

EXHIBIT "E"

RURAL RESIDENTIAL AND PUDS: CREEKSIDE ESTATES

Throughout the approval process for this rezoning there were so many misstatements and misunderstandings confusing and distorting the facts that it was difficult to understand all the details and nuances associated with the application. As Creekside was apparently the first instance of a PUD approved without a master plan that has come up for an amendment, there were apparently some new legalities to be worked out for the process of changing the existing semi-developed tract. That should have been a signal to slow down and more carefully explain all the requirements in a way they could be understood.

The rezone (PUD amendment) to smaller than permitted lots under rural residential land code was originally presented as being allowable because it offered affordable housing and open space in exchange for more densely developed lots. The PUD "tool" was continually referenced, and it was stated the county preferred the clustering of lots in a rural residential neighborhood.

I would ask who prefers "clustering" - certainly not the neighbors in any of the rural residential areas I'm aware of. There may be some instances where it is reasonable and a suitable choice - perhaps a 10-acre lot with all houses "clustered" in one corner not infringing on neighbors views/space with the remaining area truly "open space". Even this one might have been somewhat reasonably clustered but for the several buildings already constructed in the southern portion of the tract.

As a justification for this so-called cluster with smaller lots it was mentioned more than once that the applicant would be able to build his 6 1-acre lots anyway, even without the contemplated PUD, and that they would be long and skinny and detract from the rural atmosphere that will exist with the "agricultural land" in place. I challenge anyone to build those 6 larger lots without removing at least some of the buildings already placed on what are called Lots 1 and 2.

The following pages illustrate some of the misstatements and inaccuracies and misunderstandings that occurred during the process.

LUC SECTION 4.4.1 PUD OVERLAY DISTRICT

The PUD, Planned Unit Development is an overlay district designed to provide for modification of the otherwise applicable dimensional and density standards of the underlying base district as specified in Article 5, Lot Design Standards, in order to accomplish one or more of the following purposes:

- A. Promote flexibility in the siting of structures so as to preserve and take advantage of the site's unique, natural, resource or scenic feature and to avoid or mitigate any hazardous area. NO
- B. Provide density bonus incentives in the interest of creating affordable and beneficial open space; NO
- C. Encourage more efficient use of land and public streets, utilities, and governmental services. NO
- D. Promote a clustering development pattern in the interest of preserving rural character. NO - This particular lot layout does not preserve, but rather distracts, from the rural character. Had it been designed without having to take into consideration the already developed two lots, it might have been a reasonable "cluster".
- E. Preserve open space for the benefit of resident of developments and the community. NO
- F. Achieve a compatible land use relationship with surrounding areas
NO
- G. Promote greater variety in the type and design of buildings and thereby improving the character and quality of new development. NO

No one confronted the fact that the amendment to the PUD itself was inappropriate. Arguments instead centered around whether roads were included in the acreage, setbacks, CCRs, whether there was open space, etc.

The requested rezone does not "accomplish one or more of the following purposes" required under 4.4.1 Purpose and intent for a PUD Overlay District.

"OPEN SPACE" OR "AGRICULTURAL LAND" "AFFORDABLE HOUSING"

The phrases "open space" and "agricultural land" were referenced repetitively to justify the change from 1-acre minimum lots to 0.3-something or 0.4-something.

Let me state, vehemently, "open space" is a LEGAL TERM WITH SPECIFIC MEANING; it is NOT a "slightly fluid term" to be invoked when describing a lot bigger than the others to justify resizing the others down. The portrayal of "open space" and "agricultural land" is very clearly a misrepresentation of that 1.96- or 2.16- or 1.75- acre lot that the applicant is either 1) going to farm himself or, 2) sell to someone who probably would like to farm it.

I very much appreciate agricultural land and wish he had continued to farm it with the intensity of the earlier years. However, I do not believe there are any stipulations with this zoning change that require him to keep that land in agriculture, or even "open space", despite the fact a PUD requires that. As such, approval should not have been granted for a zoning change to smaller lots without a legal requirement that Lot 6 remain either "open space" or "agricultural". If the applicant is legally required to maintain the entirety of Lot 6 in actively farmed land, it might then be considered agricultural.

Examples follow of a few of the terms used erroneously to justify this parcel for smaller than required minimum lot sizes:

Staff Recommendation 9/28/20 Agenda Summary

"Staff supports ... as a means to further *preserve open space and agricultural land* in Grand County."

Staff Report Summary of Request 9/28 attachment

"Current PUD rules allow ... to alter the minimum lot size...as a mechanism to cluster development and **preserve open space**...The applicant has a DRT-approved Preliminary Plat...which preserves **agricultural land and open space**."

9.2.7 Issues for Consideration 9/28 attachment

- B. ...The pertinent community change is the need for **affordable housing**.
- C. ... **More affordable housing** is a benefit for the community.
- D. "Will there be benefits derived by the community ..." **Yes, see above.**
- H. ... **Yes...would preserve current agricultural uses.**
- I. ... **would allow for ... agricultural uses to remain.**

Every one of these references to "open space", "agricultural land" and "affordable housing" is false.

"Applicant Statement" dated 9/17/20 (9/28 attachment)

4. "Yes, the proposal provides building lots that also **support open space.**"

8. "Yes, the proposal is for single-family homes and **provides lots that support open space.**"

These are very interesting statements from an applicant who, during the actual Planning Commission meeting, denies there is open space.

During the public hearing itself there were frequent references alluding to open space. At the very beginning was the statement "leave these larger contiguous acres undeveloped and undevelopable." Then, "clustering in the NW corner and then leaving much larger tracks undeveloped on the other side".

A while later: "By clustering development we end up with open space that is not developed." Followed immediately by the declaration "I don't believe they qualify for the open space."

And finally, just before the actual public hearing, the acknowledgement "we're using 'open space' as a slightly fluid term. There is no technically public open space".

We have a real problem if no one understands or agrees upon the legal definition and/or requirement for "open space". Right after the close of the public hearing the Planning Commission requested some clarification of "open space" from staff.

"Open space is generally considered to be public access. There's no public access contemplated nor does there need to be. PUDs are used to cluster development which means a few smaller lots and one large lot.

It's all developable. It's meant to preserve agricultural land. This current proposal does **preserve agricultural land**. But, no, there's no open space contemplated, or does there need to be."

And I argue it does NOT preserve agricultural land unless some sort of deed restriction is placed on that lot designated Lot 6.

SETBACKS

There was discussion during the September 28 hearing about the change in setbacks proposed with the new Tract A PUD and objections that those new setbacks did not conform to the CCRs. Staff stated that the CCRs applied only to the existing built-out lots and did not apply to Tract A and also argued that the PUD does not contemplate a change in setbacks.

More confusion here.

It IS true that the CCRs apply only to Phase I of the development. However, I assume the Final Plat for Creekside Estates (which includes a Surveyor's Certificate, an Owners & Mortgagee's Dedication, a Certificate of Acceptance by Grand County, County Council Approval, County Engineer Approval and the signature of the County Recorder) is a legal document.

This Final Plat contains a chart delineating "Development Stipulations". The chart refers to BOTH Phase I and Phase II and specifies a minimum lot size of 1.0 acres for Phase I and 1.0 acres for Phase II. And setbacks are specified as front=25 ft, side=15ft and rear=25 ft for both phases. (These are the same setbacks defined in the Code for RR).

Also, the preliminary plat submitted with the PUD change request for Tract A clearly does propose a change. Setback would be as follows: front=20', side=10', rear=15'.

During the 9/28 public hearing the applicant told staff "I was told I can write my own setbacks. I can change those setbacks. Do you have an answer to that question?" The response was "I think we should really try to avoid talking about that; it's not an issue with the PUD amendment. We are not considering a preliminary plat at this meeting."

HOW MANY ACRES ARE THERE ?

PRELIMINARY PLAT FOR TRACT A

Included in 9/28 agenda packet

Lot 1 0.58 acres
Lot 2 1.73 acres
Lot 3 0.32 acres
Lot 4 0.34 acres
Lot 5 0.34 acres
Lot 6 1.96 acres
TOTAL 5.27 acres

The "Subdivision Boundary" for the "Legal Description" reads:

<u>Area</u>	<u>Land Use</u>
1.79 acres	roadway
<u>4.69</u> acres	single family
6.48 acres	total

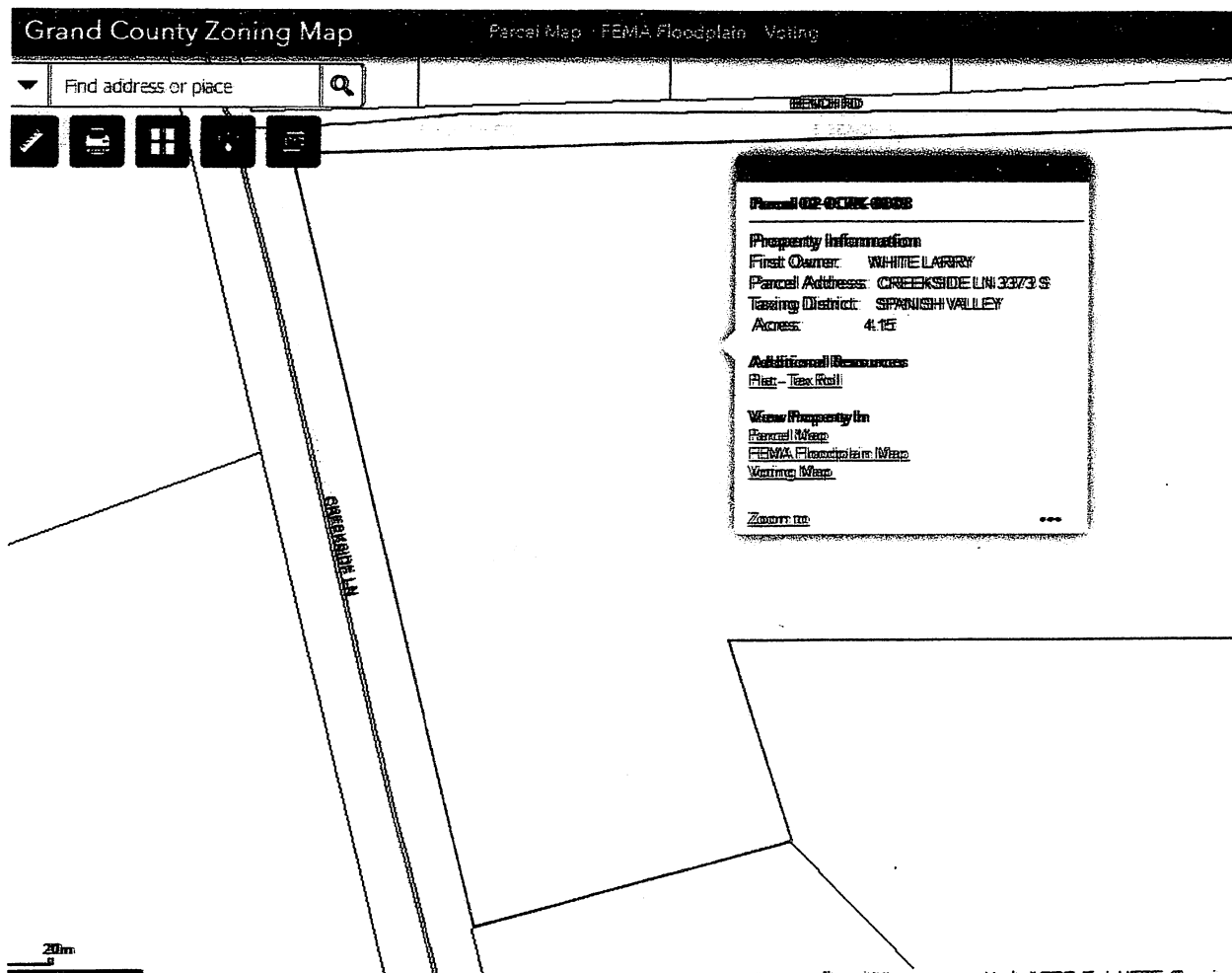
The area shown as Lot 2 (1.73 acres at the southeast corner) on the Preliminary Plat for Tract A is actually already formally platted as Lot A-1 (02-CRK-0007) with 1.36 acres.
(See following pages for details.)

The remaining land is shown with 5.12 acres on this same map. (Total 6.84 acres for Tract A plus Tract A-1)

HOWEVER

The same Tract A (02-CRK-0008) showing 5.12 acres on that map appears on the Parcel Map and *the Tax Roll Master Record as 4.15 acres.* (See following pages)

In this instance to total acreage is 5.51 acres, not 6.48.



<https://grandcountyutah.maps.arcgis.com/apps/webappviewer/index.html?id=2c5085c6b58548a78a275e4d30ee542d¢er=-109.479248%2C38.529042&scale=801>

<http://tax.grandcountyutah.net/grandcountyutah/taxroll/02-0CRK-0008.pdf>

How many iterations of the plat are there? Not including the previous plats (shown as 02-CRK-0007 and 02-CRK-0008), there are at least three associated with the recently requested PUD amendment. It seems like every time I printed a new copy of the plat it had changed. Noting noted a revision or, as far as I can see, a date.

(original)

lot 1	0.59	0.58	0.58
lot 2	1.72	1.53	1.73
lot 3	0.42	0.32	0.32
lot 4	0.41	0.34	0.34
lot 5	0.37	0.34	0.34
lot 6	1.75	2.16	1.96

NOTICE REQUIREMENTS

Required Public Notices - 9.1.8 (B)(2)Mailing. "... the applicant shall mail notice of each public meeting or public hearing not less than 13 days prior to the hearing to the record owner of each parcel on file with the Grand County Assessor's Office within 1,000 feet in all directions of the property that is the subject of a land use application."

Several local residents did not get the required mailing for notification of the public hearing. When it was mentioned during the hearing that several people had either never received the application or received it only 3 days or so before the hearing, the applicant apologized and asked Mila if she recalled when he had picked the mailing list up from her.

Mila responded that she didn't have the date but that all of the noticing requirements were fulfilled. "Unfortunately we're all aware that the national mail seems to be a bit slow but we posted the signs and the county notice and the mailed notices were sent out at the proper time." Applicant said he mailed 30 letters the day after he got the list.

All speakers at the public hearing requested the decision be deferred due to lack of timely (or any) notification of the public hearing and, as a result, they had not enough time to do their due diligence.

To help ensure affected residents are aware of pending zoning changes in their area in a timely manner, the Code (9.1.8) should be changed to require mailed notices be sent certified mail.

AGENDA SUMMARY County Commission January 19, 2021

PLANNING COMMISSION RECOMMENDATION: Approve

"The current minimum lot size does not change the allowed minimum lot size in the underlying zone (RR), therefore not using any aspect of the PUD tool."

Comment: A very large part of the 9/28 Public Hearing rhapsodized about how the PUD tool WAS going to be used to preserve open space and agricultural land.

The original Final Plat for the Creekside Estates Development very clearly stated that the minimum lot size would be 1-acre for both phases of development. Also, 5.4.1 "Residential Development Standards" indicates a minimum lot size of "1" for RR. This is a clear contradiction.

STAFF RECOMMENDATION: Approve

For the same reasons above, Staff recommends approval ...

Comment: See above

COUNTY ATTORNEY RECOMMENDATION: Approve

... This is only possible with the PUD amendment reducing the lot sizes of 3 of the lots...

Comment: This would be using the PUD tool.

BACKGROUND

... whereas if the applicant were able to take advantage of the purpose of the PUD, which is clustered development, they will be able to develop all six lots.

Comment: This would be using the PUD tool.

STAFF REPORT

SUMMARY OF REQUEST

... Current PUD rules allow for a developer to alter the minimum lot size in a PUD as long as the underlying allowed density does not change. This is used as a mechanism to cluster development and preserve agricultural land.

The Master Plan included in the packet for approval has been approved by the Development Review Team which preserves agricultural land ...

Comment: This would be using the PUD tool. See Planning Commission Recommendation under Agenda Summary: ... "therefore not using any aspect of the PUD tool." Also, I have not seen anything in any of the statements that legally mandates that so-called "agricultural land" to be used as agricultural land.

I see nothing on the Master Plan that indicates any of the lots are "agricultural land."

MISCELLANEOUS CORRESPONDENCE

Although I assume these letters included in the Staff Report would not be a factor in deciding whether or not to approve this request, I find it interesting that two of the writers did not disclose their last names and a third, Joey Applegate, is a resident of Colorado, not a neighbor of the applicant. The property at which he asserts to live is in the neighborhood (E. Bench Rd) and for sale and has been since his father died over a year ago.

THIS PROCESS SHOULD BE TRANSPARENT

A new PUD/master Plan should be required when an unplatted tract is to be developed.

When there are misstatements or misrepresentations from the applicant or anyone representing the county in the written records, or misstatements or misrepresentations during hearings by applicant or anyone representing the county, these misstatements should be corrected in writing and published.

There have been numerous changes to statements, documents (e.g. plats), and I don't believe they have been sufficiently identified for the public or anyone not intimately involved in the entire process to recognize.

The lot sizes on the plat were changed at least three times. To my knowledge there was no notification or statement in any document that there was a change; it just appeared. Any time a plat is changed, the original should be marked as "superseded" and the modification as "revised" with the dates of the action.

Create a website or a tab on the current one for each new development/ PUD, etc. so the most current information is available for anyone with an interest in being informed. That would include written input from the public. That way anyone with outdated information should be able to determine if there is anything more current. It seems to me it would be beneficial for both county employees and the public to have all the information readily available in one place.

To help ensure affected residents are aware of pending zoning changes in their area in a timely manner, the Code (9.1.8) should be changed to require mailed notices be sent certified mail.

LOOK TO THE FUTURE

Similar challenges may well arise again when these properties in the area are sold:

02-0022-0028 (Applegate) 2.25 acres

02-0022-0022 (Heaton) 4.13 acres)

02-0022-0023 (Heaton) 1.27 acres) contiguous

02-0022-0025 (Heaton) 0.18 acres)

The new owners may possibly cite Watchman Estates and Coyote Run as their precedents rather than honoring the 1-acre rural residential zoning.

Is "open space" intended to benefit just the owners of property in the new subdivision or the entire rural residential community? If this clustering open space is only visible for the residents and the rural residential community has to look at the clustering, I'd say clustering is NOT beneficial. Reconsider clustering as the "preferred" county designation. I think you will find the majority of the residents in rural areas do NOT prefer clustering.