

Addressing the Uncertainties of Planned Development

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PUDs: What do Planners often forget?

- ✓ Are you negotiating early before the developer has spent a lot of \$\$? Are you being heard?
- ✓ Have you created a staff-level PUD team--Manager, Planner, and Attorney at a minimum?
- ✓ As principal planner are you at the table during the negotiation of agreements, especially the annexation and development agreement? *These are contracts with the developer.*
- ✓ Have you revisited the PUD after X years per most PUD regulations? Has adequate progress been made?
- ✓ Have you thought about how you will handle PUDs that are long outdated? Do you have a code provision to address this?

*We want to know
what you are
dealing with before
we get started...*

- What kind of PUD's do you have?
- How many of you are revisiting older PUDs?

Type of PUD you have in your community:

❖ New zone district is created either as an overlay on an existing zone district (reverts) or new zone _____

❖ PUD was established under old regulations _____

Revisiting an old PUD:

❖ Same developer, different market conditions _____

❖ PUD never developed/small % developed, new owner _____

❖ Vested rights are clear and were memorialized/Not Clear (3 years to 60 years/???) _____

PUD's

- *Always define open space commitment*
- *PUD should clearly outline public benefit*
- *You can require that it generally meets adopted Plans*

Overview of PUD Statute

- ❖ Enables municipalities to **negotiate** almost every aspect of the proposed development in return for PUD approval.
- ❖ **Greater flexibility in return for greater public benefit:** quantity, quality, amenities, or something else the community wants or needs.
- ❖ **PUD is a 'deal'** between local government and the Developer:
 - ✓ Minimum number of units and acres
 - ✓ Densities allowed
 - ✓ Useable 'Common Open Space'
 - ✓ General compliance with the Comprehensive Plan
- ❖ Often includes **both a written zone submittal as well as a physical/master plan.**
- ❖ Statute requires **quantitative data!**

PUD's

- *What guidance is provided in Statute?*
- *What is required for a PUD zone change?*
- *Amending a PUD*
- *Enforcement*

Overview of PUD Statute

The 1972 statute that created PUD'S:

“To encourage innovations in residential, commercial, and industrial development and renewal so that the growing demands of the population may be met by greater variety in type, design, and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings”
24-67-102(1)(d)

“In order that the public health, safety, integrity, and general welfare may be furthered in an era of increasing urbanization and of growing demand for housing of all types and design...”
24-67-102(1)

IDAHO SPRINGS



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

Overview of PUD Statute

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

Should common open space be available to all residents?

“Common open space” means a parcel of land, an area of water, or a combination of land and water within the site designated ... designed, and intended primarily for the use or enjoyment of residents, occupants, and owners of the planned unit development [it does not say: “or portions thereof.”] Section 24-67-103(1)

NEW SUGGESTED LANGUAGE FROM DRAFT DOLA MODEL CODE

PUD PURPOSE STATEMENT

“ This district is intended to be used only when no other base or overlay district in this Code, and no combination of those districts, can be used to approve a large new development that provides substantial additional benefits to the town/city that would not otherwise be required by this Code. The PUD district is not intended to be used to approve types, mixes, patterns, or densities of development that would otherwise only be permitted”



Required Public Open Space is often included in the municipal code and is between 15 % and 25% for residential development and often about 10% for commercial development.

- *A PUD Master Plan can limit access to common open space to residents, occupants, and owners, and can exclude the general public.*
- *The question that Planners should then ask: What is the greater public benefit?*
- *You can specify the amount of required accessible public open space in your Zoning, PUD and/or subdivision regulations!*



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

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

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

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

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

ENFORCING A PUD

Remember:

- Periodic Reviews by Planning Commission:

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

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

Those living in a PUD can complain and often do!

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

We want to know what you are dealing with before we get started...

- Dealing with a New PUD
- Old PUD/Never processed a PUD application

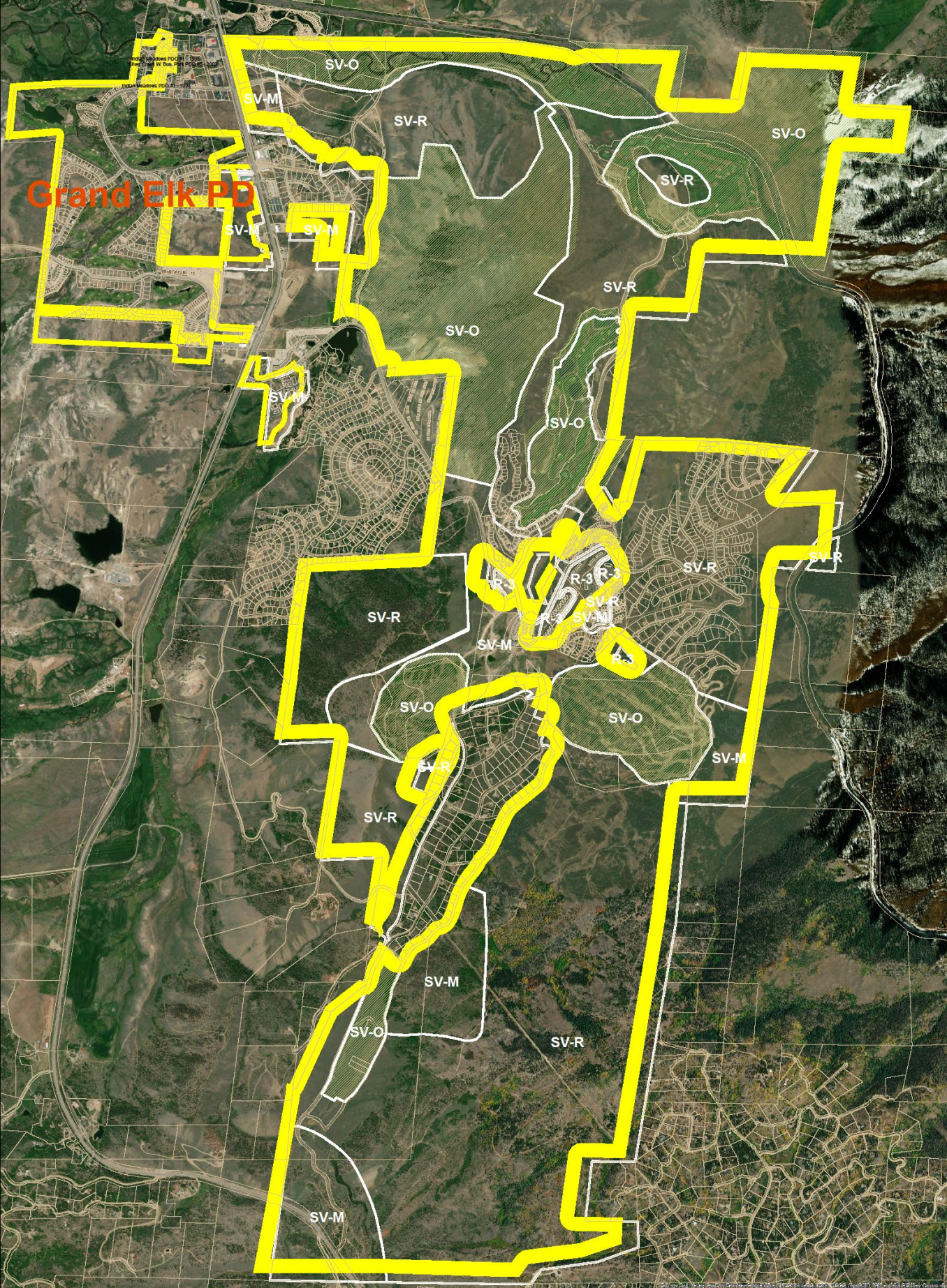
New PUD

- ❖ Applicant does not understand it's a negotiated development_____
- ❖ No clear public benefit that we can see_____
- ❖ Applicant simply presents a PD master plan that meets their needs _____
- ❖ PUD does not generally meet Comprehensive Plan_____

Old PUD or Never dealt with this in my current community

- ❖ No template or example to refer to_____
- ❖ No records of past PUD approval _____
- ❖ No experience with a PUD in the last 10+ years or more_____

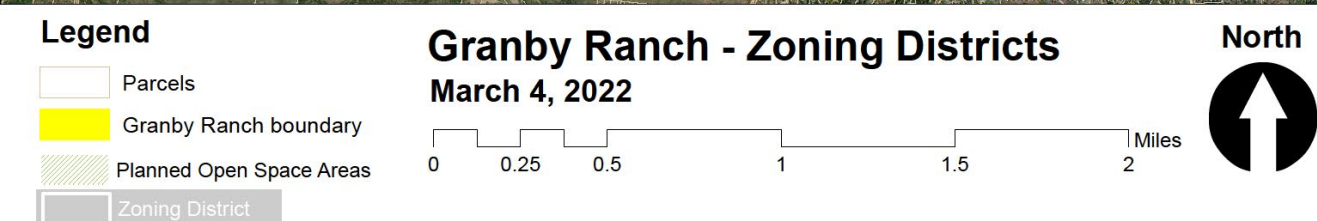


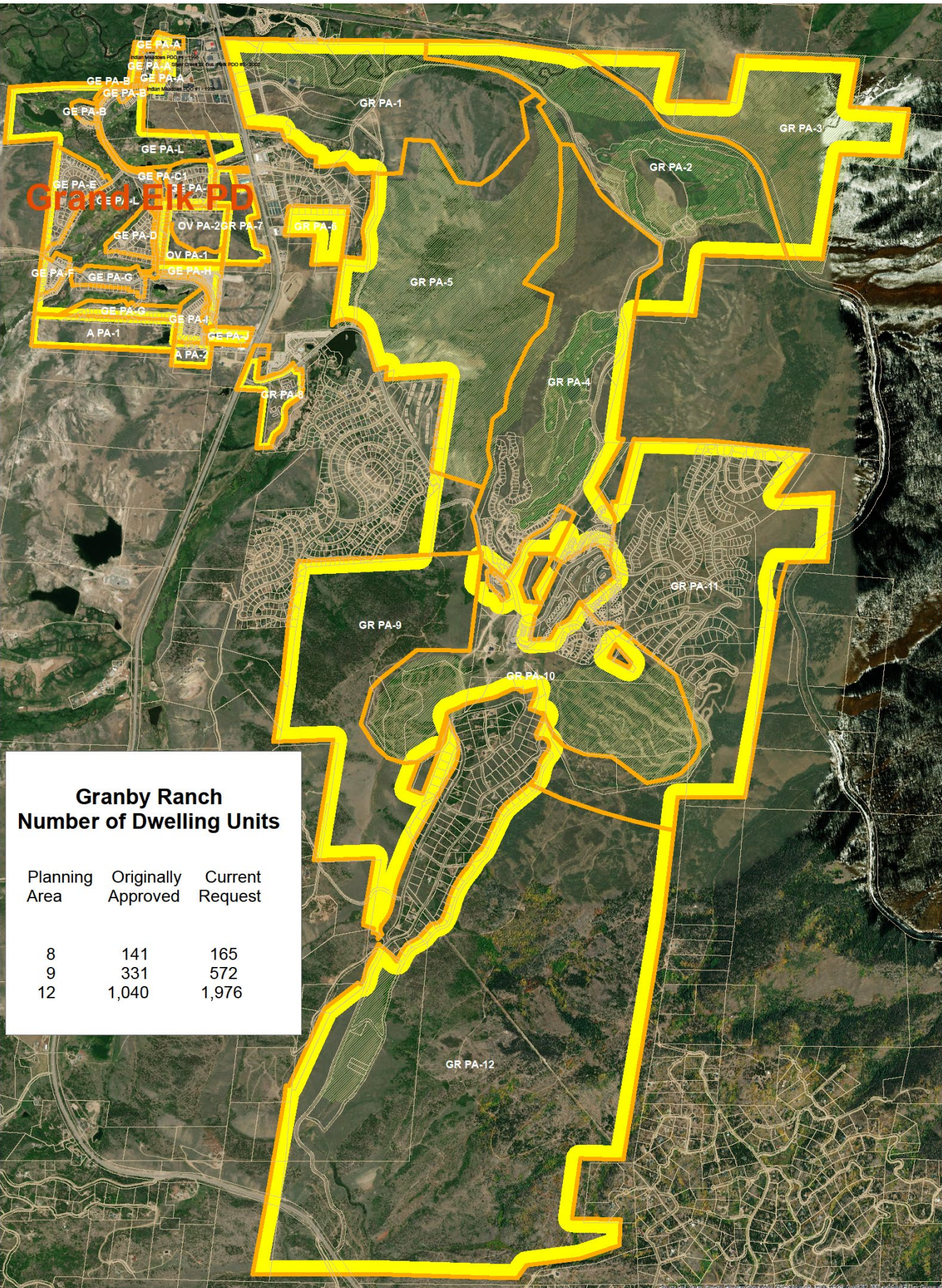


Granby Ranch- 5,014 acres, 64% of the total acreage of the Town, first PDOD approved in 2003, 6 amendments to date.

Flexibility:

- 12 Planning Areas (PA) established with **negotiated caps** on residential & non-residential development that can be amended over time (March 2003)
- **Density can be transferred** from one PA to another, 10% limit
- Town requested **expanded eligibility for workforce housing** in exchange for an increase in established caps. (2023)

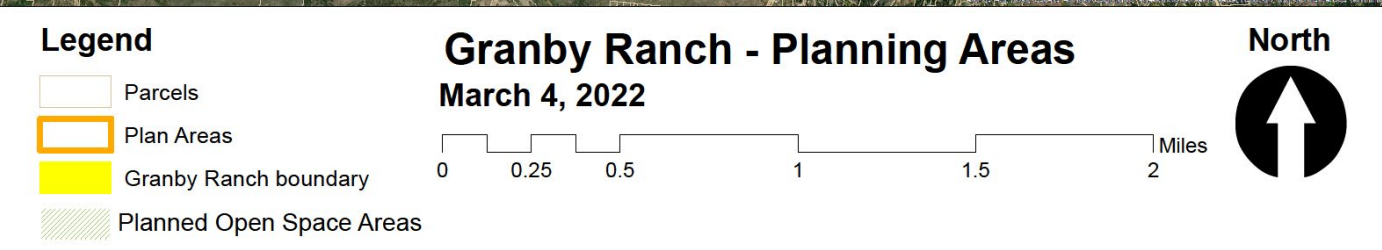




Granby Ranch

Public benefits we negotiated:

- 1459 acres of open space
- Designated area for medical facility
- Designated area for Recreation Center
- Affordable Housing
- Water rights for the entire build-out and treatment plant
- Developer maintains roads to agreed-upon road standards
- Trail easement from Granby to Fraser granted to Trail Alliance
- Contribution to Public Safety/Police

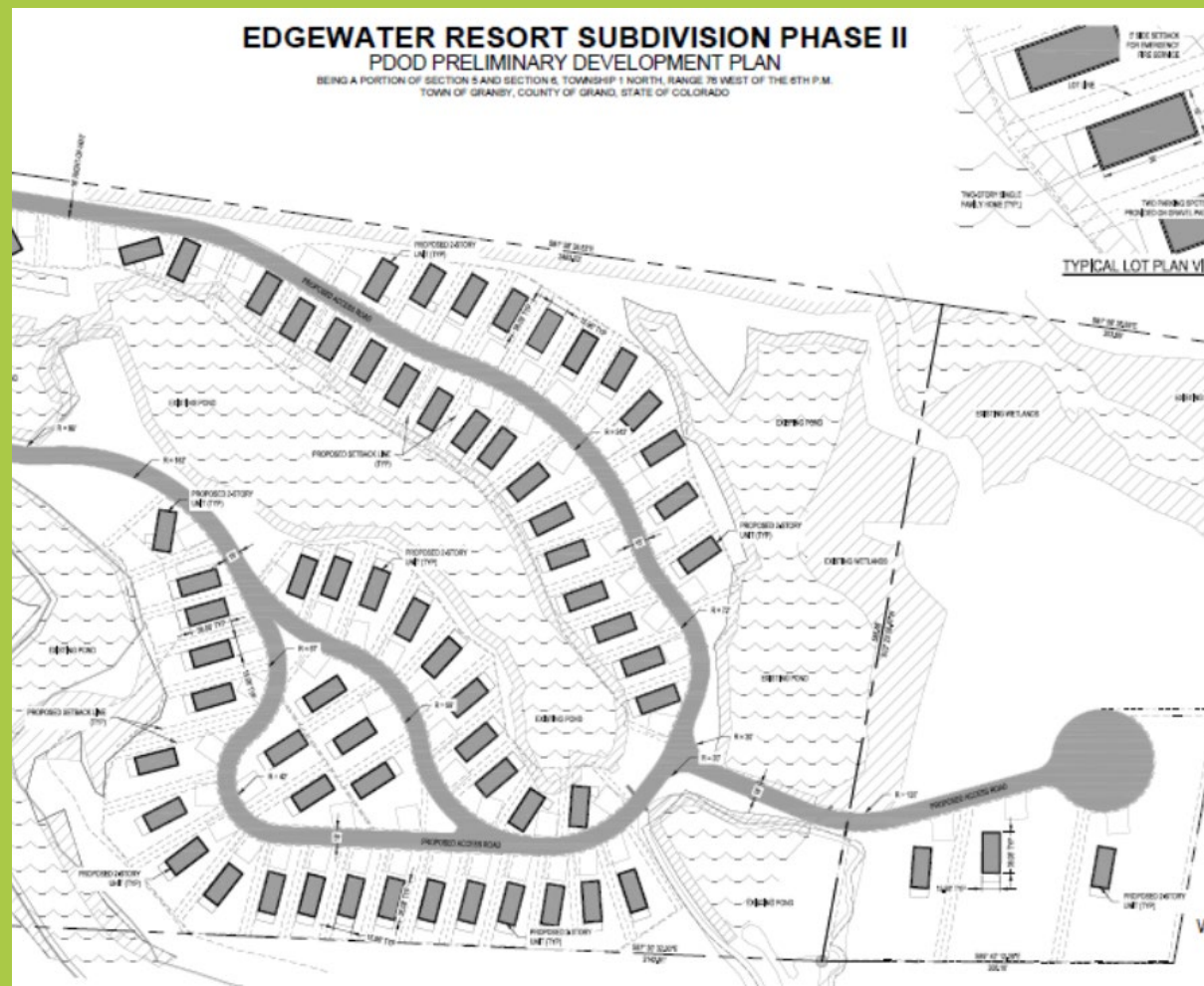


Granby Ranch

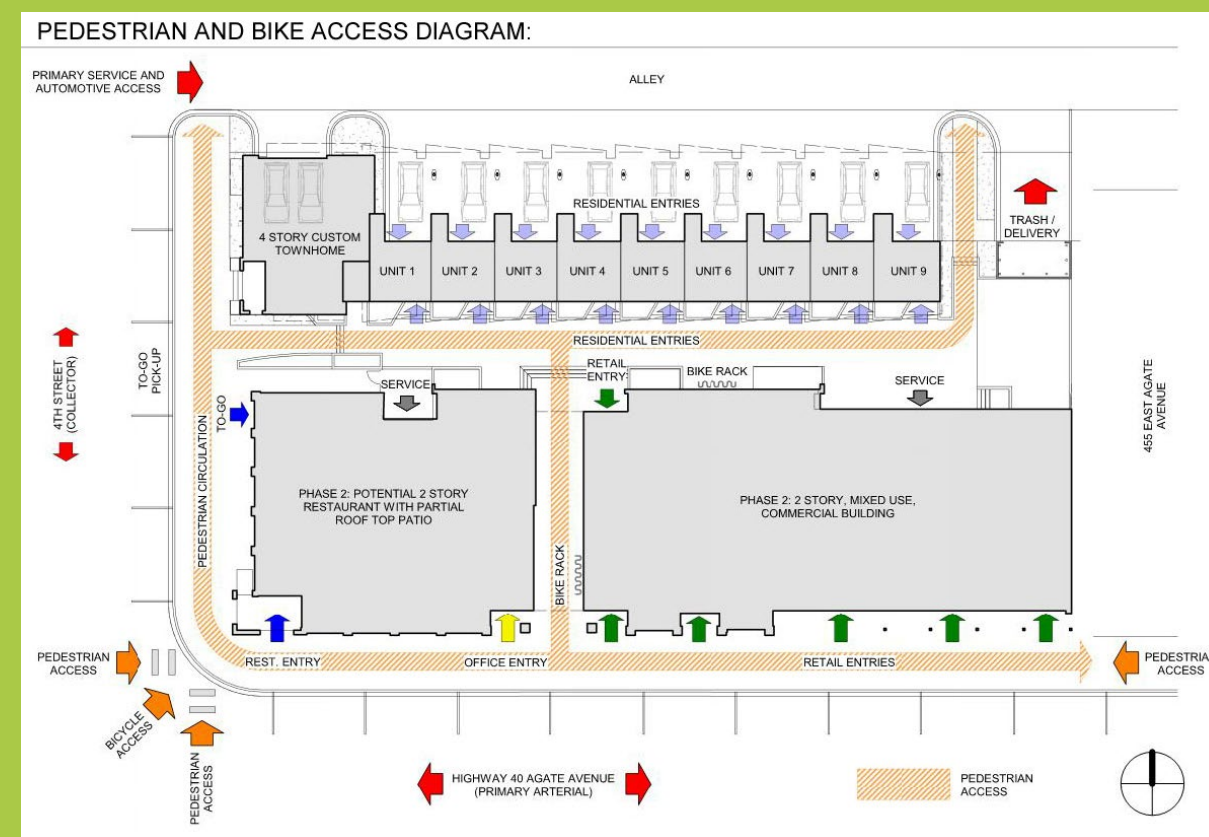
Other items of negotiation/ benefit- Financing Matters!

- ❖ Allowed developer to use up to 8 metro districts to finance the development, including the ability to define the boundaries of each district as it is needed.
- ❖ Sales tax/use tax share back agreement to help pay for their infrastructure.
- ❖ Greatest “flexibility” or benefit offered to Granby Ranch: Allow Granby Ranch out of the Silver Creek Water and Sanitation District as part of the annexation agreement.
- ❖ Ability to impose impact fee if the Fire District needs additional resources- proportional to development
- ❖ Documented that school impact fees still apply.

What flexibility did you offer the applicant?



What public benefits have you negotiated?



No clear public benefit

The PUD district is a master-planned development. Therefore, development standards, dimensional requirements, and permitted uses should be negotiated that are different from existing zone districts.

- **It must not be a workaround of existing zone districts!**
- **Some conditions can and should be triggered at Building Permit.**
- **If supporting documentation (e.g., traffic generation) doesn't ring true, you can memorialize a review in X years.**

Transportation Improvements:

- Guard rail and striping
- 12 ft. travel lanes along Riverside from 23rd Avenue to the site Access
- Right turn lane deferred for one year

Condition of Approval:

- ✓ *After the first full year of operation, the City and the Argo will review transportation impacts and collectively determine if any adjustments are necessary.*

What are the typical steps in processing a PUD?

Number of dwelling units and gross and net density. • Number of dwelling units: 46 dwelling units
• Size of property: 13 acres
• Gross density 3.54 dwelling units/acre (du/ac)- *excludes roads*
• Net density: 5.06 dwellings units DU/AC- *includes private roads*

Step 1: Application, Sketch plan submittal, & cost reimbursement agreement.

Step 2: A Pre-application meeting with Staff and often the Planning Commission.

At this point, you generally know what is being proposed- let the applicant know it's a multi-step process.

Step 3: Annexation (if necessary) along with PUD Development Agreement (both contracts)- *negotiations begin with the development review team.*

- *Town/City Manager, Town Attorney & Planner*
- *On-call- Engineer and financial consultant as needed*

Step 4: Master Plan draft, completeness review.

Only if the application is complete, move to the next steps.

PUD Steps

Step 5: PUD zone district text for team review; Preliminary/ Master Plan graphic

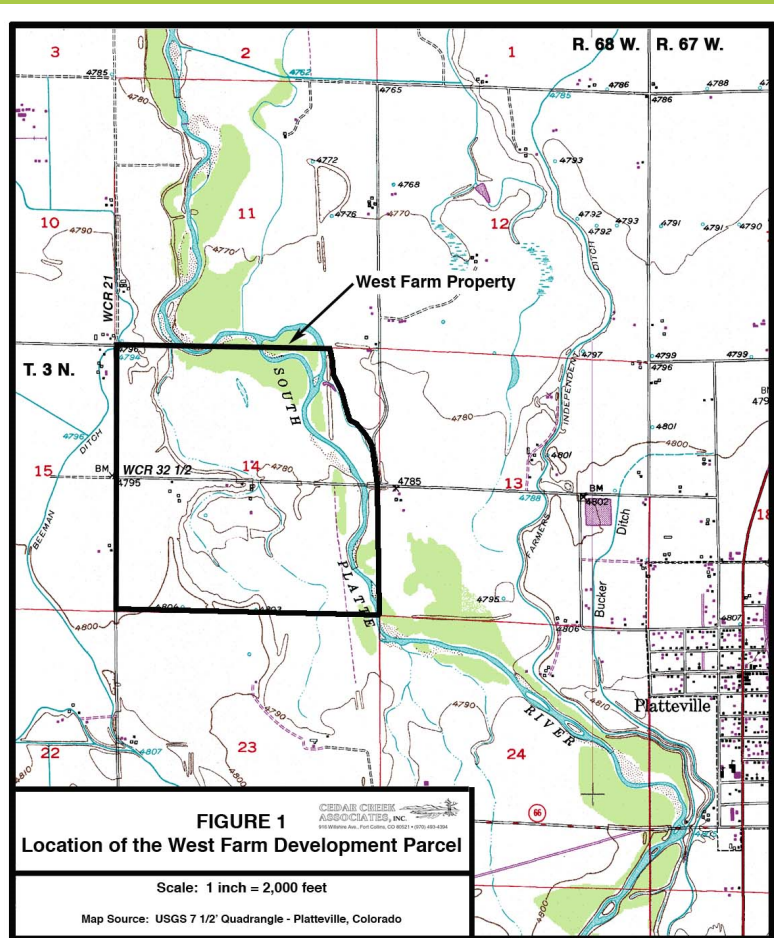
- Include all PUD variations from adopted land use regulations: acres, density, open space, all dimensional requirements, all uses, signs, design *standards*, lighting, parking, and address community needs.

Step 6: Subdivision Plat (*can be concurrent with PUD*) and SIA/PIA

- Timing of needed improvements
- Ownership of improvements
- Who pays for what?

Step 7: Final Development Plan

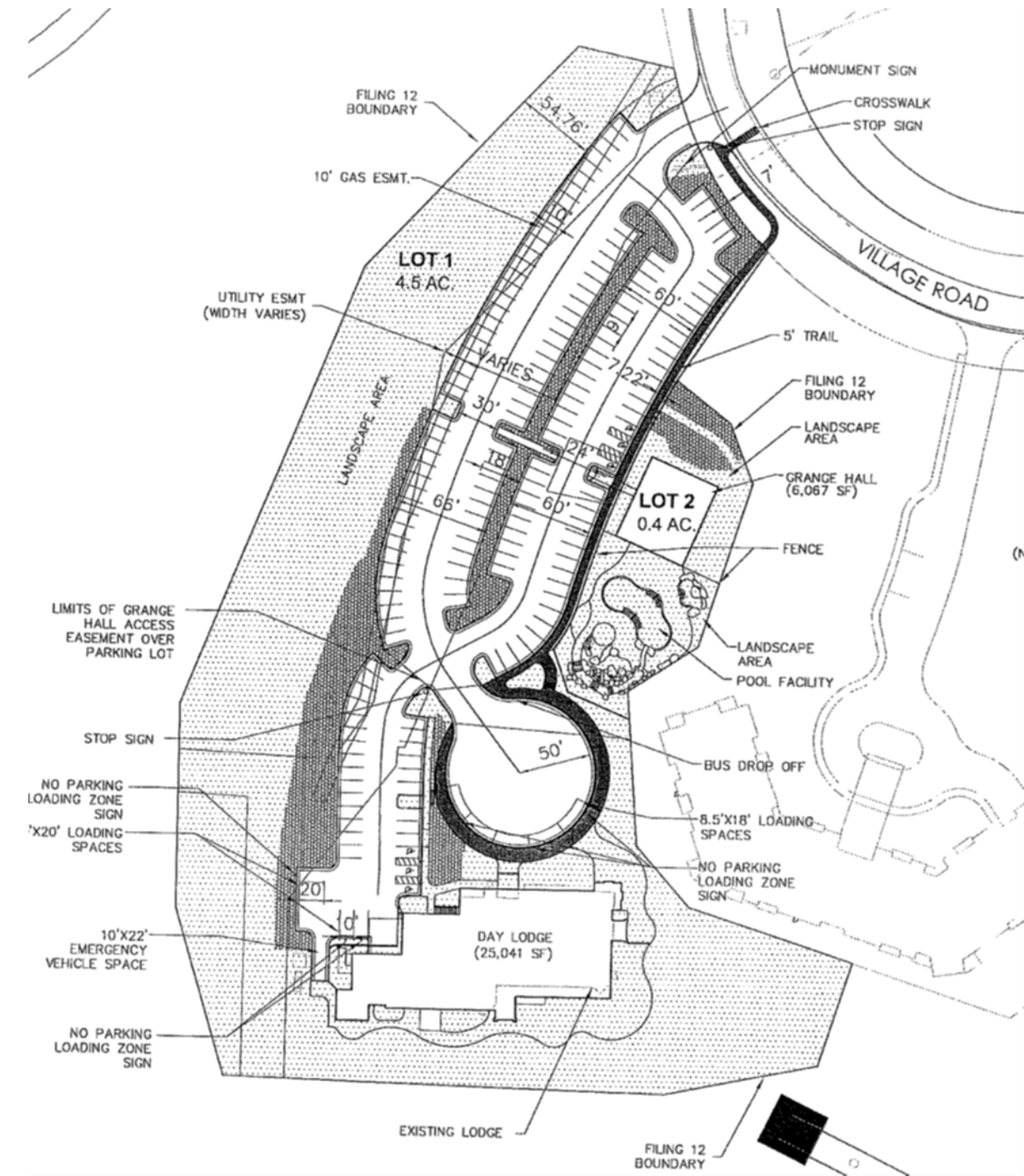
- Site Specific Development Plan
- Includes all engineering and approval from the Municipal Engineer



Approval of a PUD- legal considerations

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

- Since the approval of a PUD plan is a change in zoning or a rezoning, if there is opposition to the PUD from more than 20% of surrounding landowners, then the PUD Plan must be approved by 2/3 of all members of the governing body.
- **NOTE:** *Zoning is one of the areas where home rule municipalities have added flexibility –If you are Home Rule, check to see if your municipality reduced the 2/3 requirement.*



Amending a PUD

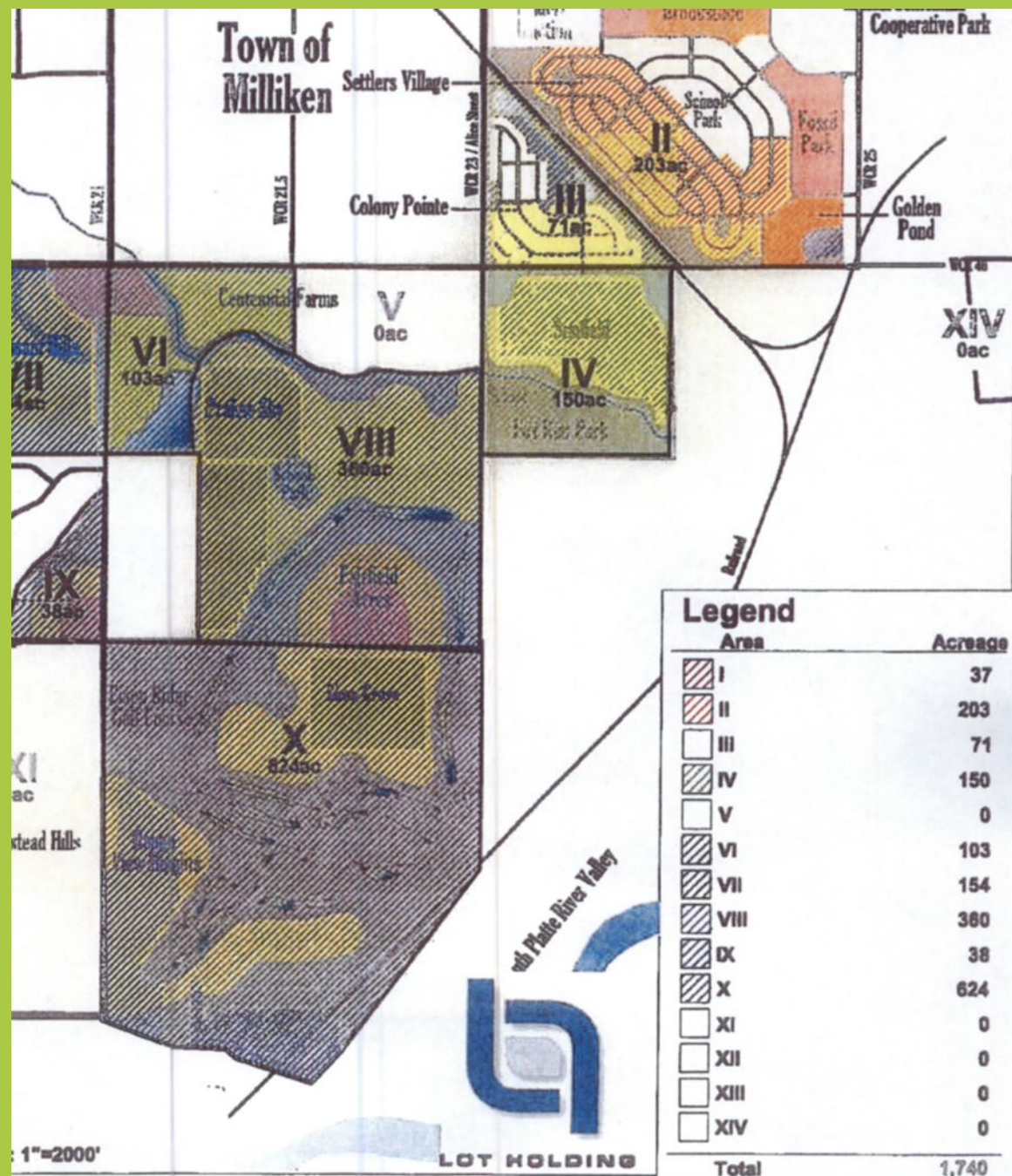
Castle Rock

Minor vs. Major PD
Amendment shall be
processed as a major
amendment:

- Introduces new land uses;
- Changes area devoted to any use by more than 10%;
- Changes density or intensity of uses by more than 10%;
- Constitutes a significant change in the design;
- Creates new or additional impacts on adjacent properties.

- ❖ Amendment of a PUD plan requires a public hearing and a finding that the proposed change is consistent with the efficient development and preservation of the entire planned unit development, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.” **Section 24-67-106(1)((b), C.R.S.**
- ❖ Some communities still allow minor amendments of less than 10% to be approved by the Manager/Planning Director.

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



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

Key Lessons
Learned after 6
amendments over
20 years and
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PUD's throughout
the StateScott



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