive to not allow a special use permit for a business was the correct path and for that I both thank and respect you for sticking to the core beliefs that guide the planning and growth of our county. I see in hindsight what I was asking for was inconsiderate and for that I apologize both for asking and wasting your time and energy.

Regarding the Plat Note Removal:

Upon this lots creation there were notes that was put upon the plat, due to what seems to be a request by the former adjacent property owner Alan White and the will of the planning commission at that time.

I would like to request that you would heavily consider removing the following plat notes

6- Where it limits the height restriction to 25 feet. I would like to do an addition above my garage that ideally has a 34 ft height. This is approximately 5 ft higher than the existing roof line.

It is my opinion that the areas has changed enough that the plat notes are no longer relevant. The hay field behind my house now is a 10,000 square foot ultra modern house t a house that below, just beyond that a 40 ft tall mansion is being built. In that light, doing an addition above my garage and building some agricultural buildings seems pretty inconsequential

Regarding the Variance:

I would also like to utilize the placement of the old town of Sidney's post office site to build an agricultural barn that will house goats, chickens. In addition to the barn, I have negotiated with the neighbor to the southeast to save one of the two historical silos that exist there when he decides to build his house and I would like to attach it to the barn both of which are outside of the current building envelope.

AS it pertains to the building envelope, rather than adjusting it, I would like to just remove the building envelope all together and I am happy designate additional non build areas if that helps.



I respect the area in which I live, my neighbors, and the foresight of previous planning that have created the peace and enjoyment that I currently partake in. It is my intent that if the planning commission decides to vote in favor of my proposal that I will do everything in my power to maintain the status quo when it comes to quiet enjoyment of our properties, respect to both our neighbors, our culture and other members of the our community.

Sincerely,

Beau Christiansen

COUNTY ROAD 14

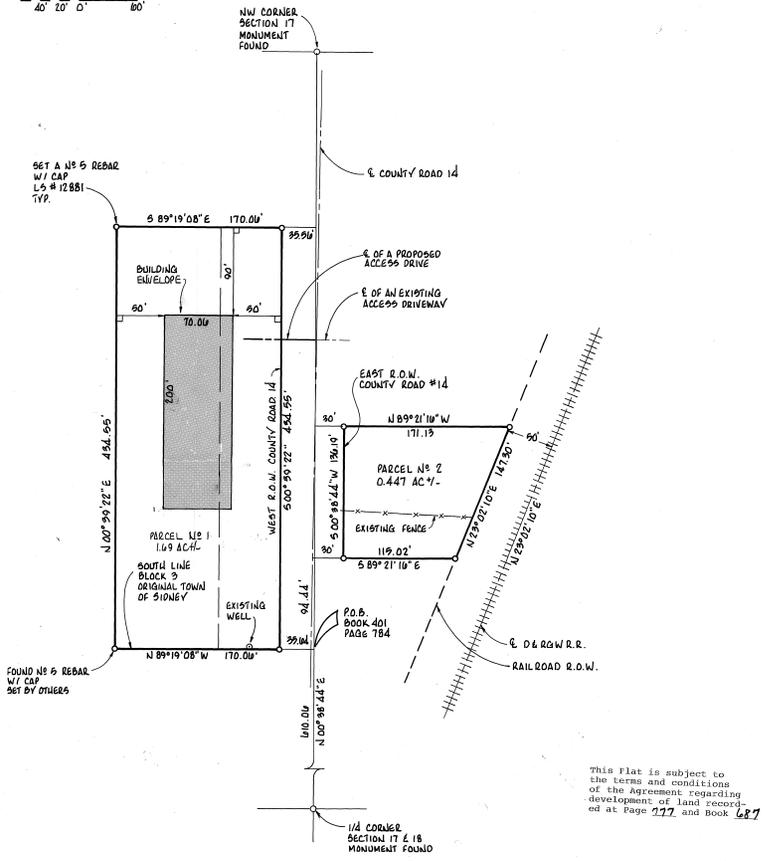
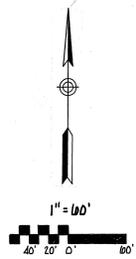
COUNTY ROAD 35



11828
1 of 1

IACOVETTO EXEMPTION

A SUBDIVISION OF LAND LOCATED IN BLOCKS 3 AND 4 OF THE ORIGINAL TOWN OF SIDNEY, CO., IN THE SE 1/4 NE 1/4, SECTION 18 AND IN THE SW 1/4 NW1/4, SECTION 17, ALL OF T5N, R84W OF THE 6TH P.M., ROUTT COUNTY, COLORADO



NOTED RESTRICTIONS AND EXCEPTIONS AND CONDITIONS OF FINAL APPROVAL

1. NO MORE THAN ONE SINGLE FAMILY DWELLING UNIT SHALL BE BUILT UPON THE PROPERTY.
2. THE DWELLING UNIT IS TO BE CONSTRUCTED WITHIN THE BUILDING ENVELOPE SHOWN ON THE PLAT. IMPROVEMENTS MAY BE CONSTRUCTED ONLY ON THAT PORTION OF THE PROPERTY THAT LIES WESTERLY OF THE COUNTY ROAD.
3. THE DWELLING UNIT WILL NOT BE A MODULAR UNIT AND WILL BE CONSTRUCTED ON SITE.
4. PROPANE TANKS WILL BE LOCATED UNDERGROUND AND NOT VISIBLE TO ADJACENT PROPERTY OWNERS.
5. LANDSCAPING FOR THE PROPERTY WILL INCORPORATE NO LESS THAN 15 ASPEN AND 5 EVERGREEN.
6. A HEIGHT LIMITATION OF 25 FEET SHALL APPLY TO THE PROPERTY.
7. THE 0.447 ACRE PARCEL EAST OF THE COUNTY ROAD IS DESIGNATED AS A NON BUILDING AREA.

BEARINGS ARE BASED UPON THE MONUMENTED WEST LINE OF THE NW1/4, SECTION 17, BEING N 00°38'44" E.

CERTIFICATE OF DEDICATION AND OWNERSHIP

KNOW ALL MEN BY THESE PRESENTS: THAT CLYDE IACOVETTO AND ALICE IACOVETTO, BEING THE OWNERS OF THE LAND DESCRIBED AS FOLLOWS:

THAT CERTAIN DEED AS CONVEYED AND RECORDED WITH THE COUNTY CLERK AND RECORDER APPEARING IN BOOK 401 AT PAGE 784 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SW CORNER OF BLOCK 3 OF THE ORIGINAL TOWN OF SIDNEY, COLORADO, A SUBDIVISION AS FILED BY PLAT WITH THE COUNTY CLERK AND RECORDER, APPEARING AT FILE NO. 1549, SAID POINT BEING ON THE WEST RIGHT OF WAY OF ROUTT COUNTY ROAD NO. 14 FROM WHICH THE 1/4 CORNER COMMON TO SECTIONS 17 AND 18 BEARS S 89°19'08" E 35.64 FEET AND S 00°38'44" W 610.06 FEET;
THENCE N 89°19'08" W 170.06 FEET ALONG THE SOUTH LINE OF BLOCK 3 TO THE SW CORNER OF SAID BLOCK 3;
THENCE N 00°39'22" E 434.55 FEET ALONG THE WEST LINE OF BLOCK 3 AND 4 TO THE NW CORNER OF BLOCK 4;
THENCE S 00°19'08" E 170.06 FEET TO THE NE CORNER OF BLOCK 4, SAID POINT BEING ON THE WEST RIGHT OF WAY OF ROUTT COUNTY ROAD NO. 14;
THENCE S 00°39'22" W 434.55 FEET ALONG THE EAST LINE OF BLOCKS 3 AND 4 AND THE WEST RIGHT OF WAY OF SAID COUNTY ROAD TO THE POINT OF BEGINNING.

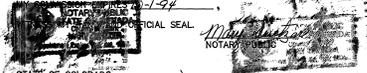
AND A TRACT OF LAND AS CONVEYED BY DEED WITH THE COUNTY CLERK AND RECORDER, APPEARING IN BOOK 401 AT PAGE 784 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE EAST RIGHT OF WAY OF ROUTT COUNTY ROAD NO. 14 FROM WHICH THE 1/4 CORNER COMMON TO SECTIONS 17 AND 18 BEARS N 89°21'16" W 30.00 FEET TO THE WEST LINE OF THE NW1/4 SECTION 17 AND S 00°38'44" W 704.50 FEET;
THENCE S 89°21'16" E 115.02 FEET ALONG THE SOUTH LINE OF THE NO. 2 PARCEL OF LAND OF AFORESAID DEED TO THE WEST LINE OF THE DENVER AND RIO GRANDE RAILROAD WESTERN RIGHT OF WAY, SAID RIGHT OF WAY BEING 50 FEET WEST AND PARALLEL TO THE EXISTING CENTERLINE OF SAID DENVER AND RIO GRANDE WESTERN RAILROAD;
THENCE ALONG SAID RIGHT OF WAY N 23°02'10" E 147.30 FEET TO THE NE CORNER OF SAID PARCEL OF LAND;
THENCE N 89°21'16" W 171.13 FEET ALONG THE NORTH LINE OF SAID PARCEL OF LAND TO THE NW CORNER OF SAID PARCEL OF LAND, SAID POINT BEING ON THE EAST RIGHT OF WAY OF ROUTT COUNTY ROAD NO. 14;
THENCE S 00°38'44" W 136.19 FEET ALONG THE WEST LINE OF SAID PARCEL OF LAND AND THE EAST RIGHT OF WAY OF SAID COUNTY ROAD TO THE POINT OF BEGINNING.

CONTAINING 2.143 ACRES MORE OR LESS, IN ROUTT COUNTY COLORADO, HAS LAID OUT, PLATTED, AND SUBDIVIDED SAME AS SHOWN ON THIS PLAT UNDER THE NAME AND STYLE OF IACOVETTO EXEMPTION.

IN WITNESS WHEREOF, THE SAID CLYDE IACOVETTO AND ALICE IACOVETTO HAS CAUSED THEIR NAMES TO BE HERETO SUBSCRIBED THIS 27 DAY OF July, A.D. 1997.
BY: *Clyde Iacovetto*
CLYDE IACOVETTO
BY: *Alice Iacovetto*
ALICE IACOVETTO

STATE OF Utah }
COUNTY OF Clark } SS

THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED BEFORE ME THIS 27 DAY OF July, A.D. 1997, BY CLYDE IACOVETTO, AS OWNER.



STATE OF Colorado }
COUNTY OF Roout } SS

THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED BEFORE ME THIS 27 DAY OF March, A.D. 1998, BY ALICE IACOVETTO, AS OWNER.

MY COMMISSION EXPIRES 2-6-96
WITNESS MY HAND AND OFFICIAL SEAL.

Lawrence E. Peterson
NOTARY PUBLIC

BOARD OF COUNTY COMMISSIONERS
THE WITHIN PLAT OF IACOVETTO EXEMPTION IS APPROVED FOR FILING THIS 27 DAY OF July, A.D. 1997.

BY: *Donnie Gule*
CHAIRMAN OF THE BOARD
ATTEST: *Donna K. Manning* COUNTY CLERK AND RECORDER

SURVEYOR'S CERTIFICATE
I, LAWRENCE E. PETERSON, A REGISTERED LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY STATE THAT THIS PLAT AND SURVEY OF IACOVETTO EXEMPTION WAS MADE AND PERFORMED BY ME AND UNDER MY DIRECT SUPERVISION, RESPONSIBILITY, AND CHECKING AND FURTHER STATE THAT SAID PLAT AND SURVEY IS ACCURATE AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. STEEL MARKERS AND/OR MONUMENTS WERE SET AS REQUIRED.

DATED DECEMBER 220 - 1998. *Lawrence E. Peterson*
LAWRENCE E. PETERSON L.S. 12881

NOTICE OF RESEARCH
PURSUANT TO C.R.S. § 38-51-102(1), RESEARCH REGARDING THE RIGHTS OF WAY AND EASEMENTS AS SHOWN HEREON WERE OBTAINED BY PERSONAL SEARCH OF THE UNDERSIGNED PROFESSIONAL LAND SURVEYOR.

COUNTY SURVEYOR LAND SURVEY PLAT CERTIFICATE
DEPOSITED THIS 28 DAY OF July, 1998, AT 10:00 A.M.
IN BOOK 401 OF THE COUNTY SURVEYORS LAND SURVEY PLATS, RIGHT OF WAY SURVEYS AT PAGE 784 RECEPTION NUMBER S 2805.
THIS LAND SURVEY PLAT COMPLIES WITH SECTION 38-51-102, COLORADO REVISED STATUTES.

BY: *Donna K. Manning* COUNTY CLERK AND RECORDER
LAWRENCE E. PETERSON L.S. 12881
CLERK AND RECORDERS CERTIFICATE

THIS PLAT WAS ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF ROUTT COUNTY, COLORADO THIS 28 DAY OF July, A.D. 1998, AT FILE NUMBER 11828 AND RECEPTION NUMBER 441523. TIME 10:00 AM.
BY: *Donna K. Manning* COUNTY CLERK AND RECORDER

This plat is subject to the terms and conditions of the agreement regarding development of land recorded at Page 777, and Book 627



3/

AGREEMENT REGARDING DEVELOPMENT OF LAND

This Agreement Regarding Development of Land (the "Agreement") dated as of June 27, 1993 is made by Clyde Iacovetto and Alice Iacovetto ("Landowner") in favor of Routt County, Colorado ("County").

Recitals

A. Landowner is the owner of approximately 2.143 acres in Routt County, Colorado described as Blocks 3 and 4, Town of Sidney, together with a tract approximately .44 acres in Section 17, Township 5, Range 84W (the "Land"). The Land is zoned Agriculture and Forestry ("A/F").

B. Landowner has applied to County for approval of the re-subdivision of the Land and for either (1) the rezoning of the Land as General Residential or (2) a variance from the minimum lot size required for the construction and maintenance of a residential unit on the Land. These applications were made for the purpose of obtaining the right to construct a single family dwelling on the Land.

C. On July 27, 1992, the Routt County Board of Adjustment granted Landowner's request for a variance permitting the construction and maintenance of a single family dwelling on the Land.

D. On June 9, 1992, and, following reconsideration, again on July 21, 1992, the Board of County Commissioners of County granted Landowner's request for re-subdivision of the Land subject to certain conditions, including that the re-subdivision plat show a merger of Blocks 3 and 4 and the approximately .44 acre tract as one lot.

E. Blocks 3 and 4 are divided from the approximately .44 acre tract by Routt County Road 14 and the surveyor employed by Landowner to prepare the necessary re-subdivision plat (the "Re-subdivision Plat") has advised that the Land can not, therefore, be shown as a single lot or tract on the plat.

F. On the Re-subdivision Plat, which is entitled the "Iacovetto Exemption Plat", Blocks 3 and 4 are shown as Parcel 1 and the approximately .44 acre tract is shown as Parcel 2.

G. County is willing to accept the written agreement of Landowner that Parcels 1 and 2 will be subject to the conditions set forth herein in lieu of a re-subdivision plat showing the Land to be a single lot or tract and Landowner is willing to subject the Land to such conditions as matters of record.

Agreement

Therefore, Landowner agrees as follows:

1. Only one single family dwelling may be constructed and maintained on the Land and that such structure shall be constructed only within the portion of Parcel 1 identified on the Re-subdivision Plat as the building envelope.

2. Parcels 1 and 2 shall not be transferred, sold or otherwise conveyed separately or to different owners but shall be treated for all purposes as a single lot or tract which may not be further subdivided without approval pursuant to the Routt County Subdivision Regulations.

3. This Agreement is intended to create a terminable conservation easement in favor of, and enforceable by, County in accordance with the provisions of C.R.S. § 38-30.5-101 et seq., relating to Conservation Easements, and any subsequent amendment thereto and is also intended to be an agreement encumbering the Remainder Parcel in perpetuity, subject to termination, even if said statute is hereafter repealed.

4. This Agreement shall be recorded simultaneously with the Re-subdivision Plat and Landowner shall place on the Re-subdivision Plat language noting that Parcels 1 and 2 are subject to the terms of this Agreement.

5. In addition to bringing a claim for damages for breach of this Agreement, Landowner agrees that County shall be entitled to an order or judgment requiring specific performance of the terms of this Agreement without showing that recoverable damages are inadequate and shall be entitled to injunctive relief without showing that irreparable injury will result from a breach or threatened breach of this Agreement.

6. In the event either Landowner or County brings suit to enforce or interpret any portion of this Agreement, the party prevailing in such action shall be entitled to recover all costs incurred in such action, including without limitation reasonable attorney fees.

7. This Agreement is to be recorded in the records of the Office of the Clerk and Recorder of Routt County, Colorado.

8. This Agreement shall be binding on and inure to the benefit of Landowner and County and their respective successors and assigns, and shall not be deemed to be for the benefit of or enforceable by any third party. This Agreement may not be amended except by a written document executed by both Landowner and County. This Agreement shall be governed by and construed in accordance



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

ITEM DATE: September 24, 2020	ITEM TIME: 9:30 am

FROM:	Alan Goldich
TODAY'S DATE:	September 21, 2020
AGENDA TITLE:	Christiansen Plat Note Removal; PL-20-150

CHECK ONE THAT APPLIES TO YOUR ITEM:	
<input checked="" type="checkbox"/> ACTION ITEM	
<input type="checkbox"/> DIRECTION	
<input type="checkbox"/> INFORMATION	

I. DESCRIBE THE REQUEST OR ISSUE:
 Consideration to remove plat notes from the Iacovetto Exemption plat.

II. RECOMMENDED ACTION (motion):

I move to approve the Christiansen Plat Note Removal application, PL-20-150, to modify plat note #2 to remove the first sentence so that it now reads: *Improvements may be constructed only on that portion of the property that lies westerly of the county road.*” and to remove plat note #6. With the findings of fact:

1. The proposed change is compatible, and in character, with the immediately adjacent and nearby neighboring properties and is in compliance with the County Master Plan.
2. The character of the neighborhood has changed to a degree that warrants the removal of the plat notes.

And the following conditions of approval:

1. An amended plat reflecting the note changes shall be recorded within one year of the Board of County Commissioners’ approval. An extension of this deadline may be granted by the Planning Director without notice.
2. The amended plat shall show Parcels 1 and 2 as one single parcel.
3. All existing plat notes continue to apply and shall be shown on the amended plat.
4. The Agreement Regarding the Development of Land shall be amended to reflect this approval. Such agreement shall be recorded concurrently with the plat.



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

III. DESCRIBE FISCAL IMPACTS (VARIATION TO BUDGET):

PROPOSED REVENUE *(if applicable)*: \$

CURRENT BUDGETED AMOUNT: \$

PROPOSED EXPENDITURE: \$

FUNDING SOURCE:

SUPPLEMENTAL BUDGET NEEDED: YES NO

Explanation: N/A

**IV. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS
(IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):**

N/A

V. BACKGROUND INFORMATION:

Please see staff's full analysis in the attached staff packet.

VI. LEGAL ISSUES:

N/A

VII. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A

VIII. SUMMARY AND OTHER OPTIONS:

1. I move to deny the Christiansen Plat Note Removal application, PL-20-150, with the following findings of fact:
 - a) The proposed change is not compatible and in character with the immediately adjacent and nearby neighboring properties and the proposed change is not in compliance with the County Master Plan and Section 3.1.P of the Subdivision Regulations.
 - b) The character of the neighborhood has not changed to a degree that warrants the removal of the plat notes.
2. Table the application if additional information is required to fully evaluate the petition.

IX. LIST OF ATTACHMENTS:

- Staff Packet



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

ITEM DATE: September 24, 2020	ITEM TIME: 9:30 am

FROM:	Alan Goldich
TODAY'S DATE:	September 21, 2020
AGENDA TITLE:	County Road 34 (Spring Creek) Right of Way Vacation; PL-20-149
CHECK ONE THAT APPLIES TO YOUR ITEM:	
<input checked="" type="checkbox"/> ACTION ITEM	
<input type="checkbox"/> DIRECTION	
<input type="checkbox"/> INFORMATION	
I. DESCRIBE THE REQUEST OR ISSUE:	
Consideration to vacate the upper portions of County Road 34 right of way.	
II. RECOMMENDED ACTION (motion):	

I move to approve the County Road 34 (Spring Creek) Right of Way Vacation, PL-20-149, with the following findings of fact:

1. The proposal with the following conditions complies with the applicable guidelines of the Routt County Master Plan and is in compliance with Sections 4, 5, and 6 of the Routt County Zoning Regulations, Sections 2 of the Routt County Subdivision Regulations.
2. The proposal meets the substantive standards as provided under Colorado Revised Statutes Section 43-2-303.
3. The proposal does not “landlock” any parcel or eliminate any landowners’ access to the public road system.

And the following conditions of approval:

1. The resolution of vacation, which includes a legal description of the right-of-way being vacated, shall be recorded in the official records of the Routt County Clerk and Recorder within one year of the Board of County Commissioners approval.
2. An easement granting access to Johnny and Gratia Walker shall be recorded concurrently with the resolution vacating the ROW for CR 34.



ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA COMMUNICATION FORM

III. DESCRIBE FISCAL IMPACTS (VARIATION TO BUDGET):

PROPOSED REVENUE *(if applicable)*: \$

CURRENT BUDGETED AMOUNT: \$

PROPOSED EXPENDITURE: \$

FUNDING SOURCE:

SUPPLEMENTAL BUDGET NEEDED: YES NO

Explanation: N/A

**IV. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS
(IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):**

N/A

V. BACKGROUND INFORMATION:

Please see staff's full analysis in the attached staff packet.

VI. LEGAL ISSUES:

N/A

VII. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A

VIII. SUMMARY AND OTHER OPTIONS:

Deny

I move to deny the County Road 34 right of way vacation application, PL-20-149 with the following findings of fact:

1. The vacation of the ROW will adversely affect the public health, safety, and welfare, the public will utilize this ROW, and there is a need to maintain this as a public ROW for the future use.

Table

I move to table the County Road 34 right of way vacation application, PL-20-149, for additional information. That information includes _____ (fill in the blank).

IX. LIST OF ATTACHMENTS:

- Staff Packet

Vacation of County Road 34 Right of Way

ACTIVITY #: PL-20-149

HEARING DATES: Board of County Commissioners: 9/24/20 at 9:30 am
(tabled from 9/15/20)

PETITIONER:

1. Amethyst Ranch, LLC (Terry Huffington)
2. Strawberry Woods, LLC (Terry Huffington)
3. Johnny and Gratia Walker

PETITION: Vacation of the Right of Way (ROW) for the upper portion of County Road 34 (Spring Creek)

LOCATION: The entire western upper portion of County Road (CR) 34 from approximately the western property boundary of City of Steamboat Springs parcel with PIN 936044007.

STAFF CONTACT: Alan Goldich, agoldich@co.routt.co.us

ATTACHMENTS:

- Vicinity and Road Segments map
- Map of ROW to be vacated
- Survey of upper portion of ROW
- Narrative
- R&B letter of support
- City of Steamboat Springs comments dated 9/10/20
- Applicant's response to City's letter dated 9/16/20
- Ditch Alteration Agreement
- Picture of sign on gates on trail

Site Description:

Generally, the main use of County Road (CR) 34 is for pedestrian and biking traffic. The Spring Creek trail uses the right of way (ROW) on the lower portion. Eventually, the trails leaves the ROW on City property and travels through City and USFS land, terminating at the Dry Lake parking area.

The applicants have broken the description of CR 34 into four distinct segments. See the attached map for a visual breakdown of these individual segments. The road generally follows the right of way for the first three segments. The constructed roadway leaves the ROW when it leaves the Second City Parcel.

Segment 1

This segment begins at the intersection of CR 34 and Amethyst Dr. There is a parking area at this intersection for the Spring Creek trailhead. The road travels in a westerly direction to two City owned and managed ponds (First City Parcel). This portion is used by multiple landowners to access property off of CR 34. At the end of this section, there is a locked gate that prevents vehicles from traveling past this point.

Segment 2

This segment travels north from the ponds and generally follows the stream bed of Spring Creek.

Segment 3

This segment begins generally at a point where the trail and ROW make a hairpin turn to the left, cross Spring Creek, and enter into another parcel owned by the City (Second City Parcel). Where CR 34 exits the Second City Parcel, there is a gate that prevents people from traveling past this point.

Segment 4

The final segment starts where the ROW, and constructed roadway, leave the Second City Parcel and travels up a steep hill. The proposed point of terminus is where the ROW, and constructed roadway, leave the Second City Parcel. This is shown as Station 29 on the Road Viewers Report and the plat that was created. The roadway in this section is not within the ROW, however it does cross the ROW twice. There are ten private parcels in this area, all owned by the applicants. Only one of the ten parcels is accessed via the constructed roadway.

The Spring Creek trails are heavily used by the public from CR 34's intersection with Amethyst Dr. all the way up to the Dry Lake parking area. Biking and hiking are the main activities that take place. The City has worked closely with the applicants to re-route and build new trails that relieve user conflicts and alleviate trespass onto the applicant's property. Based on the mapping available on the City's website, it appears that all of the Spring Creek trails are entirely contained on the City's property and do not extend onto the applicant's property. A map of the trails will be provided at the hearing.

History:

The use of CR 34 has a long history. According to the applicants, the history of the road began in 1909 and 1910 when Rosalin Niesz recorded four deeds that reserved land for "wagon road" and "public road" purposes. There is no evidence that the roads were ever built over this land nor that the County ever accepted any type of dedication for this land. In 1911 a Road Viewers Report was created as well as a plat showing proposed roads connecting Fish Creek Falls Rd. and North Park Rd. Neither the report nor the plat were recorded in the real property records at the time, which was a requirement. There have been several attempts over the years to determine exactly where the point of terminus of the right of way is. Please see the applicant's narrative for a more detailed description of this history.

In 1995, a gate was placed to block the road to vehicular traffic just after the road accesses the City's two ponds, which are located on the First City Parcel. Beyond this point, there is no vehicular access, except for owners that own land above this point.

Over the years, an unofficial social trail was created on the applicants' property. To alleviate and prevent trespass issues that were created through the use of this trail, the City and private property owners worked together to create a new trail contained entirely on City land, improved the irrigation ditch in the vicinity of this new trail, and installed gates and signs informing the public of private property and directing them towards the new trail.

Project Description:

The applicants would like the County to identify the point of terminus of the ROW at Station 29, where the ROW and the constructed roadway leave the Second City Parcel. It is the applicant's stance that since the Road Viewers Report was never recorded, no acceptance of the ROW has been found, and that the County has not maintained that section of roadway, that a ROW does not exist for segment 4. The applicants would also like any other potential rights of way that may exist across the their properties to be vacated as well.

Staff Comments:

- The constructed road intersects the upper portion of the Second City Parcel, but the ROW does not. Since there is access from CR 34 to the Second City Parcel on the lower portion of the Parcel, the applicants are not proposing to grant the City access to the upper portions of the Second City Parcel.
- Because none of the existing trails utilize the ROW that is proposed to be vacated, it is staff's opinion that there will be no impact to the recreational opportunities that are present on these trails.
- The City has requested an access easement over the constructed roadway to the upper portions of their property so they can maintain their property, access their water right, and for recreational uses.
- Routt County Road & Bridge has stated that they support the proposed vacation.
- All landowners that utilize this ROW have consented to this application.
- The centerline of an easement for Johnny and Gratia Walker, who utilize this ROW for access to their property, has been identified and is proposed to be dedicated to them.
- Notice was provided to all adjacent property owners and the required sign was placed on the gate that is located on the Second City Parcel property before the roadway leaves the Second City Parcel. Staff has received one inquiry about the application but no formal comment was submitted. No comments have been received from the public.

*****Issues for Discussion*****

- The main questions that need to be answered are: does the public utilize this ROW and is there a need to maintain this as a public ROW for the future?

Compliance with the Routt County Master Plan, Sub Area Plans and Subdivision Regulations

The Routt County Master Plan, Sub Area plans and Subdivision Regulations contain dozens of policies and regulations regarding land use. Section 5 of the zoning regulations are designed to limit or eliminate conditions that could negatively impact the environment and/or use of surrounding properties, and shall apply in all Zone Districts and to all land uses unless otherwise noted. Section 6 Regulations apply to all Minor, Administrative, Conditional or Special uses allowed by permit only, PUD plans, Site plans, and Subdivisions.

The following checklist was developed by Planning Staff to highlight the policies and regulations most directly applicable to this petition. The checklist is divided into two (2) major categories:

1. Vacation of a Plan, ROW, or Public Utility Easement of Record
2. Statutory requirements for County Road Vacations

Interested parties are encouraged to review the Master Plan, Sub Area plans and Subdivision Regulations to determine if there are other policies and regulations that may be applicable to the review of this petition.

Staff Comments are included at the end of each section, highlighting items where the public, referral agencies, or planning staff have expressed questions and/or comments regarding the proposal. **Staff comments regarding compliance with regulations and policies are noted in bold below.**

Easement/Right-of-Way Vacation Standards

Applicable Regulations – Routt County Subdivision Resolution

- 2.8.1.B Vacation will not interfere with development of, nor deny access via public thoroughfare to adjoining properties, utility services or other improvements.
- 2.8.1.C Vacation will not interfere with the orderly development of utilities to nearby properties.
- 2.8.1.D Vacation will not be contrary to the Routt County Master Plan or Zoning Regulations.

Staff comments: All property owners that utilize this ROW as their sole access have consented to this application. The applicants are proposing to dedicate an access easement to Johnny and Gratia Walker. A condition of approval is suggested requiring that this easement be recorded along with the resolution vacating the ROW. No property owner will lose access to their property under the current proposal. There are no known utilities within the CR 34 ROW, so vacation of this road will not affect utility development in this area. None of the parcels that this ROW serves have utilities. YVEA was contacted as part of this application but staff received no response. This vacation does not appear to be contrary to the Master Plan or Zoning Regulations.

***Is the application in compliance with the Policies and Regulations outlined above? Yes or No*

Statutory Requirements for County Road Vacations

Applicable sections of Colorado Revised Statutes Section 43-2-303 state:

- 1.b The board of county commissioners of any county may vacate any roadway or any part thereof located entirely within said county if such roadway is not within the limits of any city or town.
- 2.a No platted or deeded roadway or part thereof or unplatted or undefined roadway which exists by right of usage shall be vacated so as to leave any land adjoining said roadway without an established public road or private-access easement connecting said land with another established public road.
- 2.b If any roadway has been established as a county road at any time, such roadway shall not be vacated by any method other than a resolution approved by the board of county commissioners of the county. No later than ten days prior to any county commissioner meeting at which a resolution to vacate a county roadway is to be presented, the county commissioners shall mail a notice by first-class mail to the last-known address of each landowner who owns one acre or more of land adjacent to the roadway. Such notice shall

- indicate the time and place of the county commissioner meeting and shall indicate that a resolution to vacate the county roadway will be presented at the meeting.
- 2.f If any roadway is vacated or abandoned, the documents vacating or abandoning such roadway shall be recorded pursuant to the requirements of section 43-1-202.7.
- 3 In the event of vacation under subsection (1) of this section, rights-of-way or easements may be reserved for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, for ditches or canals and appurtenances, and for electric, telephone, and similar lines and appurtenances.

Staff comments: The portion to be vacated is entirely within Routt County and not any of the municipalities. Pending the recording of an access easement, the vacation will not leave any adjoining land without access. It is staff's opinion that the requirements of statute have been met without granting the City an access easement to the upper portions of their property. A resolution recorded in the Clerk and Recorder's Office is proposed to officially vacate the road. Since there are no utilites in the ROW, no easement for utilities is required.

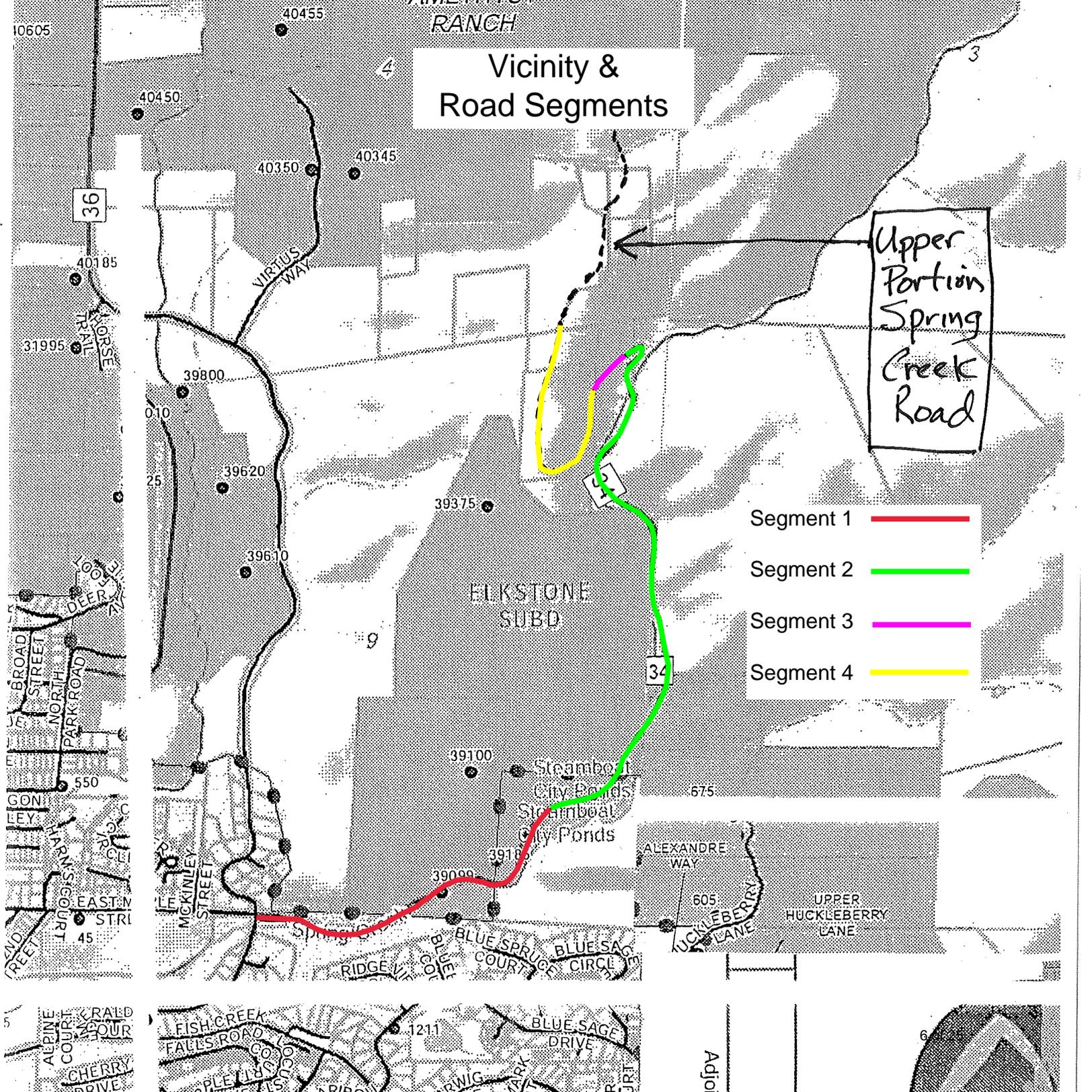
***Is the application in compliance with the Policies and Regulations outlined above? Yes or No*

10605

Vicinity & Road Segments

Upper
Portion
Spring
Creek
Road

- Segment 1 
- Segment 2 
- Segment 3 
- Segment 4 



WRITTEN NARRATIVE

SUMMARY

John and Gratia Lee Walker, Strawberry Woods Ranch, LLC and Amethyst Ranch, LLC (“**Applicants**”) request that the Routt County Board of Commissioners pass a resolution to specify the point of terminus of right-of-way for Routt County Road 34 as the point where the centerline of the existing road intersects with the east line of the W1/2NE1/4NE1/4 of Section 9, Township 6 North, Range 84 West of the 6th Principal Meridian, Routt County, Colorado (the west boundary of the parcel No. 936044007 owned by the City of Steamboat Springs) and vacating the right-of-way, if any, in the upper portion of the road commonly referred to as Spring Creek Road.

GENERAL DESCRIPTION

Spring Creek Road, as it physically exists, commences at its intersection with Amethyst Drive and runs its course northeasterly for about one-and-one-half miles. A vicinity map showing the general location of Spring Creek Road is enclosed as Exhibit A. Spring Creek Road can be described in several segments:

1. The first segment commences at its intersection with Amethyst Drive and extends easterly to Spring Creek Park, where the City of Steamboat Springs owns and operates two small reservoirs. Several private parcels use this segment for access.
2. The second segment is where Spring Creek Road turns north and generally follows the stream bed through Lightening Ridge Ranch and Amethyst Ranch in Sections 9 and 10, T6N, R84W.
3. The third segment begins where the road leaves the stream bed at a hairpin turn to the left and the road enters parcel No. 936044007 owned by the City of Steamboat Springs (“**Second City Parcel**”). An Area Map showing assessor parcel numbers is enclosed as Exhibit B. From this Second City Parcel, the City of Steamboat Springs has constructed hiking and biking trails that extend into Routt National Forest to Dry Lake Campground.
4. The fourth and final segment is where the road leaves the Second City Parcel and travels first southwest and then bends to the north across the W1/2NE1/4NE1/4 of Section 9, T6N, R84W, then enters Section 4, T6N, R84W and continues across several parcels to the end of the physical road on parcel number 936044001 owned by Strawberry Woods Ranch (“**Upper Portion**”). A map using a dotted line to mark the approximate location of the Upper Portion of Spring Creek Road is attached as Exhibit C. There are about ten parcels, other than the Second City Parcel, in the vicinity as shown on the Area Map that have or could potentially utilize the Upper Portion of Spring Creek Road for access. All of these ten additional parcels are owned by the Applicants. Proof of Ownership of these parcels is provided in Exhibit D.

The Upper Portion of Spring Creek Road does not connect to Routt National Forest.

EXISTING CONDITIONS

Beyond the Second City Parcel, the Upper Portion of Spring Creek Road has seen diminishing vehicular use over the past twenty years as the ownership of the ten parcels originally served by Spring Creek Road have been consolidated. Of the ten parcels, Parcel E owned by John Walker is the last remaining parcel to actively use the Upper Portion of Spring Creek Road for vehicular access.

To the Applicants' knowledge, the county has never maintained the Upper Portion of Spring Creek Road. The existing condition of the road in the Upper Portion is too narrow for two vehicles to pass at the same time, rocky, steep in some sections, and otherwise extremely primitive. The road is not plowed in the winter. Even in the summer, four-wheel-drive is required to drive on the Upper Portion of Spring Creek Road.

It would be extremely unlikely that the road in the Upper Portion could ever be improved to meet county road standards and, even if it could be, the county has demonstrated over the years that it would not agree to maintain the road.

There are no known electric, gas, sewer, water, cable, phone, or other utility lines in the right-of-way for the Upper Portion of Spring Creek Road. Neither Waste Management nor Twin Enviro will serve any property via the Upper Portion of Spring Creek Road.

Some pedestrians and mountain bikers were using the Upper Portion of Spring Creek Road to make a loop to connect with the embankment of the Steamboat Gardens Ditch, following the ditch to its connection with Spring Creek Trail. The Steamboat Gardens Ditch, however, is a private ditch and crosses the private lands owned by the Applicants. This social use of the Applicants' property as a trail was technically trespassing. Realizing that this social use of the Applicants' private property was not sustainable, the City of Steamboat Springs recently reconfigured and constructed a network of both pedestrian and mountain bike trails throughout the area on lands owned by the City and the U.S. Forest Service. These trails now all connect directly to Spring Creek Road without having to cross Applicants' properties and without having to use the Upper Portion of Spring Creek Road. The City and Amethyst Ranch entered into a Consent Agreement for Ditch Alteration dated July 1, 2019 ("**Agreement**") in which the City agreed to help end the trespassing. A copy of the Agreement is enclosed as Exhibit E. Except for the trails described in the Agreement, "***no other portions of the ditch are to be used as trails.***" Based on the Agreement, the public will no longer be able to use the Upper Portion of Spring Creek Road to make a loop connection to the Steamboat Gardens Ditch.

The City has recently posted signs on the ditch to inform the public about the trail re-alignment. A photo of one of the signs is attached as Exhibit F.

THE VACATION

The Applicants request that the BCC confirm the exact location of the end of the right-of-way RCR 34 and that the point of terminus be at the point where the centerline of the existing road in its current location crosses the east line of the W1/2NE1/4NE1/4 of Section 9, which is also west boundary of the Second City Parcel (parcel No. 936044007) ("**Designated Point of Terminus**"). A map showing the location of the Designated Point of Terminus is attached as

Exhibit G. In effect, this would result in a vacation of any county-owned right way west and/north of that point to wherever else the right of way may end.

While the Applicants firmly believe the public right-of-way for Spring Creek Road ends at the Designated Point of Terminus, the history of Spring Creek Road does indicate that there were previous attempts made to confirm this as the location of the end of the right-of-way.

The story of the Upper Portion of Spring Creek Road first begins in 1909 and 1910, when Rosalin Niesz recorded four deeds that reserved certain twenty-foot strips of land for “wagon road” and “public road” purposes along the south boundary of the SW1/4 NE1/4 NE1/4 and west boundaries of the SW1/4 NE1/4 NE1/4, the N1/2NW1/4NE1/4NE1/4 and the S1/2NW1/4NE1/4NE1/4 Section 9 and the T6N, R84W and the west boundary of the S1/2SE1/4SE1/4 of Section 4, T6N, R84W in deeds recorded in Book 59 at Page 243, Book 71 at Page 167, Book 71 at page 461, and Book 71 at Page 74. Copies of the deeds are enclosed as Exhibit H (the “Wagon Road Reservations”). There is no evidence that the roads were ever built on these reserved areas, that the county ever accepted the dedications, or that the county maintained roads within them. At that time, they did not connect to any other existing right-of-way. They appear to have been access corridors for specific parcels, not for a public road to somewhere, because they dead end surrounded by private property.

Then in July of 1911, a Road Viewers Report was prepared. An illegible copy of the Report is attached as Exhibit I (best available copy). Following that, in August of 1911, a plat showing a “proposed” spur connecting Fish Creek Falls and North Park Roads was prepared. A copy of the Plat, which was filed in the road book at number 197 (although “291” is handwritten on the document) is attached as Exhibit J. Although filed in the road book, neither the Report nor the Plat were recorded in the real property records for Routt County at that time.

The road that was actually constructed generally follows the location of the right-of-way shown in the Report and Plat for the first three segments of Spring Creek Road. However, in the fourth segment at Station 29, where the physical road leaves the Second City Parcel, Upper Spring Creek Road as it physically exists leaves the right-of-way shown on the Report and Plat. At Station 29, the physical road is north of the right-of-way, crosses the right-of-way twice between Stations 33 and 34, and then lies east of the right-of-way from Station 34 to the end of the physical road. The Plat shows the right-of-way going due north along the common boundary of the NE1/4 NE1/4 and the NW1/4NW1/4 of Section 9 (Note: the Report and Plat overlap the same premises included in the Wagon Road Reservations) then turning west along the boundaries of Section 4 and 9 to what was then known as North Park Road (“**Proposed Spur**”). After Station 29, virtually none of the physical road is in the right-of-way depicted on the Plat. For about 5,272 feet (nearly a mile) of the right-of-way shown on the Plat for the Proposed Spur, no road exists. Clearly, the Report and the Plat do not accurately describe the RCR 34 right-of-way for Spring Creek Road beyond Station 29.

Adding to the fact that no road exists in the Proposed Spur is the complicating factor that the Report and Plat were not recorded in the real property records. According to G.L 1877 Section 2384 in effect at the time, each road viewers report and plat were required to be “put upon record in their respective counties in the office of the recorder of deeds of such county.” Since the Report and Plat were not recorded and the road does not exist, one could only assume

that the county commissioners either never accepted the Proposed Spur or it was abandoned for some reason. And as a result of not being recorded, buyers of the lands affected by the Proposed Spur since 1911 may have taken free of any claim that the County may have to assert a right-of-way for the Proposed Spur based on the Report and the Plat. See *City of Lakewood v. Mavromatis*, 817 P.2d 90 (Colo. 1991).

The ambiguities over the RCR 34 right-of-way were so significant that in 1980, George Ojdrivich, who was in the process of acquiring one of the ten parcels accessed by the Upper Portion of Spring Creek Road, commenced a lawsuit to obtain private easements to connect his parcel to the end of the right-of-way. A copy of the recorded stipulation is attached as Exhibit K. This document indicates that the parties were unable to identify the location of the end of RCR 34 and that they desired to have the county vacate the right-of-way. They even recorded private easements over the road to get to the public right-of-way.

But even after the lawsuit, the ambiguities over the location of the end of RCR 34 persisted. In 1991, a group of owners of parcels at the end of Spring Creek Road prepared and recorded a Map or Plat and Boundary Agreement, a copy of which is attached as Exhibit L. The map created numerous new private easements in an attempt to connect to the point where they assumed the end of RCR 34 was located. But that point, as shown on the map, is not located in the actual right-of-way described in the Report or Plat.

So where is the end of the right-of-way for RCR 34?

For a public road to exist there must have been a dedication and an acceptance. Other than for the Road Viewer's Report and the Niesz Deeds, there does not appear to be any formal form of public dedication or acceptance. But an acceptance can be informal, such as by agreeing to maintain a road.

And we do have evidence of where Routt County believes the RCR 34 right-of-way ends based on its road maintenance plans. According to the official Routt County, Colorado Road Atlas published in 2017, the county right-of-way for RCR 34 ends about one mile up on the third segment of Spring Creek Road after the left hairpin turn and after entering the Second City Parcel. The pertinent portions of the 2017 Road Atlas are attached as Exhibit M. This same point of terminus was shown on the County Road Map published in 2015 (Exhibit N). It was also the same point of terminus shown on the county's GIS maps on July 13, 2018 (Exhibit O) and on February 26, 2019 (Exhibit P). This point of terminus is also consistent with the Routt County Road & Bridge Road Maintenance Plan, adopted December 17, 1996, which lists RCR 34 as a "minimal maintenance road" with only "0.9 estimated miles maintained" (Exhibit Q). According to these official Routt County records, the right of way for RCR 34 does not extend to the Upper Portion of Spring Creek Road.

The Applicant's request to fix the Designated Point of Terminus as the end of RCR 34 is consistent with the county's official Road Atlas published in 2017.

The Applicant's proposed Designated Point of Terminus is also consistent with where the physical road leaves the right-of-way shown in the Report and Plat at Station 29. At approximately Station 29, the Designated Point of Terminus is the last location of both a public

dedication and a county acceptance (based on its maintenance records) of the Spring Creek right of way.

If the proposed resolution is adopted, the remainder of the RCR 34 right-of-way downhill from the Designated Point of Termination to Amethyst Drive would remain in effect for access to all other users, including the public accessing the City's pedestrian and bike trails in Spring Creek, the City of Steamboat Springs accessing its Second City Parcel, Lightening Ridge Ranch, and all others down valley. The vacation will not cut off access to the public hiking and biking trails developed by the City because those trails connect directly to the RCR 34 right-of-way on the Second City Parcel. So the hiking and biking trails will still have access up and down RCR 34 to its point of commencement at the parking area next to Amethyst Drive.

All property owners who use the Upper Portion of Spring Creek Road for access (the Applicants) have agreed to the vacation of the Upper Portion of Spring Creek Road and the Proposed Spur by virtue of having signed this application. Amethyst Ranch, LLC has agreed to grant to John J. Walker an access easement over the W1/2NE1/4NE1/4 of Section 9 at the location of the road as it exists today to the Designated Point of Terminus.

Based on the above, there exists no continued need for any public use of the Upper Portion of upper Spring Creek Road or the Proposed Spur, and there exists no need for the county to own any right-of-way for the Upper Portion of upper Spring Creek Road or the Proposed Spur.

A proposed legal description of the rights-of-way to be vacated (assuming they even exist) is enclosed as Exhibit R. Although the principal request is for the BCC to designate that exact location of the end of RCR 34, Applicants request that the BCC include in their resolution a vacation of any other potential rights-of-way that might, based on any existing facts or circumstances, exit to the Upper Portion of Spring Creek Road and the Proposed Spur.



**136 6th Street, # 103
Steamboat Springs, CO 80487
970-870-5552**

August 5, 2020

To: Alan Goldich, Planning
From: Mike Mordi, Public Works

RE: Proposed Vacation of a portion of County Road 34

John Walker, Strawberry Woods Ranch, LLC, and Amethyst Ranch, LLC, the three land owners adjacent to County Road 34, submitted an application for the vacation of a portion of County Road 34 for planning and BCC consideration.

Beyond the existing gate installed in 2019, this road serves only private property with no identified public access. The County Public Works/Road & Bridge department supports the vacation of the proposed portion of 34 past the gate to the determined end of the road.

The applicant will need to provide information confirming utility and access easement needs or clearances for the vacated portion of the road.

Routt County Commissioners
Doug Monger
Tim Corrigan
Beth Melton
bcc@co.routt.co.us

September 10, 2020

RE: Comments on request for vacation of portion of Routt County Road 34

Dear Commissioners Monger, Corrigan, and Melton,

Thank you for the opportunity to comment on the request before you at your September 15 meeting for vacation of a portion of Routt County Road 34 ("RCR 34"). The City of Steamboat Springs ("City") is the owner of an approximately seventeen (17) acre parcel of land accessed by RCR 34, which we acquired in 1993 (Parcel No. 936044007).

The City has worked cooperatively with adjacent landowners over the last three years to consolidate our trail system and provide new routes that reduce conflicts between users. The City now manages several trails originating on our parcel, including the popular Spring Creek Trail, and the recently developed "Spring Roll" downhill mountain biking trail and hiking-only trail. Each of these trails are accessed by the lower portions of RCR 34. It is also important to note that the Steamboat Gardens Ditch traverses the City's parcel and the City owns a water right carried by the ditch.

The City understands that Ms. Huffington and Mrs./Mr. Walker ("Applicants") are requesting vacation of RCR 34 from the newly installed gate to the road's present termination point. The City does not object to vacation of this portion of RCR 34, so long as any such vacation requires that the Applicants grant an easement to the City for the purposes of maintaining our property, accessing our water right, and providing for future recreation access. The western central portion of the City's parcel traversed by RCR 34 cannot be accessed by any other road and is located atop steep slopes, making it difficult to maintain except by the current RCR 34.

In the near term, the City plans to use an easement on a vacated RCR 34 to access and maintain our property with parks vehicles. It is also critical that the City preserve future public recreational access to our property. The City suggests that such access may be limited by the terms of an easement to pedestrian and non-motorized bicycle use. The easement that the City needs would travel the same current route that Amethyst Ranch, LLC has promised to grant to the Walkers.

Our Parks, Open Space, and Trails Manager, Craig Robinson and our Assistant City Attorney, Jennifer Bock, plan on joining your meeting on September 15 to provide any additional information helpful to the County. Please do not hesitate to contact me in the meantime with any questions regarding the City's parcel and our position.

Regards,

A handwritten signature in black ink, appearing to read "Gary Suiter". The signature is fluid and cursive, with a large initial "G" and "S".

Gary Suiter

City Manager

City of Steamboat Springs

(970) 871-8225

Alan Goldich
Routt County Planning Department
136 6th St. Suite 200
Steamboat Springs, CO
Via Email: Agoldich@co.routt.co.us

September 16, 2020

Re: Vacation of Upper Spring Creek Road ROW

Dear Mr. Goldich:

This correspondence is presented to you as a response to the letter, dated September 10, 2020, from the City of Steamboat Springs (“City”) in which the City requests an easement across the applicant’s property for vehicular, pedestrian, and non-motorized bicycle use. For the reasons stated below, the applicants request that the Board of County Commissioners approve the vacation without imposing a condition that the applicants grant a new easement to the City.

As a preliminary matter, we would like to express our disappointment and frustration with the City’s position.

We have been working collaboratively with the City to facilitate a functional Spring Creek trail system for decades. It started in 1993 when Terry Huffington was in negotiations with Harrison Eiteljorg to acquire Amethyst Ranch, Mr. Eiteljorg’s agents offered to include the 17 acre parcel in the sale to her or offered that he would donate the 17 acre parcel to the City for the trail system. Ms. Huffington concurred that it would be a good idea for the community to have a connection between RCR 34 and the trails up to Dry Lake, so she did not acquire the 17 acre parcel with the ranch acquisition. Had that donation not been made, there would be no Spring Creek trail system beyond the hairpin turn.

But even after the donation, the social use of the applicants’ properties and the ditch as a trail continued to be a problem. A lot of effort went into the design of new trails, mostly for a downhill bicycle trail, to direct traffic off the upper road. The applicants entered into written agreements with the City about a year ago to create two new trails on the 17 acre parcel and to permit portions of the ditch to be used for those trails. Had the applicants not agreed to permit that work on the ditch, the two new trails would not have been built. During those discussions, the parties discussed and agreed to install a new gate at the boundary of where the road first leaves the City’s 17 acre parcel, that the road would not be used by pedestrians and bicycles (see the signage posted by the City on the gate a copy of which is included in the application), and that they would ask the county to vacate the right of way. The parties discussed applying for the vacation before the new trails were constructed, but the City pointed out that the trail building crews were onsite and mountain biking enthusiasts were anxious to build the downhill trail. Waiting to get County approval would delay construction, so the applicants, in good faith trusting the City would support our application to the County, agreed to let construction move forward before getting County approval of the vacation.

And for many years the community has been attempting to lessen the traffic flow on Spring Creek road which is inconsistent with a trail system. The applicants have been the primary leaders in that effort. Over the last fifteen years, the applicants have acquired many of the small parcels that were

using the road for vehicle access and the purchase of those parcels has resulted in a significant decrease in vehicular traffic on Spring Creek road.

So you can only imagine our surprise, after demonstrating our commitment and philanthropy to the community to help facilitate a functional trail system, that City would now ask for more new trails across our property.

Having expressed that sentiment, the following are the reasons why the City's request should be denied.

1. Right of Way. The City's letter asserts that there exists a county right of way for RCR 34 in the location where the road physically exists uphill of Station 29 (which is defined in the application as Upper Spring Creek road). That is not correct. The application goes into extensive detail on this point and explains, at length, that there is no right of way dedicated to the county for that portion of the road. The ROW that exists was created by the Road Viewer's Report and Map (*copy enclosed on page 5*). That ROW begins on Amethyst Drive and goes up the Spring Creek valley floor, past the City's ponds, to the first hair pin turn (approximately where it enters the City's property), travels southeast, turns due north, goes west over the ridge and down into Strawberry Park. The road known as Spring Creek road where it physically exists generally follows the ROW from Amethyst Drive up to Station 29. That lower portion of Spring Creek Road is shown as being RCR 34 on the County's official road map. According to our research, RCR 34 ends there (*see Footnote 1 below*). But from there the physical road as it exist does go north across the 17 acre parcel owned by the City and continues north.

The portion of the ROW to be vacated is from Station 29 over the ridge and down into Strawberry Park (*see area circled on the map enclosed as page 6*). The "proposed spur" road from Station 29 to Strawberry Park was never constructed. This portion of the ROW going over the ridge and down into Strawberry Park has never been described as RCR 34 on any county records. The ROW to be vacated does not re-connect the City's 17 acre parcel at the upper, most westerly point (*see enclosed map prepared by Skidge Moon*).

The physical road in the location where it exists above Station 29 is not located in the ROW (although it crosses it twice). The road does provide access to the handful of small parcels to the north that were created prior to the County's subdivision laws (which is why the Walkers have a legal right to an easement by necessity and by prescription). But the City's 17 acre parcel was not one them (which is why the City does not have a legal right to an easement). That parcel was donated to the City in 1993 and has access provided by RCR 34 downhill of Station 29. Since the City has other access, they are not entitled to a private easement by necessity and because they have not used the road for the purposes requested they do not have a private easement by prescription.

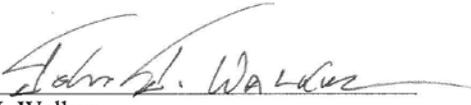
If the City believes that there exists a public right of way for Upper Spring Creek road (where it physically exists uphill of Station 29 outside of the ROW) by prescription (CRS 43-2-201(1)(c) that would have to be determined by a court of law, not by the board of county commissioners. And, in any event, to prevail in that civil action the City will have to prove some overt act on the part of the county that it asserted jurisdiction over the road, such as snowplowing, expending public money for maintenance, or putting it on the official road map. McIntyre v. Board of County Commissioners, Gunnison County, 86 P.3d 402 (Colo. 2004). The City has offered no such evidence. The applicants stand prepared to defend the City's allegations in civil court if the City should choose to bring it.

2. Recreation Easement. The City requests the new easement be for recreational use including bicycles for new trails to be constructed at the most westerly point of the 17 acre parcel to connect to the City's other property. Building those trails is not possible. In the agreement signed just one year ago, the City agreed that the only trails on the ditch would be those that were agreed to in the agreement and that **"no other portions of the ditch are to be used as trails."** Attached is a copy of the county's GIS map of the City's 17 acre parcel (Parcel 936044007). The point where the City is requesting access is the most westerly point of that parcel. The road can be seen in that vicinity. Also shown on the photo by a yellow highlighted line is the location of the ditch. The most westerly portion of the 17 acre parcel is severed by the ditch. No new trails could be constructed from that westerly point going to the east or north that would not cross the ditch. Building any such trails would be a direct violation of the written agreement between Amethyst Ranch and the City.

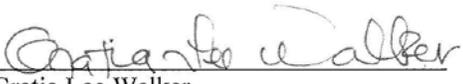
3. Vehicular Easement. The City requests that the new easement be for vehicular use by the City. This is contrary to all the efforts that have been made for years to decrease vehicular use of Spring Creek road. In addition, as stated above, the most westerly point of the City's parcel is cut off by the ditch. So to build roads in that area for vehicular use, the City would have to construct a bridge over the ditch, which the applicants would oppose.

4. Water Rights. The City has never used the Steamboat Gardens Ditch for the delivery of any water from Spring Creek. The City has never maintained the ditch or used Upper Spring Creek road to access the ditch. In fact, the City has developed a water delivery system for its Spring Creek water through the ponds downstream so the City has an existing delivery system for its water. And if the City attempted to use Steamboat Gardens Ditch to deliver water down to Strawberry Park, that ditch ends on private property and does not connect to any property from which the City would have access to the water. The applicants would vehemently oppose any effort to amend its water right to expand the ditch to carry the City's water and any proceeding to condemn an extension of the ditch through their property. These are civil matters and should not be addressed by the board of county commissioners in a hearing for a vacation of an unused right of way.

In conclusion, we request that the board of county commissioners approve the requested vacation without a condition for granting the City a new easement.



John J. Walker



Gratia Lee Walker

By: Terry Huffington
Terry Huffington, Member

STRAWBERRY WOODS RANCH, LLC
a Colorado limited liability company

By: Terry Huffington
Terry Huffington, Member

FOOTNOTE 1. The application contains many county records that show the end of RCR 34 at a point near station 29, including two print outs of the county's GIS map as it existed on July 13, 2018 and again on February 26, 2019. In preparing the map that follows, the applicants noted that the county's GIS map now shows RCR 34 going further up the road, beyond station 29. This change to the GIS map appears to have occurred after the applicants started making inquiries about commencing the vacation proceedings. We would appreciate the planning staff looking into who changed the GIS map, when the change the was made, and on what basis the change was made.



EXHIBIT E

CONSENT AGREEMENT FOR DITCH ALTERATION

This Consent Agreement between is made and entered into as of the 15th day of JULY, 2019 (the "Effective Date"), by and between the City of Steamboat Springs, a Colorado home rule municipality ("City") and Amethyst Ranch, LLC, a Colorado limited liability company ("Owner") referred to hereafter collectively as the "parties".

RECITALS

WHEREAS, the City is the owner of property commonly known as the Spring Creek Canyon and Mountain Park and identified in the records of the Routt County Assessor under PIN 933343001 ("Property"). A portion of the Steamboat Gardens Ditch ("ditch") is located on the Property; and

WHEREAS, the ditch is used by Owner and others for the transportation and delivery of water for which Owner and others have decreed water rights; and

WHEREAS, the City owns water decreed for the ditch and also has the right to use the ditch as an alternate point of diversion for other water rights in its portfolio; and

WHEREAS, the Owner utilizes the ditch to transport Owner's water across the City's Property; and

WHEREAS, the ditch is currently used as an unauthorized trail by both hikers and mountain bikers, and the City wishes to move both hikers and bikers away from most portions of the trail alongside the ditch; and

WHEREAS, the City wishes to use a portion of the ditch and its property adjacent to the ditch as a hiking only trail (in the location shown in Exhibit A) and to install a new culvert in a section (consisting of approximately [80] feet in the location shown in Exhibit B) of the ditch and to construct a new directional bike trail crossing the new culvert; and

WHEREAS, the City also plans to install three gates as shown in Exhibit A to direct bikers and hikers off of the other portions of the ditch; and

WHEREAS, the Owner wishes to consent to the alteration of the ditch.

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. The City's installation of the new culvert and the gates shown in Exhibit A and Exhibit B ("Alterations") are solely for recreational purposes and not for the purpose of altering the historical route, capacity, or gradient of the ditch.

Section 2. The City acknowledges that it has no right to make the Alterations or otherwise to install bridges, bike jumps, bike ramps, or other recreational improvements on or across the ditch without the Owner's consent or without having obtained a court order.

Section 3. The City will ensure that the Alterations will not alter the historical route, capacity or gradient of the ditch. The culvert will not be installed until the City has provided to the Owner and the Owner has approved all specifications for the culvert as shown on Exhibit B. The culvert will be no less than 36 inches in diameter and shall have a grate across the upstream opening of the culvert to prevent logs and debris from entering the culvert. All work permitted by the City will be done after the 2019 irrigation season and

will be completed before December 31, 2019. All work shall be done by Temple Construction and shall be done in a workman like manner consistent with best industry practices.

Section 4. Owner hereby consents to the City's installation of the Alterations and to the use of portions of the ditch for a pedestrian trail (the portions shown in Exhibit A as a pedestrian trail) and for a bike crossing (on the portion shown in Exhibit B as a bike crossing); provided that Owner reserves the right to shut down the trails on the ditch as needed for maintenance. No other portions of the ditch are to be used as trails. The City waives any claims against Owner for any damages to the Alterations or trails caused by the Owner or its agents in connection with the reasonable operation and maintenance of the ditch. The Owner consents to no improvements or work on the ditch by the City other than the Alterations.

Section 5. The City owns and will be responsible for all costs associated with the Alterations. The City will also maintain the new trails and signage, including, without limitation any soil erosion of the ditch embankments due to pedestrian and bike use of the trails. The Owner may, but shall have no obligation to, maintain the culvert at its own expense. The City and Owner shall have the ability and right to open and close the gates through a combination lock. The parties agree, to the extent possible, to coordinate and communicate regarding the status of the gates provided that the gates shall not be left open for the purpose of allowing public use of those portions of the ditch closed to public use.

Section 6. The City shall maintain general liability and property insurance with minimum combined single limits of \$500,000 for each and every loss and/or occurrence and excess limits in the amount of a minimum \$10 million per claim/occurrence. The City's insurance policy shall name Owner as an additional insured for the general liability insurance for the new trail that will travel on top of the culverted ditch and the bike crossing as shown on Exhibit A and Exhibit B and shall provide for a waiver of, and the City does hereby waive, any right of subrogation for claims insured under its property insurance. The City shall provide proof of insurance on Owner's request. During any period that such insurance is not in effect, the City and Owner shall close the trails located on or across the ditch to use by the public.

Section 7. Nothing in this Agreement shall impair or restrict the Owner's right to maintain, use and operate the ditch. In the event that (i) the Owner desires to make future modifications to the Alterations or (ii) the City fails to maintain, repair or replace the Alterations or those portions of the trails on the ditch, then Owner may make such modifications, maintenance, repairs or replacements (a) with the consent of the City, which consent shall not be unreasonably withheld or (b) approved by any court having jurisdiction, with the costs related thereto being allocated between the parties either as agreed by the parties or as directed by the Court.

Section 8. This Agreement is the full and complete expression of the agreement of the parties with respect to the subject matter hereof and embodies the entire Agreement of the parties, and there are no promises, terms, conditions, or obligations other than those contained or referenced herein. This Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties.

Section 9. This Agreement shall be recorded in the records of the Routt County Clerk and Recorder. Successors in title to the Property or to the water rights owned by Owner associated with the ditch shall be bound to the provisions of this Agreement. The City agrees to pay the fee for recordation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

CITY OF STEAMBOAT SPRINGS

By: 
Gary Suiter, City Manager

Owner

AMETHYST RANCH, LLC

By: 
Terry Huffington, Manager

ATTENTION TRAIL USERS

AFTER SEVERAL YEARS OF DISCUSSION AND PLANNING, THE SOCIAL TRAIL COMMONLY REFERRED TO AS THE DITCH LOOP, HAS BEEN CLOSED TO THE PUBLIC IN CERTAIN SECTIONS

THE NEW HIKING ONLY TRAIL THAT WAS CONSTRUCTED WITH HELP FROM THE ROCKY MOUNTAIN YOUTH CORPS IN 2019, IS NOW OPEN AND UTILIZES PORTIONS OF THE TRAIL ALONG THE GARDENS DITCH TO CREATE A LOOPED PEDESTRIAN TRAIL, WHILE ADDRESSING TRESPASS CONCERNS AND MINIMIZING USER CONFLICTS

THOUGH THE DITCH TRAIL HAS BEEN USED BY THE PUBLIC FOR MANY YEARS, THE DITCH IS OWNED PRIVATELY AND THE TRAIL ALONGSIDE IT EXISTS FOR WATER RIGHTS OWNERS TO ACCESS THEIR DITCH FOR MAINTENANCE. THE EXISTING DITCH TRAIL WAS NEVER A SANCTIONED SYSTEM TRAIL FOR PUBLIC USE. THE TRAIL ALSO CROSSES PRIVATE PROPERTY, AND TRESPASSING HAS INCREASED OVER THE YEARS, RAISING SIGNIFICANT CONCERNS FOR LANDOWNERS.

THROUGH A PUBLIC PROCESS STARTING IN 2017, THE CITY OF STEAMBOAT SPRINGS BEGAN WORKING WITH OWNERS OF THE GARDEN DITCH TO CULVERT A SMALL SECTION AND ALLOW THE NEW SPRING ROLL DOWNHILL BIKE TRAIL TO CROSS THE DITCH. AS PART OF THAT PROCESS, THE CITY ALSO WORKED WITH OWNERS TO ADJUST THE DITCH TRAIL, STILL UTILIZING A PORTION OF THE TRAIL ALONG THE DITCH AND CONSTRUCTING A NEW ENTRANCE AND EXIT THAT ALLOWS PEDESTRIANS TO CREATE A LOOP WITH THE EXISTING SPRING CREEK TRAIL.

THIS COMPROMISE BENEFITS ALL TRAIL USERS WHILE RESPECTING PRIVATE PROPERTY AND WATER RIGHTS, WE THANK YOU FOR RESPECTING THESE CLOSURES, AND ASK THAT YOU CONTACT PARKS & RECREATION AT 970-879-4300 WITH ANY QUESTIONS YOU MAY HAVE.

City of
Steamboat Springs 

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA COMMUNICATION FORM

ITEM DATE: Sept. 24, 2020	ITEM TIME: 1030am
----------------------------------	--------------------------

FROM:	Gary Peterson, Assessor
TODAY'S DATE:	09/21/2020
AGENDA TITLE:	Equalization Hearing – Re: Classification of Vacant Land
CHECK ONE THAT APPLIES TO YOUR ITEM:	
<input checked="" type="checkbox"/> ACTION ITEM	
<input checked="" type="checkbox"/> DIRECTION	
<input type="checkbox"/> INFORMATION	
I. DESCRIBE THE REQUEST OR ISSUE:	
<p>The Assessor's Office has recently discovered an erroneous assessment of vacant land in the Big Valley Ranch Subdv. Assessor Schedule R6208119 currently is receiving the Residential assessment rate for TY2020. The property had a transfer of ownership in 2019 and no longer is held in the same ownership as an adjacent improved property and therefore does not meet the criteria required for the favorable Residential rate on otherwise vacant land.</p>	
II. RECOMMENDED ACTION:	
<p>The Assessor is recommending the Board of Equalization change the classification of the subject property to that of Vacant Land (29%) from the current Residential (7.15%) classification as land contiguous to, and held under common ownership with a parcel upon which residential improvements are located.</p>	
III. DESCRIBE FISCAL IMPACTS (VARIATION TO BUDGET):	
PROPOSED REVENUE:	N/A
PROPOSED EXPENDITURE:	None
FUNDING SOURCE:	N/A
IV. IMPACTS OF A REGIONAL NATURE OR ON OTHER JURISDICTIONS (IDENTIFY ANY COMMUNICATIONS ON THIS ITEM):	
None	

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA COMMUNICATION FORM

V BACKGROUND INFORMATION:

Assessor Schedule R6208119 has a legal description as follows:

LOTS 1, 2 & 3 BIG VALLEY RANCH SUBD FILING IIA

As the Legal suggests, this is actually three separately platted building lots for a total of 106.73 acres. An aerial map is presented at the end of this communication form. A Warrant Deed transferring ownership was recorded on August 13, 2019 that transferred the ownership into the name of:

COX, LEE MCSHANE & EMGE, KATHLEEN M (JT)

These Buyers own a house on Lot 4 BVR, Filing IIA - just to the east of Lot 3 (one of the 3 subject parcels). Lot 3 & Lot 4 are contiguous lots (touching), however the residential improved parcel is not held in the same ownership as the vacant parcel. Thus the vacant Lot 3 is not entitled to receive the residential rate because the 'house parcel' next door is held under the ownership of:

COX, LYND BRYANT & LEE MC SHANE COX

This scenario is considered "overlapping" ownership; **Lee McShane Cox** has overlapping ownership in both lots, but holds title with different people on each account.

The recent Colorado Supreme Court decisions surrounding 'Contiguous Parcels' did not technically answer the question of the term "Common Ownership" that is found in the statutory definition of Residential Land. The case that was presented to the high court involved two family trusts. Since a trust is considered its own entity (person), the high court only concluded "*that county records dictate whether parcels are held under common ownership*" and declined to decide whether "common ownership" refers to identical ownership. That question was later answered by a division of the Colorado Court of Appeals case known as "Lannie v. Eagle County BCC". In that case, the question presented to the court was:

Does "common ownership" under the tax code require that identical parties hold record title to each contiguous parcel? We answer that question "yes." we conclude that, for purposes of the tax code, "common ownership" requires that the taxpayer(s) for the two properties must be the same, and thus the parcels must have identical record titleholders."

It is this court decision that the Assessor is relying on as clear law for bringing this equalization request forward to correct the assessor records and the erroneous classification of these three parcels (one assessor schedule), as qualifying Residential Land. Pertinent parts of the Lannie decision and the Supreme Court decision are included at the end of this Communication Form for your review.

ROUTT COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA COMMUNICATION FORM

VI. LEGAL ISSUES:

Authority is granted to the County Board of Equalization (CBOE) through C.R.S. § 39-8-102. (Please see attached *Memo* for expansion of this statute). Further clarification of this authority is provided in the published court case of Wenner v. Bd of Assessment Appeals, 866 P2d 172 (Colo. App. 1993)

VII. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A

VIII. SUMMARY AND OTHER OPTIONS:

The three subject lots were sold in 2019 and ownership is not identical to the improved property that is adjacent, and therefore does not qualify for the favorable Residential assessment rate. Furthermore, Lots 1 & 2 have no continuity with the improved residential parcel and definitely do not meet the contiguous criteria as well as the ownership requirement. All three Lots should be reclassified as Vacant Land and assessed accordingly.

Other Options: As the CBOE, you may certainly choose to not exercise your authority to effectuate an equalization of the stated disparity in assessment for these three Lots (one schedule) and leave the erroneous classification as is. I suppose you could allow Lot 1 to remain as classified as it is contiguous while changing the other two to Vacant. The Assessor does not believe this to be an equitable resolution, believing all three need to be changed.

Property Record Card

Routt County Assessor

COX, LEE MCSHANE & EMGE, KATHLEEN M (JT)

Account: R6208119

Parcel: 105700001

Tax Area: 20 - *RE2* MID-ROUTT ~10 Mile Radius Outside SS City Limits

Situs Address:
27375 COLUMBINE RIDGE
STEAMBOAT SPRINGS, 80487

PO BOX 772845
STEAMBOAT SPRINGS, CO 80477

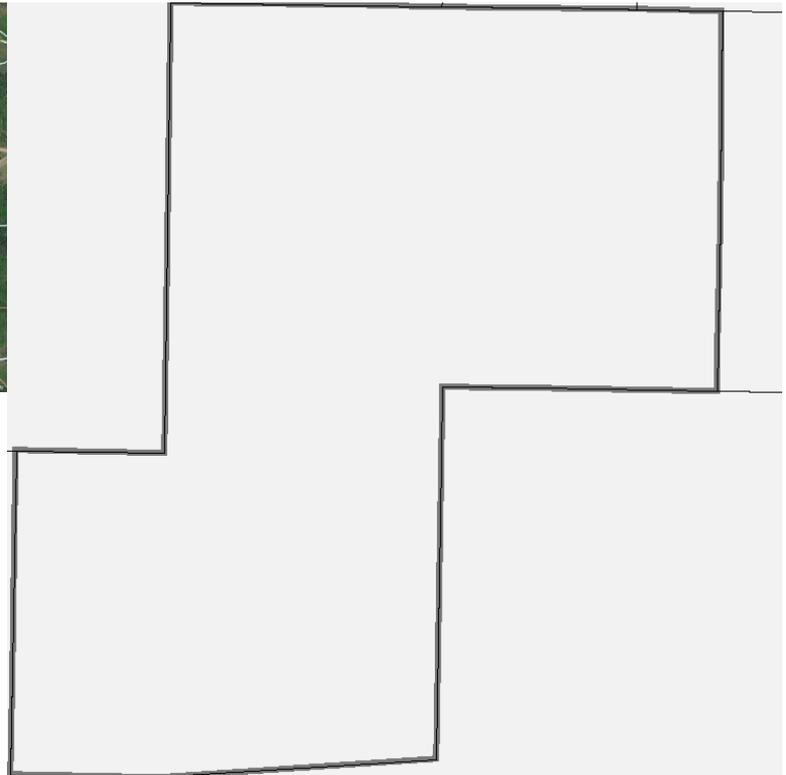
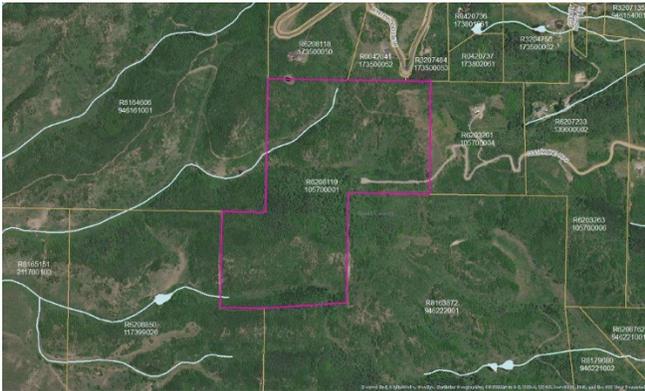
Acres: 106.730

Value Summary

Value By:	Market	Override
Land (1)	\$475,000	N/A
Land (2)	\$475,000	N/A
Land (3)	\$475,000	N/A
Total	\$1,425,000	\$1,425,000

Legal Description

LOTS 1, 2 & 3
BIG VALLEY RANCH SUBD
FILING IIA



Sale Data

Doc. #	Sale Date	Deed Type	Validity	Verified	Sale Price	Ratio	Adj. Price	Ratio	Time Adj. Price	Ratio
802023	08/13/2019	WD	QV	Y	\$1,362,500	104.59	\$1,362,500	104.59	\$1,362,500	104.59
	05/01/1990	Deeds	QV	Y	\$48,300	2950.31	\$48,300	2950.31	\$48,300	2950.31

Land Occurrence 1

Property Code	1111 - VACANT LAND ASSOCIATED WITH RESIDENTIAL	Economic Area	2 - 10 MILE
Super Neighborhood	50 - 131 NORTH TO WHITEWOOD SUBDV	Neighborhood	2450 - BIG VALLEY RANCH
Land Code	245050 - BIG VALLEY RANCH	Land Use	1 - PRIME SITE
Zoning	AF	Site Access	2 - YEAR-ROUND
Road	3 - GRAVEL	Site View	2 - GOOD
Topography	3 - SLOPING	Slope	1 - NOT AFFECTED
Wetness	1 - NOT AFFECTED	Water	1 - NONE
Utilities	1 - NONE	Sewer	1 - NONE



Property Record Card

Routt County Assessor

Land Occurrence 1

Zoning	AF	Slope	1 - NOT AFFECTED
Wetness	1 - NOT AFFECTED		

Land Occurrence 2

Property Code	1111 - VACANT LAND ASSOCIATED WITH RESIDENTIAL	Economic Area	2 - 10 MILE
Super Neighborhood	50 - 131 NORTH TO WHITEWOOD SUBDV	Neighborhood	2450 - BIG VALLEY RANCH
Land Code	245050 - BIG VALLEY RANCH	Land Use	1 - PRIME SITE
Zoning	AF	Site Access	2 - YEAR-ROUND
Road	3 - GRAVEL	Site View	2 - GOOD
Topography	3 - SLOPING	Slope	1 - NOT AFFECTED
Wetness	1 - NOT AFFECTED	Water	1 - NONE
Utilities	1 - NONE	Sewer	1 - NONE
Zoning	AF	Slope	1 - NOT AFFECTED
Wetness	1 - NOT AFFECTED		

Land Occurrence 3

Property Code	1111 - VACANT LAND ASSOCIATED WITH RESIDENTIAL	Economic Area	2 - 10 MILE
Super Neighborhood	50 - 131 NORTH TO WHITEWOOD SUBDV	Neighborhood	2450 - BIG VALLEY RANCH
Land Code	245050 - BIG VALLEY RANCH	Land Use	1 - PRIME SITE
Zoning	AF	Site Access	2 - YEAR-ROUND
Road	3 - GRAVEL	Site View	2 - GOOD
Topography	3 - SLOPING	Slope	1 - NOT AFFECTED
Wetness	1 - NOT AFFECTED	Water	1 - NONE
Utilities	1 - NONE	Sewer	1 - NONE
Zoning	AF	Slope	1 - NOT AFFECTED
Wetness	1 - NOT AFFECTED		

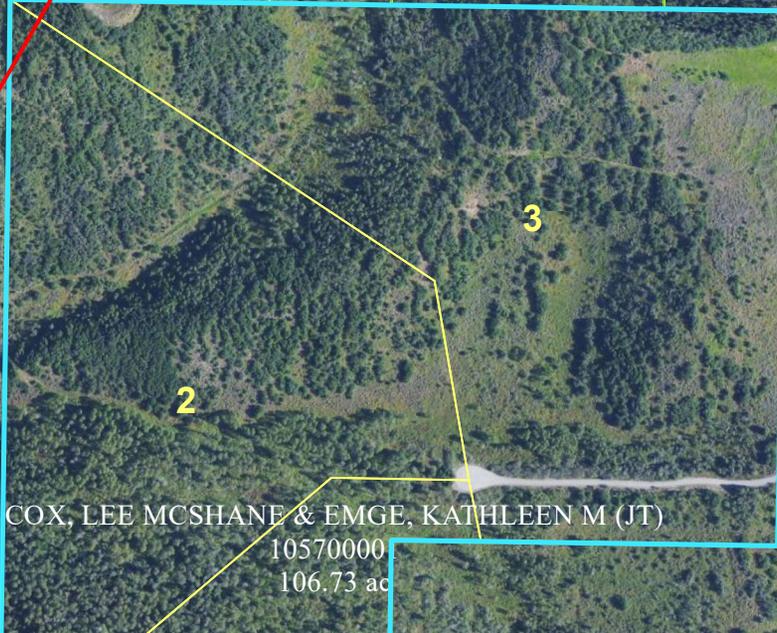
Abstract Summary

Code	Classification	Actual Value	Value	Taxable Value	Actual Value Override	Taxable Override
1111	VACANT LAND ASSOCIATED WITH RESIDENTIAL	\$1,425,000		\$101,890	NA	NA
Total		\$1,425,000		\$101,890	NA	NA



STATE OF COLORADO
946161001
640 ac

Previous owners of
Lots 1, 2 & 3 BVR



COX, LEE MCSHANE & EMGE, KATHLEEN M (JT)
10570000
106.73 ac

COX, LYND BRYANT &
LEE MC SHANE COX
105700004
35.17 ac

OUTLOT26

GRACE RANCH, LLC
946222001
286 ac

0 500 1,000 2,000 Feet

The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

DATE FILED: May 7, 2020
CASE NUMBER: 2017CA1971

SUMMARY
May 7, 2020

2020COA77

**No. 17CA1971, *Lannie v. Bd. of Cty. Comm'rs* — Taxation —
Property Tax — Residential Land**

A division of the court of appeals answers a question left open in *Mook v. Board of County Commissioners*, 2020 CO 12 — whether, for purposes of classifying vacant property as residential land for tax classification, the phrase “common ownership” refers to identical ownership or merely overlapping ownership. The division concludes that identical ownership is required.

Court of Appeals No. 17CA1971

Board of Assessment Appeals Case Nos. 68965 & 69093

Paul Anthony Lannie and Donna Dean Lannie,

Petitioners-Appellants,

v.

Board of County Commissioners of Eagle County, Colorado; and Board of Equalization of Eagle County, Colorado,

Respondents-Appellees,

and

Board of Assessment Appeals, State of Colorado,

Appellee.

ORDER AFFIRMED IN PART, REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division II
Opinion by JUDGE TOW
Dailey and Vogt*, JJ., concur

Announced May 7, 2020

Ryley Carlock & Applewhite, F. Brittin Clayton III, Denver, Colorado, for
Petitioners-Appellants

Bryan R. Treu, County Attorney, Christina C. Hooper, Assistant County
Attorney, Eagle, Colorado, for Respondents-Appellees

Philip J. Weiser, Attorney General, Emmy A. Langley, Assistant Solicitor
General, Katie Allison, Assistant Attorney General, Denver, Colorado, for
Appellee

cases, including this one, were remanded for reconsideration in light of the court’s decision.

¶ 3 This case involves two of the three criteria — whether the parcels were under common ownership and whether they were used as a unit. To resolve the first issue, we must answer a question left

open in *Mook*: Does “common ownership” under the tax code require that identical parties hold record title to each contiguous parcel? We answer that question “yes.” Because the parcels were

not under common ownership during two of the three tax years at issue in this case, we affirm the decision of the Board of Assessment Appeals (BAA) for those two years. We reverse the decision of the BAA for the third tax year and remand the matter for consideration of whether the parcels were used as a unit under the analysis announced in *Mook*.

I. Background

¶ 4 Petitioners, Paul Anthony Lannie and his wife Donna Dean Lannie,¹ own two contiguous parcels of land in Eagle County, Colorado — one with a home on it (the residential parcel) and an

¹ Because they share the same surname, we will refer to Paul and Donna by their first names. We mean no disrespect in doing so.

533 (Colo. 2010)). In so doing, we construe any undefined term “in accordance with its ordinary or natural meaning.” *Id.* (quoting *Cowen v. People*, 2018 CO 96, ¶ 14). Applying the plain meaning of the language requires us to “give consistent effect to all parts of a statute, and construe each provision in harmony with the overall statutory design.” *Larrieu v. Best Buy Stores, L.P.*, 2013 CO 38, ¶ 12 (citing *In re Miranda*, 2012 CO 69, ¶ 9).

III. Analysis

A. Common Ownership

1. Applicable Law

¶ 9 The tax code does not define the term “common ownership.” It does, however, direct that “[o]wnership of real property shall be ascertained by the assessor from the records of the county clerk and recorder” § 39-5-102(1), C.R.S. 2019. “Thus, according to the plain language of the tax code, assessors must rely on county records to determine whether properties are held under ‘common ownership.’” *Mook*, ¶ 80.

¶ 10 In *Kelly*, record title to the residential parcel was held by a qualified personal residence trust, while record title to the subject parcel was held by a revocable family trust. *Kelly*, ¶ 4. The same

person (Kelly) was settlor, trustee, and beneficiary of both trusts.

Id. Before the supreme court, Kelly argued that because she held “overlapping equity ownership and control” of both properties, they were under common ownership. *Mook*, ¶ 79. The supreme court rejected this argument, holding that the record of legal title was conclusive. *Id.* at ¶ 86. In doing so, however, the court explicitly declined to consider the issue of whether overlapping *legal* title would suffice, or rather whether identical ownership is required. *Id.* at ¶ 86 n.7.

2. Analysis

¶ 11 Here, there are overlapping legal title interests in the parcels for tax years 2014 and 2015.² During those tax years, because Paul Lannie was a record titleholder of both properties — one held in his name alone and one held jointly with Donna — we turn to the question left open in *Mook*.

¶ 12 The BAA urges us to adopt its interpretation of the term, which is that common ownership requires identical record title

² There is no dispute that the parcels were under common ownership for tax year 2016. The discussion of common ownership, therefore, is limited to tax years 2014 and 2015.

owners. The BAA posits that this interpretation was established in *Sullivan v. Board of Equalization*, 971 P.2d 675 (Colo. App. 1998).

But the BAA reads *Sullivan* too broadly. There, the sole owner of the subject parcel was the taxpayer, while the taxpayer's wife was the sole owner of the residential property. *Id.* at 676. In other words, there was no overlapping legal title as there is here.

Furthermore, the taxpayer in *Sullivan* conceded the lack of common ownership and, thus, the appellate court did not address that issue.

Id. For this reason, while we generally afford deference to statutory interpretation by the agency charged with administering the statute, see *Mook*, ¶ 47, because the BAA misapplied the holding in *Sullivan*, we do not defer to its construction in this context. See *El Paso Cty. Bd. of Equalization v. Craddock*, 850 P.2d 702, 704-05 (Colo. 1993) (“Courts, of course, must interpret the law and are not bound by an agency decision that misapplies or misconstrues the law.”).

¶ 13 Nevertheless, for the following reasons, we conclude that the statute requires identical ownership.

¶ 14 First, as noted, the supreme court observed that section 39-5-102(1) requires the assessor to rely on county records. *Mook*, ¶ 80.

When doing so, the supreme court discussed its earlier decision in *Hinsdale County Board of Equalization v. HDH Partnership*, 2019 CO 22. *Mook*, ¶¶ 80-84. In *Hinsdale*, the supreme court invoked the same statutory language when it held that “assessors must value and tax separate parcels of real property and assess taxes on the parcel owner as determined by the county’s real property records.” *Hinsdale*, ¶ 22. The court further noted that “Colorado’s tax statutes reflect the legislature’s intent to levy property tax on the record fee owner of real property.” *Id.*

¶ 15 The court in *Mook* reiterated that “the *party holding record title to the property is the fee owner* responsible for property taxes.” *Mook*, ¶ 81 (quoting *Hinsdale*, ¶ 25). The court then rejected Kelly’s argument that assessors could look to record title to determine ownership for purposes of tax *liability*, while taking a different approach to determine ownership for purposes of tax *classification*. *Id.* at ¶¶ 82-83. Noting that nothing in the statute suggested such differing approaches to determining ownership, the court stated, “[t]herefore, we won’t require assessors to use different standards when classifying property and assessing taxes.” *Id.* at ¶ 83.

property? Would the other ninety-nine co-owners share the benefit of Paul's beneficial tax rate?

¶ 18 In our view, either scenario would be an absurd result, and one we cannot conclude would be consistent with the legislature's intent. And, if "common ownership" is read to encompass mere overlapping interest, there is no textual basis establishing any limit on how large or small the overlap must be. Nor could we remedy this omission under the guise of construing the statute by imposing some limit such as "substantially overlapping." *See Trujillo v. Colo. Div. of Ins.*, 2014 CO 17, ¶ 12 ("We do not add words to a statute.").

¶ 19 Finally, we note that the phrase "common ownership" is not foreign to real property law. Take, for example, the situation in which a parcel is burdened by a prescriptive easement. Under the doctrine of merger, if the two estates come "under common ownership," the easement is extinguished. *Salazar v. Terry*, 911 P.2d 1086, 1090-91 (Colo. 1996). However, for merger to occur, there can be no other ownership interests in either estate. *Brush Creek Airport, L.L.C. v. Avion Park, L.L.C.*, 57 P.3d 738, 747-48 (Colo. App. 2002) (citing Restatement (Third) of Property: Servitudes § 7.5 cmt. d (Am. Law Inst. 2000)). In *Westpac Aspen Investments*,

LLC v. Residences at Little Nell Development, LLC, 284 P.3d 131 (Colo. App. 2011), one party was the sole owner of the servient estate and held title to the dominant estate in joint tenancy with someone else. *Id.* at 136. A division of this court held that, because the two lots were not owned in “completely identical manner,” their co-ownership was insufficient to extinguish the easement. *Id.* at 136-37.

¶ 20 For these reasons, we conclude that, for purposes of the tax code, “common ownership” requires that the taxpayer(s) for the two properties must be the same, and thus the parcels must have identical record titleholders. Because the two parcels were not under common ownership for tax years 2014 and 2015, we affirm the BAA’s decision denying reclassification for those years.

B. Used as a Unit

¶ 21 Because the parcels were under common ownership in tax year 2016, we turn to whether the parcels were used as a unit during that year.

1. Applicable Law

¶ 22 Like the term “common ownership,” the term “used as a unit” is not defined in the tax code. However, the code requires the

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Steven L. Bernard
Chief Judge

DATED: March 5, 2020

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