



**AGENDA**  
**Planning & Zoning Commission**  
**Tuesday, June 7, 2016**  
**6:00 P.M.**

**Public Meeting Room / Eagle Town Hall**  
**200 Broadway**  
**Eagle, CO**

*This agenda and the meetings can be viewed at [www.townofeagle.org](http://www.townofeagle.org).*

**ITEM**

**6:00pm – CALL TO ORDER**

**APPROVAL OF MINUTES – May 17, 2016**

**PUBLIC COMMENT**

*Citizens are invited to comment on any item not on the Agenda subject to a public hearing. Please limit your comments to five (5) minutes per person.*

**LAND USE FILES**

**NEW PUBLIC HEARINGS**

1.	Project:	Rocky Mountain School of Discovery
	File #:	SU16-01
	Applicant:	Anne Helene Garberg
	Location:	409 Brooks Lane
	Staff Contact:	Tom Boni (Town Planner)
	Request:	Special Use Permit to allow operation of a pre-school and educational facility.
2.	Project:	Colorado Slab & Tile - Outside Storage
	File #:	SU16-02
	Applicant:	Jason Kaples
	Location:	12 Eagle Park East
	Staff Contact:	Matt Farrar (Assistant Town Planner)
	Request:	Special Use Permit to allow for outside storage.

<b>ITEM</b>		
3.	Project:	Colorado Slab & Tile - Fence Variance
	File #:	V16-02
	Applicant:	Jason Kaples
	Location:	12 Eagle Park East
	Staff Contact:	Matt Farrar (Assistant Town Planner)
	Request:	Zoning variance to allow for the installation of a 6' tall fence in the front yard.
4.	Project:	Boyz Toyz Snowmobile/ATV Store
	File #:	SU97 (Amended 2016)
	Applicant:	Gary Ratkowski
	Location:	432 Grand Avenue
	Staff Contact:	Tom Boni (Town Planner)
	Request:	Special Use Permit to allow continued operation of store/repair facility.
<b>CONTINUED PUBLIC HEARINGS</b>		
1.	Project:	Revisions to Section 4.03.040 - Definitions and Section 4.04 - Zoning of the Town of Eagle Land Use & Development Code
	File #:	LURA16-01
	Applicant:	Town of Eagle
	Location:	N/A
	Staff Contact:	Matt Farrar (Assistant Town Planner)
	Request:	<p>1. Revise Section 4.03.040 to define dog daycare facility. <b><i>(Staff requests continuation to July 19, 2016)</i></b></p> <p>2. Revise Section 4.04.070 to define regulations for dog daycare facilities. <b><i>(Staff requests continuation to July 19, 2016)</i></b></p> <p><del>3. Revise Section 4.04.070 to modify regulations for indoor recreation facilities. <i>(Approved by Board of Trustees – April 26, 2016)</i></del></p> <p>4. Revise Section 4.04.070 to define regulations for marijuana testing facilities.</p> <p>5. Revise Section 4.04.100 to modify regulations regarding medical and retail marijuana cultivation facilities and infused-product manufacturing facilities and to expand the area in the Town of Eagle where these uses are permitted.</p>
<b>TOWN BOARD OF TRUSTEES MEETING REVIEW</b>		
<i>Staff update to the Planning &amp; Zoning Commission on recent decisions made by the Board of Trustees on various Land Use files.</i>		
1. Eagle Tubing and Photography – Temporary Use Permit		
<b>OPEN DISCUSSION</b>		

**ITEM**

**ADJOURN**



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

## Planning and Zoning Commission Meeting Minutes May 17, 2016

### PRESENT

Stephen Richards  
Jamie Harrison  
Charlie Perkins  
Jason Cowles  
Max Schmidt  
Donna Spinelli  
Jesse Gregg  
Cindy Callicrate

### STAFF

Tom Boni–Town Planner  
Angela Haskins–Administrative Assistant

This meeting was recorded and the CD will become part of the permanent record of the minutes. The following is a condensed version of the proceedings written by Angela Haskins.

### **CALL TO ORDER**

The regular meeting of the Planning and Zoning Commission held in the Eagle Town Hall on May 17, 2016 was called to order by Jason Cowles at 6:03 p.m.

### **APPROVAL OF MINUTES**

Spinelli made a motion to approve the minutes of the May 3, 2016, Planning and Zoning Commission Meeting. Callicrate seconded. The motion passed unanimously.

### **PUBLIC COMMENT**

None

### **LAND USE PUBLIC HEARINGS**

*TU16-01, Eagle Tubing and Photography*

Cowles opened File No. TU16-01, Eagle Tubing and Photography temporary use permit for a mobile vendor at Chambers Park. Boni presented to the Planning and Zoning Commission the plans and vision that the applicant, Ken Hoeve had for Chambers Park. Boni reviewed the Temporary Use Permit Standards, Compliance and Staff Recommendations.

Ken Hoeve, the applicant presented to the Commission the idea behind his temporary use permit allowing a mobile rental trailer for tubing, biking, paddle boarding, and photography. This business would strictly be a rental service and not a guiding service. The business would be in operation for approximately 4 months.

The Commission, staff and applicant began deliberations. Concerns regarding temporary use, private sector and public land use, town lease, parking, restrooms and other vendors were discussed. Cowles opened the meeting to public comment.

1. Tim Obrien – Shamrock Fine Woodworking is in favor of the applicant.
2. Tom Clinton – Pazzo’s Pizza is in opposition of the applicant doing business right now. He thinks it is a good idea but would like to see the area developed first.
3. Kathy Heicher – Eagle County Historical Society is in opposition of the applicant with concerns regarding parking, restrooms, emergency services and trash.
4. Brian Maloony – Eagle Crossing Association is in opposition of the applicant and submitted written comment to the Planning and Zoning Commission.
5. Celena Olden – Property Manager and citizen is in opposition of the applicant with concerns regarding public land use with private sector. Submitted written comment to Town Board of Trustees, Planning and Zoning Commission and, staff.
6. Tom Olden – Property Manager and citizen is in opposition of the applicant with concerns regarding public land use with private sector.
7. Greg Schrader – Eagle Homeowner and citizen is in favor of the applicant and thinks it is a good business for the Town.

Commission members deliberated after hearing public comment. They discussed the applicant’s entrepreneurship, concerns of the public, policy between the public and private sector, and the river park development.

Harrison made a motion to recommend denial of approval of File TU16-01, Eagle Tubing and Photography a Temporary use permit for a mobile vendor at Chambers Park; based on the deliberations and concerns from the Planning and Zoning Commission that there is a significant policy decision required for using public land for private gain and that making this policy decision in context of a land use application (review by the Planning and Zoning Commission for a Temporary Use Permit) is not appropriate. Spinelli seconded. The motion passed 4-3. Harrison, Perkins, Spinelli and Cowles support the motion. Callicrate, Richards and Gregg opposed the motion.

**TOWN BOARD OF TRUSTEES MEETING REVIEW**

1. Trotter Minor Subdivision
2. Poukish Pre Annexation Discussion
3. Eagle River Park Update

**ADJOURN**

Cowles made a motion to adjourn the meeting. Richards seconded. The motion passed unanimously. The meeting was adjourned at 8:26 p.m.

\_\_\_\_\_  
Date Jason Cowles – Planning and Zoning Commission

\_\_\_\_\_  
Date Angela Haskins – Administrative Assistant



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

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## CERTIFICATE OF RECOMMENDATION

**TO:** Planning & Zoning Commission

**FROM:** Department of Community Development

**DATE:** June 7, 2016

**PROJECT NAME:** Rocky Mountain School of Discovery

**FILE NUMBER:** SU16-01

**APPLICANT:** Anne Helene Garberg

**LOCATION:** 409 Brooks Lane

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:**  
Section 4.05.010 (Special Use Permit)  
Section 4.04 (Zoning)

**EXHIBIT(S):** A. Application Packet  
B. Aerial Photographs  
C. Record of decision  
D. Town of Eagle Letter to Commission

**PUBLIC COMMENT:** E-Mail from John Hardesty

**STAFF CONTACT:** Tom Boni, Town Planner

**REQUEST:** Applicant is requesting a Special Use Permit to allow for a pre- school to serve up to a maximum of 40 children on a +/- one acre parcel of land zoned Rural Residential.

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**DISCUSSION:**

There is a critical need for pre-schools in the Eagle Community and given the educational philosophy of the Rocky Mountain School of Discovery this large property is attractive. The property is included in the Brooks Lane Neighborhood of the Riverside Mixed Use Area of the Eagle River Corridor Plan (Plan). While a school is not a use specifically mentioned in the Plan, staff believes that it would provide a community service to the future residents of this area and is compatible with the overall land use direction provided by the Plan for this area.

However, the most significant constraints to the further development of any property accessed from Brooks Lane are the limitations of the Public Railroad Crossing and access to Highway 6. Please see attached record of decision by the Hearing Judge related to an application by the Town to make Brooks Lane a Public Railroad Crossing. One of the most relevant conditions associated with the Decision of the Public Utilities Commission is the requirement for the Town to construct improvements at this crossing in sufficient time to prevent a significant increase in the use of the existing, unimproved Brooks Lane Crossing. The Town has notified the Commission regarding this application and as of this time the Commission has not responded. Please see attached letter from the Town to the Commission.

It is likely that the Commission will deem the drop-off and pick-up of 40 children (Phase one and two) or for phase one of 20 children is a significant increase in traffic. The Court Proceeding related to the Brooks Lane Crossing reported 16 existing homes and an average daily vehicle count of 157 trips. Twenty children would potentially result in 40 trips or a 25% increase in traffic using the crossing. Forty children would potentially result in 80 trips or 50% increase. The applicant has indicated she is open to being creative in the management of the school in order to reduce traffic. One suggestion to minimize additional traffic at the crossing is for parents to park in the Fairgrounds Parking Lot and walk children across the bridge and to the school. This is an approximately 800 foot distance. The applicant also discussed with staff was to pick up the children at an off site location and bus them to the school.

Another option is for the Town to make application with the PUC for an upgraded public rail road crossing. There may be a delay period between administrative approval of the improvements to the crossing and required construction of significant improvements because there are not revenue trains on the Union Pacific Rail Road. I believe a similar deferment of construction was included in the rail road crossing approvals granted for Eagle River Station. This improvement to the Brooks Lane Rail Road crossing is referenced in the Plan as needed in order to develop the Riverside Mixed Use Area and mentions that the Town will assist in this process.

There are also concerns with traffic exiting Brooks Lane onto Highway 6. Traffic on Highway 6 is significant and continues to increase over time as the Eagle Valley grows. Additional cars exiting from Brooks Lane onto Highway 6 or making a left turn from Highway 6 onto Brooks Lane are problematic particularly during rush hour. One potential mitigation of this problem would be to sign Brooks Lane prohibiting left turns exiting the street onto Highway 6 in the

morning and afternoon rush hours. In discussions with Chief Stauffer, this technique is being used in several communities on the Front Range.

There are not any easy answers to these traffic problems related with Brooks Lane. During the preparation of the Plan, we anticipated the rail road crossing and access to Highway 6 would be addressed by a larger development and likely involve the formation of some type of public financing. We were also anticipating the Town would commence a comprehensive study of Highway 6 to identify overall improvements required and a phasing plan for implementation.

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**STANDARDS FOR SPECIAL USE PERMIT (SECTION 4.05.010):**

Listed below are the findings required by Section 4.05.010 of the Land Use & Development Code for approval of a Special Use Permit:

1. The proposed use is consistent with the provisions of this Chapter and with the Town's goals, policies and plans, and
2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, and
3. Street improvements adequate to accommodate traffic volumes generated by the proposed use and provision of safe, convenient access to the use and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the Town, and
4. The special conditions for specific uses, as provided in this Section, are met.

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**FINDINGS FOR SPECIAL USE PERMIT:**

*Standard #1:*

Subject property is zoned Rural Residential. Chapter 4.04.060 (Schedule of Uses Permitted in Residential Zone Districts) identifies a Child Care Facility or School as a Special Use within the Rural Residential Zone District.

As referenced previously this property is located within the Brooks Lane Neighborhood of the Riverside Mixed Use Area in the River Corridor Plan (Plan). This Area is envisioned as a compact, walkable, vibrant, mixed use neighborhood that complements existing development within the CBD. Staff believes that a child care facility fits within the overall vision for this area and would be serve the residential development anticipated by the Plan. Chapter 6 of the Eagle Area Community Plan places a strong emphasis on "Quality of Life" and "Family Oriented Community" and references the priority placed on these values by respondents of the Community Survey. The availability of high quality, convenient child care supports these values.

*Standard #2:*

The surrounding land use to the east is medium density residential and to the west is low density residential. The property on north is also residential. The Eagle County Fairgrounds are located across the Eagle River to the north. Staff believes that the requested child care facility is compatible with the surrounding neighborhood.

*Standard #3:*

Street Improvements, Parking & Access:

As discussed earlier, staff has concerns that this additional traffic related to the pre-school would constitute a significant increase in traffic and warrant the construction of improvements to the Brooks Lane Railroad Crossing as referenced in the conditions of approval of the existing Brooks Lane Public Rail Road Crossing. Adequate parking could be provided on site.

Based on existing information Staff cannot report to the Commission and Board that adequate street improvements are in place to accommodate the proposed use.

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**PLANNING & ZONING COMMISSION:**

1. Questions of Staff and/or Applicant
2. Public Comment
3. Deliberations

## Tom Boni

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**From:** cjhard69@aol.com  
**Sent:** Wednesday, June 01, 2016 10:37 AM  
**To:** Tom Boni  
**Subject:** Planning and Zoning.

TOWN OF EAGLE PLANNING AND ZONING COMMISSION:

MR. TOM BONI:

RE: ROCKY MOUNTAIN SCHOOL OF DISCOVERY.

- 1) We do not believe Owners of 409 Brooks Lane have a Permit from the Union Pacific Railroad to cross their tracks to access their property.
- 2) Do not believe Brooks Lane is a dedicated street in the Town of Eagle.
- 3) Brooks Lane is a dead end street. How are 80 cars dropping off 80 children at mostly the same time going to get in and out?
- 4) Brooks Lane over the Railroad Tracks and turning towards 409 Brooks Lane is only ONE LANE.
- 5) Brooks Lane is access for walkers, bicycles, children from Town to access the Fairgrounds.
- 6) Do not believe it is appropriate location for any commercial activity much less one that required 80 cars twice a day to access in and out at the same time frame.
- 7) The Railroad Crossing is crossing (Brooks Lane) over rail active traffic and has no security guards or signals as required by law for all dedicated street rail crossings.
- 8) Read communication from Willie Powell in 1995-1997 informing Property at 407 Brooks Lane could not be developed because of the way 5th Ave. interaction with Hwy. 6 and Brooks Lane.
- 9) No one is maintaining the Railroad Crossing from Hwy. 6 to 20 feet East of the Railroad Tracks.
- 10) One can only imagine the back up on Hwy. 6 in both directions trying to turn into Brooks Lane. Currently in the morning traffic is back up to Brooks Lane from the Roundabout.

Tom:

Could you also give a copy of my comments to the Board of Trustees and the Mayor.

Owner of 407 Brooks Lane.  
Thermo Dynamics Inc.  
John R. Hardesty, Pres.

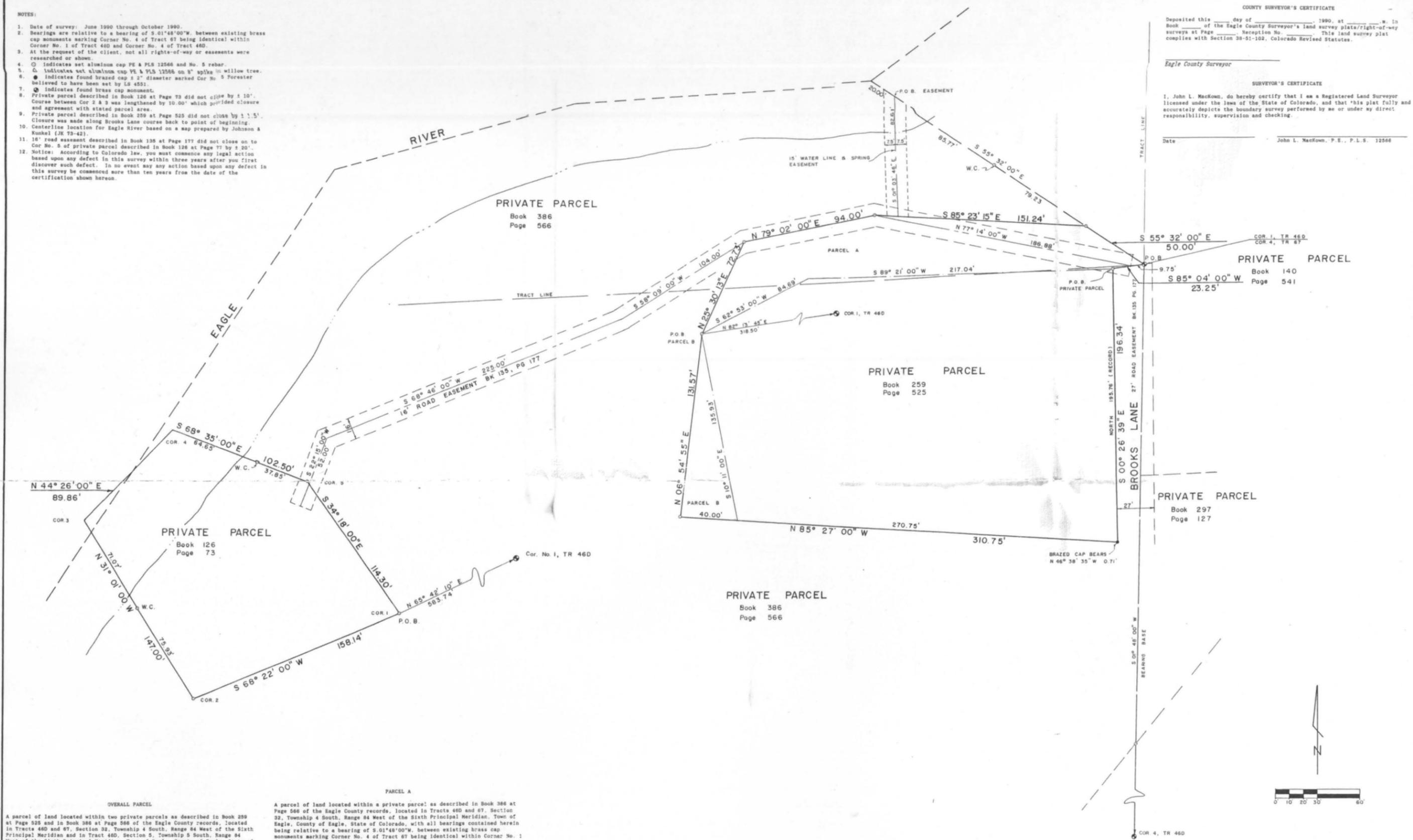
NOTES:

1. Date of survey: June 1990 through October 1990.
2. Bearings are relative to a bearing of S 01°48'00"W between existing brass cap monuments marking Corner No. 4 of Tract 67 being identical within Corner No. 1 of Tract 460 and Corner No. 4 of Tract 460.
3. At the request of the client, not all rights-of-way or easements were researched or shown.
4.  $\odot$  indicates set aluminum cap PE & PLS 12566 and No. 5 rebar.
5.  $\bullet$  indicates found brass cap  $\pm$  2" diameter marked Cor No 5 Forester believed to have been set by LS 4551.
6.  $\odot$  indicates found brass cap monument.
7. Private parcel described in Book 126 at Page 73 did not close by 10". Course between Cor 2 & 3 was lengthened by 10.00' which provided closure and agreement with stated parcel area.
8. Private parcel described in Book 259 at Page 525 did not close by 1.5'. Closure was made along Brooks Lane course back to point of beginning.
9. Centerline location for Eagle River based on a map prepared by Johnson & Kunkel (JK 73-42).
10. 16' road easement described in Book 135 at Page 177 did not close on to Cor No. 5 of private parcel described in Book 126 at Page 73 by 2.30'. Notice: According to Colorado law, you must commence any legal action based upon any defect in this survey within three years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown herein.

COUNTY SURVEYOR'S CERTIFICATE  
 Deposited this \_\_\_\_\_ day of \_\_\_\_\_, 1990, at \_\_\_\_\_ M. in Book \_\_\_\_\_ of the Eagle County Surveyor's land survey plat/right-of-way surveys at Page \_\_\_\_\_, Reception No. \_\_\_\_\_. This land survey plat complies with Section 38-51-102, Colorado Revised Statutes.

Eagle County Surveyor  
 SURVEYOR'S CERTIFICATE  
 I, John L. MacKown, do hereby certify that I am a Registered Land Surveyor licensed under the laws of the State of Colorado, and that this plat fully and accurately depicts the boundary survey performed by me or under my direct responsibility, supervision and checking.

Date \_\_\_\_\_ John L. MacKown, P.S., P.L.S. 12566



**OVERALL PARCEL**  
 A parcel of land located within two private parcels as described in Book 259 at Page 525 and in Book 386 at Page 566 of the Eagle County records, located in Tracts 460 and 67, Section 32, Township 4 South, Range 84 West of the Sixth Principal Meridian, Town of Eagle, County of Eagle, State of Colorado, with all bearings contained herein being relative to a bearing of S 01°48'00"W between existing brass cap monuments marking Corner No. 1 of Tract 460, being identical to Corner No. 4 of Tract 67 and Corner No. 4 of Tract 460, said parcel being more particularly described as follows:  
 Beginning at Corner No. 1 of Tract 460 being identical with Corner No. 4 of Tract 67; thence S 85°04'00"W, 23.25 feet; thence along and conforming to the westerly boundary of a 27 foot roadway easement hereby designated as Brooks Lane, described in Book 135 at Page 177 of the Eagle County records, S 00°26'39"E, 196.34 feet; thence departing said roadway boundary N 85°27'00"W, 310.75 feet; thence N 06°54'55"E, 131.57 feet; thence N 25°30'13"E, 72.73 feet to an angle point on the centerline of a 16 foot roadway easement as described in Book 135 at Page 177 of the Eagle County records; thence along said centerline S 85°23'15"E, 151.24 feet to a point on a private parcel as described in Book 386 at Page 566 of the Eagle County records; also coinciding with a private parcel as described in Book 140 at Page 541 of the Eagle County records; thence along said boundaries S 85°32'00"E, 50.00 feet to the point of beginning. Said parcel contains 1.472 acres more or less.

**PARCEL A**  
 A parcel of land located within a private parcel as described in Book 386 at Page 566 of the Eagle County records, located in Tracts 460 and 67, Section 32, Township 4 South, Range 84 West of the Sixth Principal Meridian, Town of Eagle, County of Eagle, State of Colorado, with all bearings contained herein being relative to a bearing of S 01°48'00"W between existing brass cap monuments marking Corner No. 4 of Tract 67 being identical within Corner No. 1 of Tract 460 and Corner No. 4 of Tract 460, said parcel being more particularly described as follows:  
 Beginning at Corner No. 1 of Tract 460, being identical with Corner No. 4 of Tract 67; thence S 85°04'00"W, 23.25 feet to a point on a private parcel as described in Book 259 at Page 525 of the Eagle County records; thence along said private parcel the following two courses:  
 1. S 89°21'00"W, 217.04 feet  
 2. S 82°53'00"W, 84.69 feet  
 thence departing said private parcel N 25°30'13"E, 72.73 feet to an angle point on the centerline of a 16 foot roadway easement as described in Book 135 at Page 177 of the Eagle County records; thence along said centerline N 79°02'00"E, 94.00 feet; thence departing said centerline S 85°23'15"E, 151.24 feet to a point on a private parcel as described in Book 386 at Page 566 of the Eagle County records; also coinciding with a private parcel as described in Book 140 at Page 541 of the Eagle County records; thence along said boundary S 85°32'00"E, 50.00 feet to the point of beginning. Said parcel contains 0.250 of an acre more or less.

**PARCEL B**  
 A parcel of land located within a private parcel as described in Book 386 at Page 566 of the Eagle County records, located in Tracts 460 and 67, Section 32, Township 4 South, Range 84 West of the Sixth Principal Meridian and in Tract 460, Section 32, Township 4 South, Range 84 West of the Sixth Principal Meridian, Town of Eagle, County of Eagle, State of Colorado, with all bearings contained herein being relative to a bearing of S 01°48'00"W between existing brass cap monuments marking Corner No. 1 of Tract 460, being identical to Corner No. 4 of Tract 67 and Corner No. 4 of Tract 460, said parcel being more particularly described as follows:  
 Beginning at an angle point on a private parcel of land described in Book 259 at Page 525 of the Eagle County records from which Corner No. 1 of Tract 460 at Page 525 of the Eagle County records from which Corner No. 1 of Tract 460 being identical within Corner No. 4 of Tract 67 bears N 82°13'45"E, 318.50 feet distant; thence along said private parcel S 10°11'00"E, 135.93 feet; thence departing said private parcel N 85°27'00"W, 40.00 feet; thence N 06°54'55"E, 131.57 feet to the point of beginning. Said parcel contains 0.060 of an acre more or less.

**WATER LINE AND SPRING EASEMENT**  
 An easement 15 feet in width for a waterline and spring, being 7.5 feet on each side of a center line within a private parcel of land as described in Book 386 at Page 566 of the Eagle County records, located in Tract 67, Section 32, Township 4 South, Range 84 West of the Sixth Principal Meridian, Town of Eagle, County of Eagle, State of Colorado, with all bearings contained herein being relative to a bearing of S 01°48'00"W between existing brass cap monuments marking Corner No. 1 of Tract 460, being identical to Corner No. 4 of Tract 67 and Corner No. 4 of Tract 460, said easement being more particularly described as follows:  
 Beginning at a point on the northeasterly boundary of said private parcel from which Corner No. 4 of Tract 67 being identical to Corner No. 1 of Tract 460 bears S 52°32'00"E, 215.00 feet distant; thence departing said boundary S 01°03'46"E, 82.81 feet to a point on the proposed northerly boundary of a private parcel of land owned by MacKown and the point of terminus.

**MSE MacKown Surveying & Engineering**  
 P.O. Box 1554 • 205 E. Chamber Ave., Eagle, CO 81631 • (303) 328-7208

**MACKOWN PARCEL**  
 LOCATED WITHIN  
 Tracts 460 & 67, Sec. 32, T. 4 S., R. 84 W. of 6th P.M. and  
 Tract 460, Sec. 5, T. 5 N., R. 84 W. of 6th P.M.

DRN. JM	DES.	REV.
CHK. LM	REV.	SHEET 1 OF 1
DATE 4 OCT 90	REV.	JOB NO. 90/006

Anne Hele Garberg/Kelly Anderson  
Rocky Mountain School of Discovery  
PO Box 1289  
Gypsum, CO 81637

Tom Bone/Town Planner  
The Town of Eagle  
Box 609  
Eagle, CO 81631

We are applying for a special use permit for 409 Brooks Ln Eagle, CO 81631. We are the owners of Rocky Mountain School of Discovery (RMSD) which has been serving families in Gypsum and Eagle since 2001. On the first of April 2016, RMSD took over Sunshine Mountain Preschool in Eagle when the school was on the verge of closing due to losing the director. The Methodist Church, which was the owner of Sunshine Mountain Preschool also need the space occupied by the preschool from September 2016.

In the process of finding a new location for the school we found 409 Brooks Lane ideal for the school and its philosophy.

#### The Need for Preschools in Eagle County.

There is a desperate need for preschools in Eagle County. Families have to look as far away as Avon and Vail for preschool care for their children. Many say that driving to Gypsum is simply too far in the wrong direction and do not want to add another hour on to their day just to drop off and pick up their children. Having a central location in Eagle will help those families and keep revenue in Eagle.

#### Location

409 Brooks Lane is located in the town of Eagle which is important for parents to save time at drop off and pick up of their children. With it being on the north side of highway 6, impact is minimal while providing great benefit because it will not disrupt the flow of traffic with safety zones or overcrowded parking. When development continues further east alongside highway 6 as indicated in the town planning, those families will benefit as well.

#### School on a Farm.

RMSD has a philosophy that differs from existing schools in the valley. At RMSD we want to provide children with experiences that will connect them to the natural world. The earth has a finite amount of resources that human life depends on and we are facing serious environmental challenges. The education of our children has to be a part of the long term solutions to these problems. We believe that instilling values and giving our children hands-on learning experiences in a natural setting is crucial to develop their understanding of, a concern for, and a sense of stewardship of the natural environment.

#### The Historical Perspective

The original Farm house on 409 Brooks Lane is built in 1912. We want to restore this building to its original architecture and we see that as an important part in giving future generations a historical perspective and a chance to be connected to their heritage. Already there are houses recognized by the Historical Society; we want to preserve this as well before it falls into disrepair and is lost to future generations.

### Open Farm

We want to offer families in the valley a place where they can visit and get a taste of what farm life is in a historical setting. Many people have never had the pleasure of interacting with animals beyond the family dog or cat, nor have they seen where our food comes from first hand.

### Space Requirement for New Building

The minimum space requirement for children aged 2.5-5yrs is 25sq ft per child. We are planning two classrooms at a maximum capacity of twenty children per classroom. We are going to increase the size to 30sq ft per child to make 600sq ft total in each room. Kitchen, bathrooms, and utility rooms will occupy an additional 200sq ft. The building will be 52ftx27ft, or 1404sq ft total.

### Access to Property

To access the property, we will need to cross the railroad tracks between the property and Highway 6. We are aware of the concerns of the railroad company and the increased traffic and the need for a special permit addressing the increased use. An alternative to this is to have a drop-off point on the north side of the river at the fairgrounds and use the pedestrian bridge and path that runs alongside the property on the west and south sides.

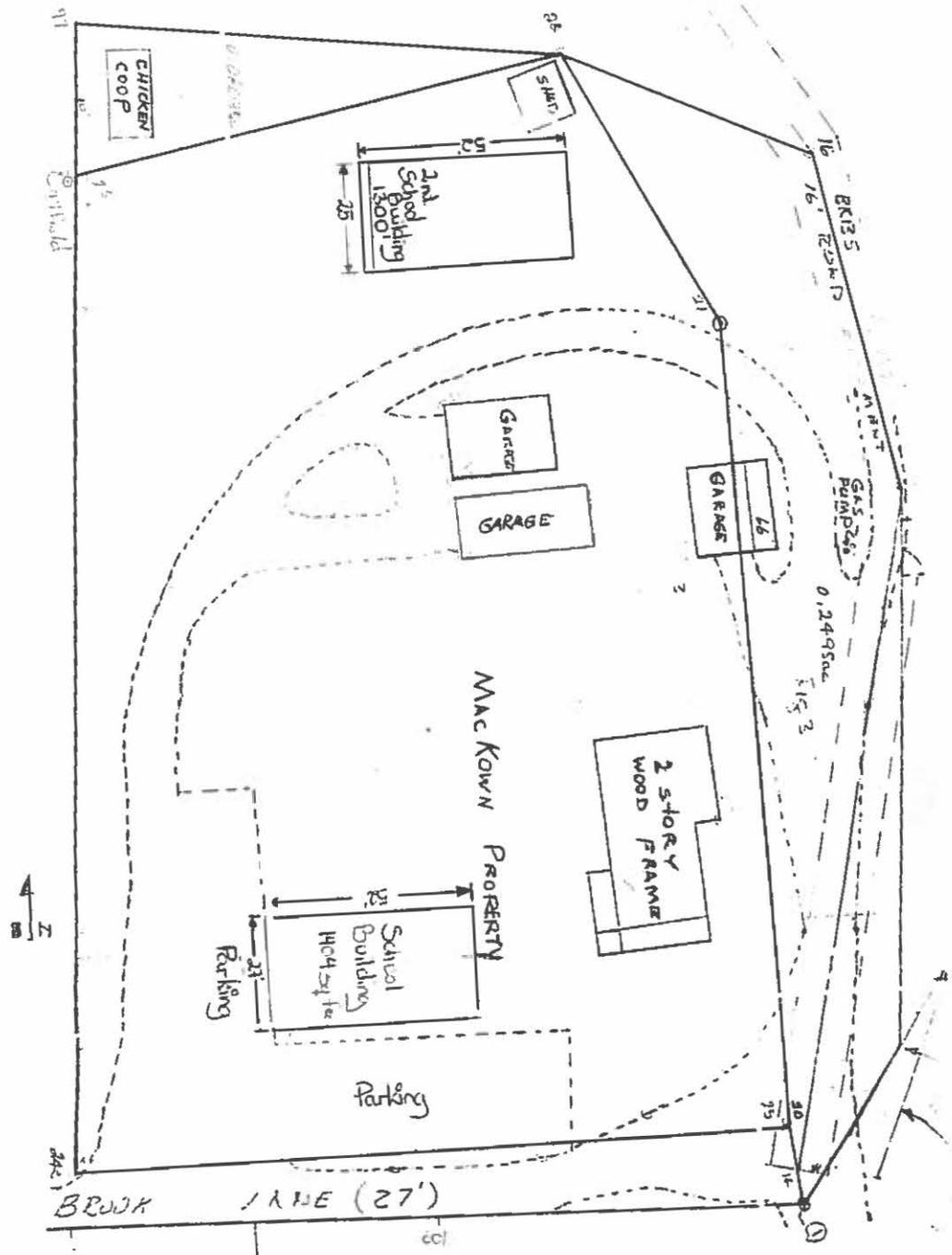
### Phase II

An additional building is planned for the premises to increase the capacity to add an additional 40 children.

We truly believe that our proposed special use of 409 Brooks Lane will be an attraction to the town of Eagle and the surrounding area.

Sincerely,

Aimee Helene Gasberg  
Kay Kroger







Source: Esri, DigitalGlobe, GeoEye, Earthstar (United States), CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Decision No. R06-0285

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 05A-325R

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IN THE MATTER OF THE APPLICATION OF THE TOWN OF EAGLE, P.O. BOX 609,  
EAGLE, COLORADO 81631, FOR AUTHORITY TO ESTABLISH A PUBLIC CROSSING  
STATUS AT THE CROSSING OF BROOKS LANE AT RAILROAD MILEPOST 329.3, IN  
THE TOWN OF EAGLE, COUNTY OF EAGLE, STATE OF COLORADO.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
ACCEPTING STIPULATION IN PART;  
GRANTING APPLICATION WITH CONDITIONS;  
AND NOTING WAIVER OF § 40-6-109.5, C.R.S.**

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Mailed Date: March 28, 2006

Appearances:

Edward P. Sands, Esq., Rifle, Colorado, on behalf of Applicant  
Town of Eagle, Colorado;

Kathleen M. Snead, Esq., Denver, Colorado, on behalf of  
Intervenor Union Pacific Railroad Company; and

Michael R. Dunlevie, Esq., Edwards, Colorado, on behalf of  
Intervenor Each Valley Conservation Trust.

**TABLE OF CONTENTS**

I. <u>STATEMENT</u> .....	2
II. <u>FINDINGS OF FACT</u> .....	3
III. <u>DISCUSSION AND CONCLUSIONS</u> .....	11
A. Application .....	11
B. Stipulation .....	15
IV. <u>ORDER</u> .....	17
A. The Commission Orders That: .....	17

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I. **STATEMENT**

1. On July 29, 2005, the Town of Eagle (Town or Applicant) filed an application for authority to establish a public crossing status at the crossing of Brooks Lane at Railroad Milepost 329.3, in the Town of Eagle (Application). That filing commenced this docket.

2. The Commission gave public notice of the Application. Notice of Application Filed, dated August 2, 2005. Union Pacific Railroad Company (UPRR) and Eagle Valley Conservation Trust (EVCT) intervened. The Town, UPRR, and EVCT (collectively, Parties) are the only parties in this proceeding.

3. By Decision No. C05-1123, the Commission scheduled this matter for hearing before an Administrative Law Judge (ALJ) and deemed the Application complete as of September 16, 2005. By Decision No. R05-1305-I, the ALJ vacated the hearing date.

4. On October 7, 2005, the ALJ held a prehearing conference. Following that prehearing conference, the parties submitted a proposed procedural schedule, including new hearing dates. The ALJ adopted the proposed procedural schedule, with changes and clarifications, and scheduled the hearing in this matter for February 23 and 24, 2006 in Eagle, Colorado. Decision No. R05-1305-I.

5. On November 15, 2005, Applicant filed a statement waiving the provisions of § 40-6-109.5, C.R.S., in this proceeding.

6. On February 16, 2006, the Parties filed a Stipulation. If accepted, the Stipulation would not settle all issues in this proceeding.

7. A hearing in this matter was held as scheduled on February 23, 2006. The ALJ heard the testimony of three witnesses on behalf of Applicant<sup>1</sup> and the testimony of one witness on behalf of Intervenor UPRR.<sup>2</sup> Intervenor EVCT did not present testimony. Hearing Exhibits A through E, G, H, M, No. 1 through No. 6, and No. 8 were identified, offered, and admitted into evidence. At the conclusion of the hearing, the ALJ took the case under advisement.

8. In accordance with § 40-6-109, C.R.S., the undersigned ALJ now transmits to the Commission the record and exhibits in this case along with a written recommended decision.

## II. FINDINGS OF FACT

9. The Town is a municipality located in Eagle County within the State of Colorado.

10. Intervenor UPRR is the railroad which owns the track at the Brooks Lane crossing at issue in this proceeding.

11. Intervenor EVCT, either in its own right or on behalf of a third party (*i.e.*, Mr. John Hardesty), holds property to the north of the Brooks Lane crossing at issue in this proceeding.<sup>3</sup>

12. The crossing at issue in this proceeding is located in the Town and is the location at which Brooks Lane crosses two UPRR tracks, one of which is the Tennessee Pass Line and one of which is a siding.

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<sup>1</sup> The witnesses were: Mr. William P. Powell, Town Manager for the Town of Eagle; Mr. Tom Gosiorowski, P.E., Town Engineer for the Town of Eagle; and Mr. Bob Silva, a police officer for the Town of Eagle.

<sup>2</sup> The witness was Ms. Susan Grabler, Manager of Industry and Public Projects for UPRR.

<sup>3</sup> In its Notice of Intervention, EVCT represented that it is "the holder of the private crossing license" for the crossing at issue in this proceeding. The Private Way License (Hearing Exhibit No. 8 at 1) states that the licensee is "Dixon, Inc., A Colorado Corporation and John R. Hardesty, an individual[.]" There is no record evidence which establishes *either* that EVCT and Dixon, Inc., are one and the same *or* that EVCT and Mr. Hardesty are one and the same.

13. The crossing is located approximately 80 feet north of the intersection of U.S. Highway 6 and Brooks Lane. Based on the Town's standard, this distance is sufficient for four vehicles to stop between U.S. Highway 6 and the railroad tracks.

14. Brooks Lane is located on the north side of the highway and intersects with the highway at approximately a 90-degree angle. On the south side of the highway and roughly opposite Brooks Lane is Fifth Street, which intersects with Highway 6 at an acute angle.

15. The specifics of the Brooks Lane crossing are: U.S. Highway 6, a two-way and two-lane paved roadway, runs roughly northeast-southwest at this location; and the UPRR tracks parallel U.S. Highway 6. Brooks Lane is a two-way and two-lane asphalt-paved roadway which is maintained by the Town. The asphalt goes to the north side and to the south side of the tracks, and there are wooden ties between the rails. Brooks Lane crosses the tracks at-grade and at approximately a 90-degree angle. The crossing is 16 feet in width<sup>4</sup> and, although it has existed for at least 30 years, has been a private crossing since 1994. The only signage at the crossing at present is a stop sign located on the north side of the crossing (i.e., faces south-bound traffic). The sight distances from the crossing to the first point of curvature along the track are at least 1400 linear feet to the northeast and at least 900 linear feet to the southwest. There are neither street lights nor other lighting at the crossing. There are trees and grasses near the crossing.

16. The main line is out-of-service to revenue trains.<sup>5</sup> Thus, there is no regular or scheduled revenue train traffic on the line.<sup>6</sup> It is possible, however, that UPRR may reopen this line in the relatively near future as UPRR is negotiating with at least two companies to operate

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<sup>4</sup> In the opinion of the Town, this is sufficient for two automobiles to pass one another.

<sup>5</sup> Revenue trains are those for which UPRR is compensated to move railroad cars from point A to point B.

<sup>6</sup> There is no evidence as to the year in which UPRR placed this line out-of-service to revenue trains.

revenue trains on the Tennessee Pass Line from Minturn, through the Town, to Dotsero. If the main line were to be reopened to revenue trains, UPRR would look at all crossings on the line with an eye toward safety-related upgrades which might be needed.

17. The side track is disconnected and cannot be used.<sup>7</sup> If the main line were to be reopened to revenue trains, the side track would be reconnected, upgraded, and used.

18. On an irregular schedule, UPRR operates work trains and hi-rail vehicles to perform maintenance and to check for rocks on the tracks. These trains and vehicles use the main line. The speed at which, and the time of day at which, these trains and vehicles cross the Brooks Lane crossing are unknowns.

19. At present there are 16 residences located to the north of the Brooks Lane crossing. This crossing is the only point of access for the occupants of these residences, and they have used the crossing for an unknown period of time. The majority of the occupants who use the crossing are not the licensee named in the Private Way License.

20. In a traffic study conducted by the Town over the seven-day period October 14 through 20, 2005,<sup>8</sup> the average vehicular traffic count at the Brooks Lane crossing was 157 trips (*i.e.*, one vehicle crossing in one direction). Hearing Exhibit E. The average speed of a vehicle at the crossing is approximately ten miles per hour.

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<sup>7</sup> There is no evidence as to the year in which UPRR disconnected the side track.

<sup>8</sup> Hearing Exhibit H is a traffic analysis presented in mid- to late-2003 to the Town by Knight Planning Services, Inc., which was acting on behalf of Mr. Hardesty. Given the age of the analysis and lack of information concerning both who prepared it and the factual bases for the assumptions used, the ALJ does not rely on the Knight Planning Services traffic analysis because the ALJ finds the Town traffic study to be more recent and, on balance, more reliable. As a result, the ALJ relies on the Town's traffic study (Hearing Exhibit E) to the exclusion of the Knight Planning Services traffic analysis (Hearing Exhibit H).

21. There is also pedestrian and bicycle traffic which uses the Brooks Lane crossing.<sup>9</sup> The Eagle County-fairgrounds, some recreation areas (e.g., a Town park, baseball fields), and a pedestrian path are north of the crossing and can be accessed by using the crossing. In addition, there is a school bus stop near, and to the south of, the crossing.<sup>10</sup> A student who resides north of the crossing must use the crossing to go between her residence and that school bus stop. The record is silent as to the number of students, if any, who must use the crossing on the way to and from the bus stop.

22. The pedestrian traffic averages 10 to 20 persons per day. There are days during the year, however, when that number increases substantially. The Town holds a July 4th celebration and fireworks, and as many as 150 to 200 persons<sup>11</sup> may use the Brooks Lane crossing. When the Eagle County fair is held, there are Professional Rodeo Cowboy Association-sanctioned rodeos on four nights and a bull riding competition on one night. As many as 150 to 200 persons<sup>12</sup> may use the Brooks Lane crossing on each of these five nights. For those leaving after the end of the July 4th fireworks, after the end of each rodeo, and after the end of the bull riding competition, it is night when they cross the Brooks Lane crossing.

23. The existing pedestrian path is a part of the ECO<sup>13</sup> Trail system in Eagle County, but it is a spur trail and not a core (or principal) trail. Although there are plans to extend the core

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<sup>9</sup> This Recommended Decision refers to pedestrian and bicycle traffic collectively as pedestrian traffic for ease of reference and to differentiate this traffic from vehicular traffic.

<sup>10</sup> The bus stop is between the railroad tracks and U.S. Highway 6.

<sup>11</sup> This number may cross going to, and this number may cross leaving, the celebration and fireworks. It is unclear how many of these persons are in cars and how many are pedestrians. For purposes of this decision, however, the ALJ assumes that at least one-half are pedestrians.

<sup>12</sup> This number may cross going to, and this number may cross leaving, each rodeo and the bull riding competition. It is unclear how many of these persons are in cars and how many are pedestrians. For purposes of this decision, however, the ALJ assumes that at least one-half are pedestrians.

<sup>13</sup> ECO refers to the Eagle County Regional Transportation Authority.

ECO Trail through the Town in the near future, the preferred route for that extension will not use the pedestrian path near the Brooks Lane crossing. As a result, it is unlikely that this planned extension will increase the number of pedestrians using the Brooks Lane crossing.<sup>14</sup>

24. From the Town's perspective, the Fifth Street intersection with U.S. Highway 6 presents safety issues due to, in part, the limited sight distance which results from the angle of the intersection with the highway. To address these issues, the Town plans in the future to realign Fifth Street so that the intersection is perpendicular to U.S. Highway 6. When that realignment occurs, the Town has tentative plans to move the north side of the intersection (that is, what is now Brooks Lane) to the east.<sup>15</sup> Moving the north side of the intersection will move the railroad crossing to the east as well.<sup>16</sup> See generally Hearing Exhibit D (location of the future crossing as shown is approximate). If and when this occurs, the Town will apply to the Commission for authority to open a new crossing and for permission to close the Brooks Lane crossing at issue here.

25. To a large extent, the timing of the street realignment and whether the crossing is relocated depend on the plans for development of the 22.8-acre parcel owned by Mr. Hardesty (or held by EVCT on his behalf). The present zoning would allow up to 11 single-family units on this parcel, and the Town has held informal discussions with Mr. Hardesty/EVCT about

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<sup>14</sup> Hearing Exhibit No. 4 is a summary of the results of an on-the-ground survey conducted by ECO personnel and shows the number of persons using a pedestrian trail at an unidentified pedestrian bridge in the Town. The evidence is undisputed that the referenced trail/bridge is located at Eby Creek Road and not near Brooks Lane. Thus, because the data are not relevant in this proceeding, the ALJ did not rely on this exhibit. The ALJ notes that, had she relied on the exhibit (which she did not), the survey results are not inconsistent with the evidence that, on average, 10 to 20 people use the pedestrian path near Brooks Lane on a daily basis.

<sup>15</sup> This will result in two T-intersections: one on the south side of U.S. Highway 6 at Fifth Street and one on the north of U.S. Highway 6 at a now-unknown location to the east of Fifth Street. Hearing Exhibit D.

<sup>16</sup> Given the present uncertainty surrounding the realignment of Fifth Street and the relocation of the railroad crossing, Applicant has not budgeted for the capital construction; has not secured right-of-way for the new crossing; and has no firm plans with respect to this overall project.

changing the zoning to allow substantially greater residential density (e.g., 50 to 90 units). During the Town's review of an application for a permit to develop the parcel, the Town plans to examine the impact of the proposed development on traffic safety and traffic flow in order to determine, *inter alia*, the need for, and the timing of, a street and crossing relocation.

26. Although there is no pending application for a permit to develop this parcel, the Town believes it is likely that this 22.8-acre parcel will be developed within the next five years. The Town estimates that, depending on factors such as the nature and scope of the permit application filed and the zoning variance sought, it could process an application for permit to develop the parcel within two to nine months from the Application's filing.

27. The Town has received no reports of train-vehicle incidents, and no reports of train-pedestrian incidents, related to the Brooks Lane crossing. In addition, notwithstanding the proximity of the school bus stop to the crossing, the Town has received no complaints, either from the school district or from the parents of students, concerning the crossing's safety. Further, the Town has received no complaints regarding the ability of the public, including members of the public who are physically challenged, to use the Brooks Lane crossing. Finally, this absence of reports and complaints goes back at least 21 years.

28. The Brooks Lane crossing does not meet UPRR's specifications for crossings because, at a 16-foot width, it is too narrow; UPRR requires a crossing width of 22 to 24 feet. In addition, the crossing lacks UPRR's preferred signage: crossbucks and a stop sign on each side of the crossing. If the crossing becomes a public crossing, UPRR would like to see a minimum crossing width of 24 feet (two 11-foot lanes and two 1-foot shoulders), two crossbucks, two stop signs, and a concrete surface between the rails and in the crossing.

29. To upgrade the crossing to meet UPRR's specifications for crossings is estimated to cost at least \$100,000 (2006\$). The Town has not budgeted for this capital improvement outlay in its Fiscal Year 2006 budget.

30. The Town has agreed to improve the Brooks Lane crossing to prevailing public crossing standards when the Town issues a permit for two or more additional residential units or for any commercial activity in the area north of that crossing. The Town plans immediately to begin to assess the best location for the crossing, and the necessary improvements, when it receives an application for a permit for two or more additional residential units or for any commercial activity in the area north of that crossing. The Town will file an application with the Commission to obtain the authorizations necessary to relocate and/or to upgrade the Brooks Lane crossing. It appears that the Town plans to have necessary authorization from the Commission in sufficient time to prevent a significant increase in use of an unimproved crossing.

31. The Town agrees that crossbucks ought to be installed at the Brooks Lane crossing. The Town has agreed to pay for the installation of these signs. In addition, the Town agreed that the signage at the crossing should comport with the Manual on Uniform Traffic Control Devices for Streets and Highways (Manual)<sup>17</sup> and with Commission requirements.

32. If the Application is granted and the Commission does not require upgrades to the Brooks Lane crossing in this proceeding, the Town has agreed to implement a Safety Monitor Program (SMP) at the Brooks Lane crossing. Although the SMP is largely conceptual at present, the basics are: (a) for so long as the line remains out-of-service to revenue trains, the Town will

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<sup>17</sup> The Manual is published by the Federal Highway Administration and, as pertinent here, contains standards and recommendations for signage at railroad/road crossings.

provide -- on an as-needed basis, for high-volume events<sup>18</sup> only, and in its sole discretion -- a Safety Monitor at the crossing; (b) if the line is reopened to revenue trains, the Town will provide -- during high volume events only and non-discretionary with the Town -- a Safety Monitor at the crossing; and (c) the Safety Monitor will be a person sanctioned by the Town, will be stationed at the crossing at least before and after each high-volume event, and will perform several duties (e.g., watch for trains, group people and vehicles, and allow people and vehicles to cross the crossing as appropriate).

33. There is no evidence in this record to support the construction of a grade-separated crossing at Brooks Lane.<sup>19</sup> Likewise, there is no evidence to support the construction of an elevated pedestrian overpass at the crossing.

34. The Parties filed a Stipulation in this matter. Hearing Exhibit No. 6. The Parties stipulated that the Brooks Lane crossing should be a public crossing. *Id.* at ¶ 1. The Stipulation also provides that

[a]ny expense of any improvements which might be ordered now or in the future shall not in any way be a cost of Union Pacific and shall be borne by other parties.

*Id.* at ¶ 3. The Town and UPRR<sup>20</sup> agree that this provision covers capital improvement costs but does not cover maintenance expenses;<sup>21</sup> applies to improvements made at the present Brooks Lane location and, in the event the crossing is relocated, to those made at another location; and

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<sup>18</sup> These are at least the rodeos, the bull riding competition, and the July 4th celebration/fireworks. There may be other high-volume events.

<sup>19</sup> The ALJ notes that, even if the evidence did support the need for construction of a grade-separated crossing (which it does not), there is insufficient distance between U.S. Highway 6 and the crossing within which to build the grade-separated crossing.

<sup>20</sup> Intervenor EVCT, which signed the Stipulation, did not offer a witness. Thus, its understanding of the import of this paragraph is unknown.

<sup>21</sup> The Town and UPRR agree that each would pay its maintenance expenses as ordered by the Commission. Generally speaking and typically, UPRR would maintain, at its expense, the track, appurtenances, and warning devices; and the Town would maintain the public traffic surface and the public approaches to the crossing.

would apply in this proceeding and, if accepted by the Commission, would govern the anticipated future crossing application discussed above. In the opinion of Town witness Powell, this provision makes the Town, and not others, the party responsible to pay for capital construction costs; and the Town, in turn, is free to negotiate with third parties (other than UPRR) for contributions to defray those costs. In the opinion of UPRR witness Grabler,<sup>22</sup> this provision would supersede § 40-4-106(2)(b), C.R.S., to the extent that provision might be applicable, both in this proceeding and in the subsequent crossing proceeding discussed above.

### III. DISCUSSION AND CONCLUSIONS

35. The Commission has subject matter jurisdiction and has personal jurisdiction over the Applicant.

#### A. Application

36. Section 40-4-106, C.R.S., provides the jurisdictional basis for the Commission to act in applications for approval of railroad crossings and the protective devices to be installed. In this case, Applicant bears the burden of proof to establish by a preponderance of the evidence that the Brooks Lane crossing should be a public crossing and that the requested improvements to the railroad crossing are "reasonable and necessary to the end, intent, and purpose that accidents may be prevented and the safety of the public promoted." *Id.* Applicant has met its burden of proof in this matter.

37. The evidence of record establishes, and it is found, that the Brooks Lane crossing should be a public crossing. The Parties agree that the crossing should be a public crossing. The record shows that this crossing already is, in all but name, a public crossing; and it will be ordered to be a public crossing.

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<sup>22</sup> Ms. Grabler is not an attorney.

38. The evidence of record establishes, and it is found, that the proposal to install crossbucks on either side of the Brooks Lane crossing should be approved. There is no dispute that this signage is reasonable and necessary to prevent accidents and to promote the public safety. The record supports the need for the crossbucks, and they will be ordered.

39. The Parties were unable to reach agreement on the question of what safeguards, in addition to the crossbucks, are necessary. This was the issue left for determination as a result of the hearing.

40. Applicant's position is that, at present, no improvements to the Brooks Lane crossing (beyond the addition of the crossbucks) are necessary and that implementation of the Safety Monitor Program will suffice to protect the public. In support of this position, the Town cites the unblemished safety record of the crossing; the absence of any complaints regarding the safety of the crossing; the relatively low volume of vehicular and of pedestrian traffic; the fact that the line is out-of-service to revenue trains; the sight distances at the crossing; the fact that the grade at the crossing is reasonably smooth and level; the absence of any vertical obstruction which could make it difficult to stop and to start; the cost of the necessary upgrades; and the fact that the crossing may be moved in the not-too-distant future. The Town argues that, given these circumstances, the Safety Monitor Program will provide the necessary safeguards without the expense attendant to constructing crossing upgrades. The Town acknowledges that upgrades will be needed in the future. In the Town's opinion, however, adoption of the approach it proposes will protect the crossing's users over the near-term (defined as two to five years).

41. Notwithstanding its preference with respect to upgrades to the Brooks Lane crossing (discussed above), the minimum level of safeguards which UPRR believes necessary,

and is willing to support in this proceeding, is: crossbucks, a stop sign on the north side of the crossing, and a stop sign on the south side of the crossing.

42. EVCT advocates immediate upgrade of the crossing to Commission and UPRR standards and immediate installation of all necessary safeguards.<sup>23</sup> From EVCT's perspective, this is an issue of protecting the users of the public crossing (that is, the general public). Thus, EVCT argues that, notwithstanding the cost and the possibility that the crossing may be moved in the future, the improvements must be made at the time the crossing is made public (that is, ordered in this proceeding). According to EVCT, this is the only approach which will guarantee the safety of the crossing and, thus, fulfill the Commission's mandate.

43. The Commission's function in this proceeding is to determine the best method of control at the Brooks Lane crossing in order to prevent accidents and to promote public safety. In performing this function, the statute instructs the Commission that the improvements it orders must be "*reasonable and necessary to*" those ends. Section 40-4-106(2)(a), C.R.S. (emphasis supplied). The statute requires the Commission to determine which specific safeguards are necessary to prevent accidents and to promote the public safety at the particular crossing under review; this, in turn, requires the Commission to consider and to balance site-specific factors and data. The Commission's decision is of necessity predictive because it deals with prevention of accidents and promotion of public safety when the crossing is used in the future. Needless to say, no one predicts the future with absolute certainty and accuracy. Rather, one makes the best judgment one can based on the data available. This is the Commission's charge and responsibility in a case such as the one presented in this proceeding.

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<sup>23</sup> The precise nature of those safeguards -- especially the way(s) in which they may differ from, or are more stringent than, Commission and UPRR requirements -- is unclear.

44. In this case, the evidence is convincing that accidents are likely to be prevented and the public safety will be promoted if the Application is granted subject to these conditions: (a) installation of crossbucks, stop signs, and signage necessary to meet the Manual's standard for two-track crossings; (b) implementation of the Safety Monitor Program as described above with the following addition: the safety monitor (i) must be a person authorized to direct traffic at the Brooks Lane crossing, (ii) must be on duty at the crossing for not less than one hour before the beginning of the high-volume event, and (iii) must be on duty at the crossing for not less than one hour after the conclusion of the high-volume event;<sup>24</sup> (c) vegetation management (*e.g.*, tree trimming, grass/weed cutting) as necessary to ensure that the sight distances at the crossing are unimpeded; (d) requirement that the Town file an application, either for authority to construct improvements at the Brooks Lane crossing or for authority to construct a new crossing, in sufficient time to prevent a significant increase in the use of the existing, unimproved crossing; and (e) requirement that the Town file reports with the Commission Staff. The Town will be ordered to file a report with the Commission Staff: (a) if and when the Town receives information that the Tennessee Pass Line through the Town will be reopened to revenue trains; (b) if and when the Town issues a permit for two or more additional residential units or for any commercial activity in the area north of the Brooks Lane crossing; and (c) if and when the Town learns that Brooks Lane will be used as part of the core ECO Trail through the Town. The reporting obligation will be ordered to cease if and when the Commission grants either an application to upgrade the Brooks Lane crossing or an application to close the Brooks Lane crossing. Finally, so that the Commission's records in this matter are complete, Applicant will be

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<sup>24</sup> The safety monitor need not, but may, be stationed at the crossing during the high-volume event itself.

ordered to file its written agreement with UPRR, when signed, containing the specifics of the signage and of the responsibility of the Town and of UPRR for signage and for maintenance.

45. The immediate upgrade of the Brooks Lane crossing will not be ordered. EVCT's concerns can and will be addressed when the Commission considers the Town's application, either for authority to construct improvements at the Brooks Lane crossing or for authority to construct a new crossing. If it wishes to do so, EVCT can participate in this process. In addition, although the present circumstances, on balance, do not require upgrades, the Town and UPRR each has a vested interest in responding to a change in circumstances (for example, a greater-than-anticipated increase in vehicular or pedestrian traffic) which may necessitate construction of upgrades at the crossing. Finally, UPRR has testified that, should revenue trains resume, it will review the main line to determine the necessary safety-related upgrades. Certainly, as a practical matter, this information will be communicated to the Town which then can take appropriate action. At present, the evidence does not support a finding that there is a need for safety-related upgrades at this location.

46. The safeguards proposed by Applicant, as augmented by the conditions set out above, are reasonable; are necessary to prevent accidents and to promote public safety; are appropriate; and are in the public interest. The record supports the need for these conditions, and they will be ordered.

**B. Stipulation.**

47. As discussed above, the Stipulation provides that

*[a]ny expense of any improvements which might be ordered now or in the future shall not in any way be a cost of Union Pacific and shall be borne by other parties.*

Hearing Exhibit No. 6 at ¶ 3 (emphasis supplied). On its face, that language is overly-broad to the extent that it: (a) includes more than capital construction costs; (b) binds parties in future proceedings even though those parties are not before the Commission in this docket; and (c) is an impermissible attempt to supersede the requirements of § 40-4-106(2)(b), C.R.S.<sup>25</sup> In addition, based on the testimony given by the Town and UPRR, the language of ¶ 3 does not reflect those parties' understanding of the agreement. See discussion at ¶ 34, *supra*. It appears that the Town and UPRR did not share a common, clear understanding of the scope and import of the agreement. Because these two signatories did not have the same understanding of what they were agreeing to or signing, the Commission cannot accept that portion of the Stipulation as to which there was no agreement. Consequently, the Stipulation will be amended by deleting ¶ 3; with that amendment, the Stipulation will be accepted.

48. To preserve the essence of the agreement, as testified to at the hearing and as appropriate to this proceeding, the ALJ will order Applicant to pay for the required signage and for maintenance of the roadway surface and the public approaches to the crossing and will order UPRR to maintain, at its expense, the track, appurtenances, and warning devices. This allocation of responsibility is consistent with Commission policy in railroad matters.

49. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

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<sup>25</sup> This statutory provision, as relevant here, requires the Commission, *after hearing*, to allocate costs associated with, *inter alia*, installation of specified types of crossing safety devices. The statute establishes factors which the Commission must consider. The Commission cannot accept, in this proceeding, a Stipulation which limits or eliminates its ability to make, in a future proceeding, the required fact-dependent allocation determination.

**IV. ORDER****A. The Commission Orders That:**

1. The Application of the Town of Eagle (Town) is granted, subject to the following conditions: (a) installation of crossbucks, stop signs, and signage necessary to meet specifications for two-track crossings, as those specifications are contained in the Manual on Uniform Traffic Control Devices for Streets and Highways; (b) implementation of the Safety Monitor Program as described in this Order; (c) vegetation management as described in this Order; (d) requirement that the Town file an application, either for authority to construct improvements at the Brooks Lane crossing or for authority to construct a new crossing, in sufficient time to prevent a significant increase in the use of the existing, unimproved Brooks Lane crossing; and (e) requirement that the Town file reports with the Commission Staff as set out in Ordering Paragraph No. 2. The reporting obligation shall cease if and when the Commission grants either an application to upgrade the existing Brooks Lane crossing or an application to close the Brooks Lane crossing.

2. The Town will file a report with the Commission Staff if and when each of the following occurs: (a) the Town receives information that the Tennessee Pass Line through the Town will be reopened to revenue trains; (b) the Town issues a permit for two or more additional residential units or for any commercial activity in the area north of the Brooks Lane crossing; and (c) the Town learns that Brooks Lane will be used as part of the core Eagle County Regional Transportation Authority Trail through the Town.

3. The crossing of Brooks Lane at Railroad Milepost 329.3, in the Town is declared and determined to be a public crossing.

4. The Town shall be responsible for the cost of the signage required for the Brooks Lane crossing.

5. The Town shall maintain, at its expense, the signage and the roadway approaches to the Brooks Lane crossing.

6. The Union Pacific Railroad Company will maintain, at its expense, the track and appurtenances.

7. The Town shall file the written agreement, when signed, containing the specifics of the signage and of the responsibility for paying for the signage and for maintenance.

8. The Stipulation filed in this proceeding (Hearing Exhibit No. 6) is amended by the deletion of ¶ 3, consistent with the discussion above.

9. As amended, the Stipulation (Hearing Exhibit No. 6) is accepted.

10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

 a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If

no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

12. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

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Administrative Law Judge



Public Utilities Commission



## E-Filings

### Decision Detail

#### Details of Decision R06-0285

Number: R06-0285

Title: Recommended Decision Accepting Stipulation in PartAttachment: Errata Notice

Mailed Date: 03/28/2006 12:00am

Decision Type: Recommended

Author: Jennings-Fader, Mana L.

Proceeding(s):	Proceeding Number	Proceeding Title	Industry
	<u>05A-325R</u>	Eagle - UPRR - Brooks Lane - pvt to pub	Railroad

Description: 1. The Application of the Town of Eagle (Town) is granted, subject to the following conditions: (a) installation of crossbucks, stop signs, and signage necessary to meet specifications for two-track crossings, as those specifications are contained in the Manual on Uniform Traffic Control Devices for Streets and Highways; (b) implementation of the Safety Monitor Program as described in this Order; (c) vegetation management as described in this Order; (d) requirement that the Town file an application, either for authority to construct improvements at the Brooks Lane crossing or for authority to construct a new crossing, in sufficient time to prevent a significant increase in the use of the existing, unimproved Brooks Lane crossing; and (e) requirement that the Town file reports with the Commission Staff as set out in Ordering Paragraph No. 2. The reporting obligation shall cease if and when the Commission grants either an application to upgrade the existing Brooks Lane crossing or an application to close the Brooks Lane crossing. 2. The Town will file a report with the Commission Staff if and when each of the following occurs: (a) the Town receives information that the Tennessee Pass Line through the Town will be reopened to revenue trains; (b) the Town issues a permit for two or more additional residential units or for any commercial activity in the area north of the Brooks Lane crossing; and (c) the Town learns that Brooks Lane will be used as part of the core Eagle County Regional Transportation Authority Trail through the Town. 3. The crossing of Brooks Lane at Railroad Milepost 329.3, in the Town is declared and determined to be a public crossing. 4. The Town shall be responsible for the cost of the signage required for the Brooks Lane crossing. 5. The Town shall maintain, at its expense, the signage and the roadway approaches to the Brooks Lane crossing. 6. The Union Pacific Railroad Company will maintain, at its expense, the track and appurtenances. 7. The Town shall file the written agreement, when signed, containing the specifics of the signage and of the responsibility for paying for the signage and for maintenance. 8. The Stipulation filed in this proceeding (Hearing Exhibit No. 6) is amended by the deletion of ¶ 3, consistent with the discussion above. 9. As amended, the Stipulation (Hearing Exhibit No. 6) is accepted. 10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above. 11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it. a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S. b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed. 12. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

### Result(s) of Decision R06-0285

Result Date: March 28, 2006

Result Type: **Granted**

**Details:** 1. The Application of the Town of Eagle (Town) is granted, subject to the following conditions: (a) installation of crossbucks, stop signs, and signage necessary to meet specifications for two-track crossings, as those specifications are contained in the Manual on Uniform Traffic Control Devices for Streets and Highways; (b) implementation of the Safety Monitor Program as described in this Order; (c) vegetation management as described in this Order; (d) requirement that the Town file an application, either for authority to construct improvements at the Brooks Lane crossing or for authority to construct a new crossing, in sufficient time to prevent a significant increase in the use of the existing, unimproved Brooks Lane crossing; and (e) requirement that the Town file reports with the Commission Staff as set out in Ordering Paragraph No. 2. The reporting obligation shall cease if and when the Commission grants either an application to upgrade the existing Brooks Lane crossing or an application to close the Brooks Lane crossing.

Result Date: March 28, 2006

Result Type: **Information Requested**

**Details:** 2. The Town will file a report with the Commission Staff if and when each of the following occurs: (a) the Town receives information that the Tennessee Pass Line through the Town will be reopened to revenue trains; (b) the Town issues a permit for two or more additional residential units or for any commercial activity in the area north of the Brooks Lane crossing; and (c) the Town learns that Brooks Lane will be used as part of the core Eagle County Regional Transportation Authority Trail through the Town.

Result Date: March 28, 2006

Result Type: **Information Requested**

**Details:** 7. The Town shall file the written agreement, when signed, containing the specifics of the signage and of the responsibility for paying for the signage and for maintenance.

Close



May 31, 2016

Colorado Department of Regulatory Agencies  
Public Utilities Commission  
Rail Division  
Attn.: Pam Fischhaber  
1560 Broadway #250  
Denver, CO 80202

Re: SU16-01 Rocky Mountain School of Discovery

Please find attached an application for a pre-school on property located at 409 Brooks Lane. There is a Brooks Lane Public Railroad Crossing of the Union Pacific Railroad governed by Decision No. R06-0285 which requires the Town of Eagle to notify the Commission if and when the Town issues a permit for two or more residential units or for any commercial activity in the area north of the Brooks Lane crossing. The application for a pre-school is being presented by a nonprofit organization requesting permission for a school of up to 40 children. First phase request is for 20 children. They intend to remove an existing mobile home from the property and live in the existing stick built house. In discussion with the applicant concerning the limitations of the existing railroad crossing they have indicated a willingness to a smaller number of children if required or have suggested that the drop off for children could occur on the north side of the property at the Eagle County Fairgrounds Parking Lot which would not require crossing of the rail road. There is a public path from that location approximately 800 feet to the site.

The Order of the Commission requires that the Town file an application to construct new crossing in sufficient time to prevent a significant increase in the use of the existing, unimproved Brooks Lane crossing. The Town would like to discuss with the Commission's representatives what would constitute a significant increase in traffic and therefore require the construction of an upgraded crossing and what improvements would be required to be constructed. This application has been scheduled for hearings in June.

Looking forward to discussing this application with you.

Sincerely

Tom Boni  
Town Planner

Cc: John Schneiger, Town Manager



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## CERTIFICATE OF RECOMMENDATION

**TO:** Planning & Zoning Commission

**FROM:** Department of Community Development

**DATE:** June 7, 2016

**PROJECT NAME:** Colorado Slab & Tile – Outside Storage

**FILE NUMBER:** SU16-02

**APPLICANT:** Jason Kaples

**LOCATION:** 12 Eagle Park East

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:**  
Section 4.05.010 (Special Use Permit)  
Section 4.04.100 (Supplementary Regulations and Standards)  
Section 4.07 (Development Standards)

**EXHIBIT(S):** A. Application Packet  
B. Staff's recommendations for outside storage areas  
C. Aerials

**PUBLIC COMMENT:** 1. Email from Bob & Katherine Senn

**STAFF CONTACT:** Matt Farrar (Assistant Town Planner)

**REQUEST:** Special Use Permit to allow for outside storage of stone slabs.



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## **DISCUSSION:**

The applicant owns and operates Colorado Slab and Tile located at 32 Eagle Park East Drive. The applicant recently purchased 12 Eagle Park East Drive, the former location of Sinton Dairy. The applicant purchased 12 Eagle Park East Drive with the intent of having a corner location along Chambers Avenue to display their stone slabs, as well as remodel the existing building to be used for office space.

The applicant has expressed a desire to install a 6' tall chain-link fence around the perimeter of the property to allow their stone slabs to be visible from Chambers Avenue, while also keeping non-customers out of the on-site storage areas. Please refer to *Exhibit A*.

When contacted by the applicant, staff informed the applicant that "Outside Storage" in the Commercial General (CG) zone district necessitated a Special Use Permit and that a 6' tall fence in a required front yard (i.e., the sides of the property that front on Eagle Park East Drive and Chambers Avenue) would require a Zoning Variance. Therefore, the applicant has submitted applications for both a Special Use Permit and a Zoning Variance.

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## **STANDARDS FOR SPECIAL USE PERMIT (SECTION 4.05.010):**

Listed below are the findings required by Section 4.05.010 of the Land Use & Development Code for approval of a Special Use Permit:

1. The proposed use is consistent with the provisions of this Chapter and with the Town's goals, policies and plans, and
2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, and
3. Street improvements adequate to accommodate traffic volumes generated by the proposed use and provision of safe, convenient access to the use and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the Town, and
4. The special conditions for specific uses, as provided in this Section, are met.

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## **FINDINGS FOR SPECIAL USE PERMIT:**

### *Standard #1:*

Chapter 4.04 of the Land Use & Development Code permits "Outside Storage" as a Special Use within the Commercial General (CG) Zone District. The subject property is zoned Commercial General (CG) and therefore requires issuance of a Special Use Permit to allow for the desired outside storage.



Section 4.04.100 (M) provides standards for outside storage, which include:

- As a general rule, outside storage shall be situated in the rear yard.
- Outside storage areas in the front yard or on lots with no, or minimal, structures shall be required to provide a front yard street buffer as provided in Section 4.07.010(B).
- Businesses that sell, rent, or lease outside storage items may create a display area in the front yard not to exceed a single area 25 feet by a length of 25% of the lot frontage for the purpose of displaying representative items. All other outside storage items are subject to the requirements in subparagraphs (1) and (2) above.

In addition, Section 4.07.022 (4) states “Chain-link fencing may be used for demonstrated security purposes only and must be vinyl-coated black or green and used in conjunction with plant material that is tightly spaced to create a visual screen. Chain-link fencing shall be restricted to rear yards.”

Staff believes that if the applicant is agreeable to the storage areas shown in *Exhibit B*, and the landscaping recommended along the area fenced in by the chain-link fence, that the proposed outside storage complies with the regulations set forth in the Land Use & Development Code.

12 Eagle Park East Drive is located within an area designated as “Commercial” on the Future Land Use Map of the 2010 Eagle Area Community Plan (2010 EACP). Under the “Intent” of the “Commercial” land use designation, it states:

- A. Provide opportunity for a broad variety of commercial uses important to the local and regional economy.

Under “Character” of the “Commercial” land use designation, it states:

- B. Outdoor storage areas and loading bays are located on the back or sides of properties, and are generally screened from view.

12 Eagle Park East Drive is also located within the “Interstate 70 Influence Character Area.” In the discussion of the I-70 Influence Character Area, the Eagle Area Community Plan emphasis the importance of encouraging more intensive uses on underutilized properties along Chambers Avenue, while also ensuring that the aesthetic values of the eastern gateway of the town are maintained.

In the “Economic Development and Sustainability” chapter of the 2010 EACP there are variety of recommended strategies that are listed. Some of the recommended strategies that are relevant to this application include:

- Promote businesses and activities that benefit from Eagle’s proximity to the I-70 corridor.
- Work to create more local jobs and additional outlets for goods and services.



In Staff's opinion, the proposed Special Use Permit helps to facilitate the growth of a local business and therefore complies with many of the objectives of the 2010 EACP. The 2010 EACP also emphasizes the importance of ensuring that development is done in an aesthetic manner and therefore reducing the visual impact of the chain-link fencing around the outside storage area is important in achieving this objective.

*Standard #2:*

Existing uses neighboring 12 Eagle Park East include:

- The existing location of Colorado Slab & Tile at 32 Eagle Park East Drive.
- An office building at 11 Eagle Park East Drive.
- An office building at 850 Chambers Avenue.
- An office building at 31 Eagle Park East Drive.
- A vacant lot at 882 Chambers Avenue.
- The Eagle County Justice Center at 885 Chambers Avenue.

It is staff's opinion that the proposed outside storage at 12 Eagle Park East Drive, which is adjacent to many other Commercial General (CG) zoned properties, is generally compatible with existing and allowed uses in this part of Eagle.

*Standard #3:*

Street Improvements & Access: The design of Eagle Park East Drive and Chambers Avenue is adequate to accommodate any additional traffic generated by the proposed outside storage.

Staff believes that the parking provided at 12 Eagle Park East is adequate to meet the needs of the outside storage and the office space.

*Standard #4:*

Not Applicable.



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**STAFF RECOMMENDATION:**

Staff recommends approval of file number SU16-02 based on compliance with Special Use Permit Standards 1, 2 and 3 with the following condition:

1. The outside storage and 6' tall chain-link be limited to those areas shown in *Exhibit B*.
2. The chain-link fence shall be painted black or green.
3. Landscaping be provided along the exterior of the chain-link fence to minimize the visual impact of the fencing. Shorter landscaping materials (e.g., shrubs, bushes and/or ornamental grasses) are appropriate along the fencing adjacent to Chambers Avenue to allow for the stone slabs to be seen from the public right-of-way. Taller landscaping materials are to be planted along the fencing on the eastern edge of the property. Chain-link fencing should be setback from the property line a minimum of 2' to allow for landscaping to be planted along the exterior of the fencing.

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**PLANNING & ZONING COMMISSION:**

1. Questions of Staff and/or Applicant
2. Public Comment
3. Deliberations



**Colorado Slab & Tile LLC**

0032 Eagle Park East, Eagle CO 81631

970.328.0557

Property : 0012 Eagle Park East, Eagle CO 81631

Our Proposal,

We would like to fence around our property for safety, liability and security. Fence will be a 6" chain-link fence similar to the storage facility across the street by taco bell.

Within the fence line we would like to store and display our stone and remnants. This is not a scrap yard. We will have full size slabs, remnants on display and organized for our customers.

We have already started on cleaning, we are preparing to paint the building and landscape the property by trimming trees and weeding.

We also want to it the property to look nice as it represents both Colorado Slab and Tile as well as the Town of Eagle.

Thank you for your assistance in helping us with this process.

Jason Kaples,

COLORADO SLAB & TILE LLC



Fence.  
6' chain link.

 Slabs  
Marble + Granite  
6' x 13' ea  
x 30 ?

remnants  
30' x 4'-10'  
x 200.

Court Yard -  
fenced / wood.  
and painted.  
to match  
Building

Office Building  
to be painted  
same as existin







**Robert J. Senn & Katherine Paison-Senn**  
**P.O. Box 1440, Eagle, CO 81631**  
**paisenn@centurytel.net**  
**970-390-1731**

June 2, 2016

Mr. Matt Farrar, Asst. Town Planner  
Town of Eagle  
P.O. Box 609  
Eagle, CO 81631

Re: SUI16-02 and V16-02 Colorado Slab & Tile Fence Installation and Onsite Storage

Dear Mr. Farrar:

We will be out of town for the Public Hearing on the above referenced request but would like to provide comment on the application as follows:

We do not feel that the fence as proposed in its size, material, and placement (around the entire perimeter of the property) is consistent with the character of the adjacent properties within the Eagle Park East subdivision as well as those along Chambers Avenue.

We understand the applicant's desire to secure the property, but believe it might be possible to achieve this in a manner that would be more in keeping with the nature and character of the neighboring properties.

We appreciate the opportunity to submit our comments and hope that you will consider them in your review process.

Sincerely,



Robert J. Senn and Katherine Paison-Senn  
Owners, Parcel 5, 063 Eagle Park East Drive

KPS  
cc: file



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## CERTIFICATE OF RECOMMENDATION

**TO:** Planning & Zoning Commission

**FROM:** Department of Community Development

**DATE:** June 7, 2016

**PROJECT NAME:** Colorado Slab & Tile – Fence Variance

**FILE NUMBER:** V16-02

**APPLICANT:** Jason Kaples

**LOCATION:** 12 Eagle Park East

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:**  
Section 4.05.010 (Special Use Permit)  
Section 4.04.100 (Supplementary Regulations and Standards)  
Section 4.07 (Development Standards)

**EXHIBIT(S):** Please refer to Exhibits for SU16-02

**PUBLIC COMMENT:** Please refer to Public Comment for SU16-02

**STAFF CONTACT:** Matt Farrar (Assistant Town Planner)

**REQUEST:** Zoning variance to allow for the installation of a 6' tall fence in a front yard.



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**DISCUSSION:**

Please refer to discussion for SU16-02.

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**STANDARDS FOR ZONING VARIANCE (SECTION 4.05.020):**

Listed below are the findings required by Section 4.05.020 of the Land Use & Development Code for approval of a Zoning Variance:

1. That the variance granted is without substantial detriment to the public good and does not impair the intent and purposes of the Town's regulations, goals, policies and plans, including the specific regulation in question, and
2. That the variance granted is the minimum necessary to alleviate the hardship, and
3. That there exists on the property in question exceptional topography, shape, size or other extraordinary and exceptional situation or condition peculiar to the site, existing buildings, or lot configuration such that strict application of the zone district requirements from which the variance is requested would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property in questions, or
4. That such exceptional situation or condition was not induced by any action of the applicant and is not a general condition throughout the zone district.

---

**FINDINGS FOR ZONING VARIANCE:**

*Standard #1:*

Section 4.04.100 (H)(6) of the Land Use & Development Code defines standards for "Fences and Walls," which include:

In any non-residential zone district, any fence in any front yard, whether required or not, shall be a maximum of three feet in height and shall be of such material and design as will not detract from adjacent properties, which determination shall be made by the Town Planner as part of the Building Permit review.

Staff believes that a portion of six (6') foot tall fencing could be permitted in the properties front yard, along Chambers Avenue, without substantial detriment to the public good, nor impairing the intent of the Town's regulations, goals, policies and plans. However, staff believes that six (6') foot tall fencing along the entire length of both front yards creates a visual impact that is detrimental to the public good and not compatible with the Town's regulations, goals, policies and plans.



*Standard #2:*

It is staff's opinion that allowing for six (6') foot tall fencing along a limited portion of the front yard is the minimum necessary to alleviate the hardship created by the Code requirement to limit fencing to three (3') feet tall along both front yards.

*Standard #3:*

It is staff's opinion that the strict application of the fencing regulations in the Land Use and Development Code would result in peculiar and exceptional practical difficulties to the owner of the property. Therefore, staff believes that it is appropriate to allow for a limited amount of fencing that exceeds the three (3') foot limit set forth in the Code.

---

**STAFF RECOMMENDATION:**

Staff recommends approval of file number V16-02 based on compliance with Zoning Variance Standards 1, 2 and 3 with the following condition:

1. The six (6') foot tall fencing be limited to the area shown in *Exhibit B* (please refer to SU16-02).

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**PLANNING & ZONING COMMISSION:**

1. Questions of Staff and/or Applicant
2. Public Comment
3. Deliberations



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

---

## CERTIFICATE OF RECOMMENDATION

**TO:** Planning & Zoning Commission

**FROM:** Department of Community Development

**DATE:** Tuesday, June 7, 2016

**PROJECT NAME:** Boyz Toyz Special Use Permit Amendment

**FILE NUMBER:** SU97 Amended 2016

**APPLICANT:** Gary Ratkowski

**LOCATION:** 432 Grand Avenue

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:**  
Section 4.05.010 (Special Use Permit)  
Section 4.04 (Zoning)

**EXHIBIT(S):** A. Application Packet  
B. Aerial Photos  
C. Existing Conditions of Approval  
D. Previous Site Plan

**PUBLIC COMMENT:** No written comments. However phone call in opposition and written request for existing records on this Special Use Permit.

**STAFF CONTACT:** Tom Boni, Town Planner

**REQUEST:** Applicant is requesting an amendment to his existing Special Use Permit to remove four of the conditions of the existing Special Use Permit.

---

**DISCUSSION:**

There is a fairly long history related to the Boyz Toyz Special Use Permit. The original application was approved in May of 2002. In December of 2002, the property owner was cited for non-compliance with the conditions of approval. In August of 2003, the Trustees approved an amendment to the Boyz Toyz Special Use Permit with conditions as noted on Exhibit C. Also included in Exhibit C are the minutes of the hearing.

In the summer of 2013, the Planning Department inspected the business and notified the owner that he was out of compliance with the conditions of the Special Use Permit. Based on a discussion with the Board of Trustees at that time we asked that he either come into compliance or apply for an amendment to the Permit. At that time, the owner was selling the business and a closing was imminent.

Over the last three years the Planning Department has met with the owner on several occasions to ask that improvements to the operation be made to lessen the impact on the neighborhood, ask about the status of the sale of the business and encouraged the applicant to apply for an amendment to the Special Use Permit. Through this period I believe that the owner has made improvements to his operations.

In 2016 the Town received a complaint about the business operation. We requested that the applicant meet with the Board to discuss his business operation and existing Special Use Permit. Unfortunately, the applicant had an emergency and was not able to attend. At this point we informed the applicant that he was out of compliance with his Special Use Permit and that he needed to rectify the problems or request an amendment to the Permit if he believed that he could not operate his business and comply with the conditions. Based on this conversation, the business owner, Gary Ratkowski has submitted this application.

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**STANDARDS FOR SPECIAL USE PERMIT (SECTION 4.05.010):**

Listed below are the findings required by Section 4.05.010 of the Land Use & Development Code for approval of a Special Use Permit:

1. The proposed use is consistent with the provisions of this Chapter and with the Town's goals, policies and plans, and
2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, and
3. Street improvements adequate to accommodate traffic volumes generated by the proposed use and provision of safe, convenient access to the use and adequate parking are either in place or will be constructed in conjunction with the proposed use, as approved by the Town, and
4. The special conditions for specific uses, as provided in this Section, are met.

---

**FINDINGS FOR SPECIAL USE PERMIT:***Standard #1:*

Chapter 4.04 – Zoning of the property is Commercial Limited and allows vehicular sales and service through a Special Use Permit.

The Eagle Area Community Plan places emphasis both on Economic Development and Community Design and appearance. Under economic development the Plan encourages the Town to expand the number and diversity of businesses in Eagle and reduce leakage of shopping dollars to other areas. Under Community Design and Appearance it emphasizes the importance of maintaining and improving the appearance of the community and maintain “Sense of Community”

*Standard #2:*

The area surrounding Boyz Toyz along Highway 6 is commercial. On the east side across McIntire Street there is a pizza store and yoga studio. Immediately west of the property is a liquor store. However, south of the property across Fifth Street is a residential neighborhood. There is also a residential use on the property located to the east behind the pizza store on the other side of McIntire.

*Standard #3:***Street Improvements, Parking & Access:**

The property has a wide curb cut along Highway 6. This site was previously occupied by a gas station. Access to the building also occurs from McIntire. I have not found any records of the access permit referenced as a condition of approval. Parking is provided along the west side of McIntire. However, parking also occurs on the portion of Highway 6 Right of Way not used as travel way. There has been some parking of display vehicles that encroaches into Highway 6 Right of Way. The sight line west at the intersection of McIntire and Highway 6 has occasionally been impacted by parked vehicles.

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**PLANNING & ZONING COMMISSION:**

1. Questions of Staff and/or Applicant
2. Public Comment
3. Deliberations



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

On August 26, 2003 the Board of Trustees approved an Amended Special Use Permit for Boyz Toyz to operate a sales and service business for snowmobiles and all-terrain vehicles. The application was approved with the following conditions:

1. The property owner shall apply for and comply with CDOT Access Permit
2. Storage for vehicles for uses other than display shall be limited to the fenced storage area at the south end of the property.
3. All screen fencing shall not exceed 6 feet in height and all materials stored within the fence shall not exceed 6 feet in height. Fencing materials shall be cedar or redwood and must create a full screen.
4. A Trash enclosure shall be constructed at the location indicated on the amended site plan.
5. Vehicle display shall be limited to eight vehicles with not more than two in the area in front of the building. No display vehicles are to be parked in the five parking spaces located in front of the building.
6. A 14 foot wide signed loading area shall be provided in the drive through area north of the building.
7. Parking on McIntire shall be parallel and delineated with landscaping and worked out in a sufficient manner with the Town Engineer.
8. Landscaping shall be installed and maintained to Town standards, including the grass areas on Town property in the right of way and worked out in a sufficient with the Town Engineer.
9. A new sign is to be constructed for the business that complies with the Town Sign Code.
10. The applicant shall provide an approved lighting plan that complies with the Town lighting code.
11. The special use permit shall be subject to review upon change of business, or substantial change in ownership of business or the property.
12. On-site improvements shall be completed within 90 days of the approval be the Town Board. If at the end of the 90 days the property is not in compliance with all conditions of approval, the Special Use Permit shall be revoked.
13. Applicant shall study the possibility of replacing the fence along the common property line, and if replacement is proposed staff shall review the materials.
14. No additional structures shall be permitted by approval of this amended Special Use Permit.
15. All testimony, submitted plans, Town Engineer's plans and Town Attorney recommendations will be included as record.
16. Cartons and Crates for merchandise are not to remain on property for more than 48 hours from time the merchandise is removed from them.

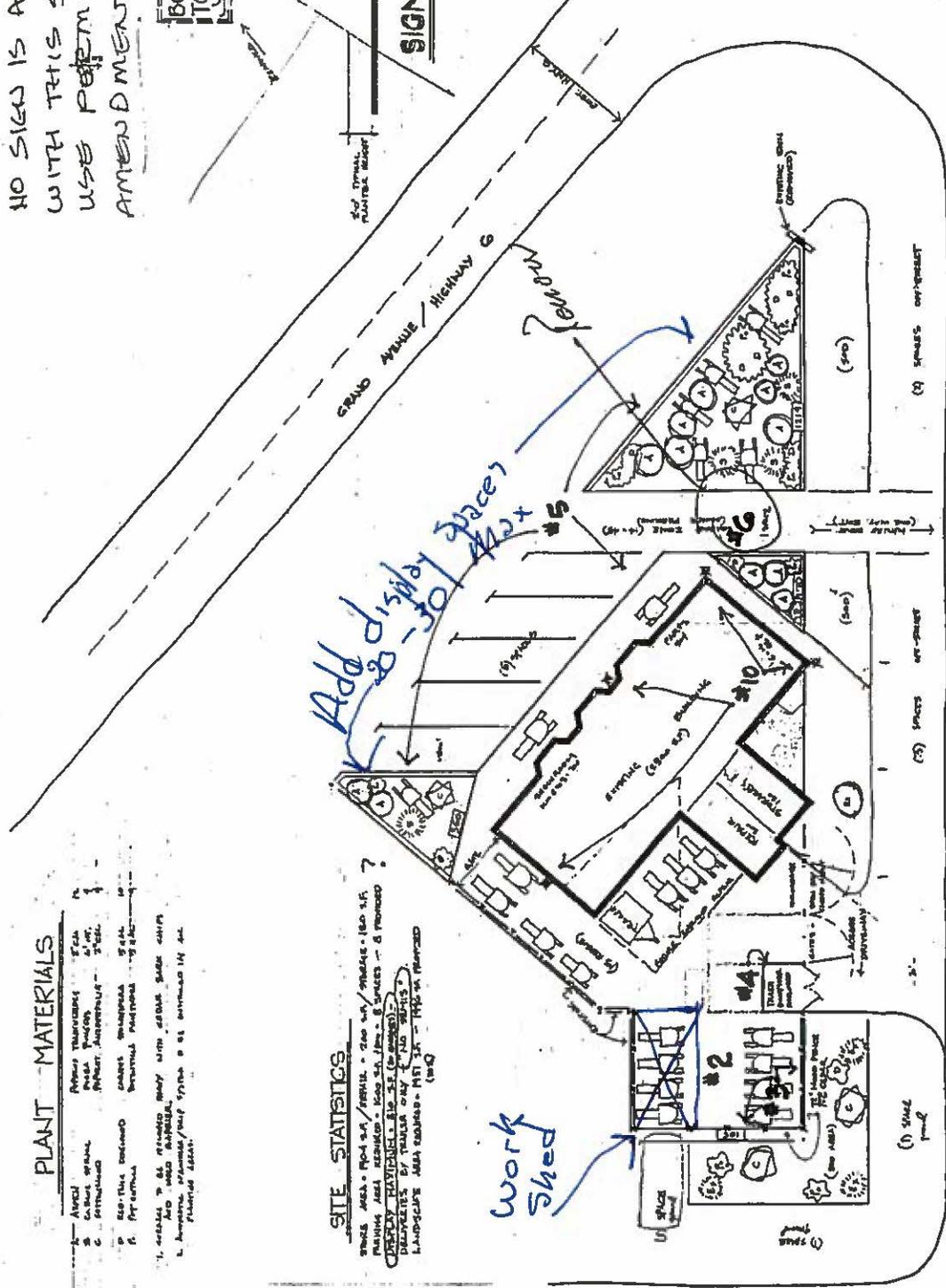
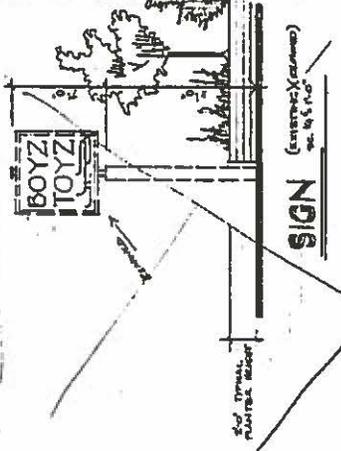
**PLANT MATERIALS**

- 1. **AVOID** plants that are toxic to children.
- 2. **AVOID** plants that are allergenic.
- 3. **AVOID** plants that are highly fragrant.
- 4. **AVOID** plants that are highly invasive.
- 5. **AVOID** plants that are highly susceptible to pests and diseases.
- 6. **AVOID** plants that are highly susceptible to frost damage.
- 7. **AVOID** plants that are highly susceptible to wind damage.
- 8. **AVOID** plants that are highly susceptible to hail damage.
- 9. **AVOID** plants that are highly susceptible to snow damage.
- 10. **AVOID** plants that are highly susceptible to ice damage.

**SITE STATISTICS**

STREET AREA - 100' x 100' / PERMIT - 200' x 100' / TOTAL - 100' x 100'  
 PARKING AREA - 100' x 100' / PERMIT - 200' x 100' / TOTAL - 100' x 100'  
 DRIVEWAY - 100' x 100' / PERMIT - 200' x 100' / TOTAL - 100' x 100'  
 DELIVERIES BY TRUCK ONLY - NO TRUCKS  
 LANDSCAPE AREA - 100' x 100' / PERMIT - 200' x 100' / TOTAL - 100' x 100'

NO SIGN IS APPROVED WITH THIS SPECIAL USE PERMIT OR AMENDMENT



#12 IMPROVEMENTS COMPLETED BY OCT. 15TH, 2003

**LANDSCAPE / SITE PLAN 1/2003**



SCOTT SMITH  
CARY RATKOWSKI

April 12, 2016

Town of Eagle  
Board of Trustees  
200 Broadway  
Eagle, CO 81631

Re: Boyz Toyz Special Use Permit

Planning Commissioners and Trustees,

My family has been operating our business for approximately 15 years at this location on Highway 6 and McIntire Street. We have learned some things over this time. Tom Boni, the Town Planner has visited me on several occasion to note that various aspects of my operation were out of compliance with the conditions of the Special Use Permit. While some of those items are operational concerns that can be better managed there are four conditions that I need to revise in order to operate my business successfully. Tom has advised me that I need to amend my Permit.

We request an amendment of the application to revise the following conditions:

- Condition #2 I need to allow temporary placement of vehicles on the east side of the building. This is an area where customers drop their vehicles sometimes when I am closed. At other times I need to do an inspection prior to accepting them for service.
- Condition #5 In order to sell vehicles I need more than the 8 vehicle. I can fit between 20 to 30 vehicles in front of building on the property
- Condition #6 I initially installed this loading area and it became a cut through from McIntire to Highway 6. The drop off works better from McIntire.
- Condition #4 A shed to store material and perform repairs in the rear of the property.

Please see revised site plan and set of existing conditions.

Sincerely



**PLANT MATERIALS**

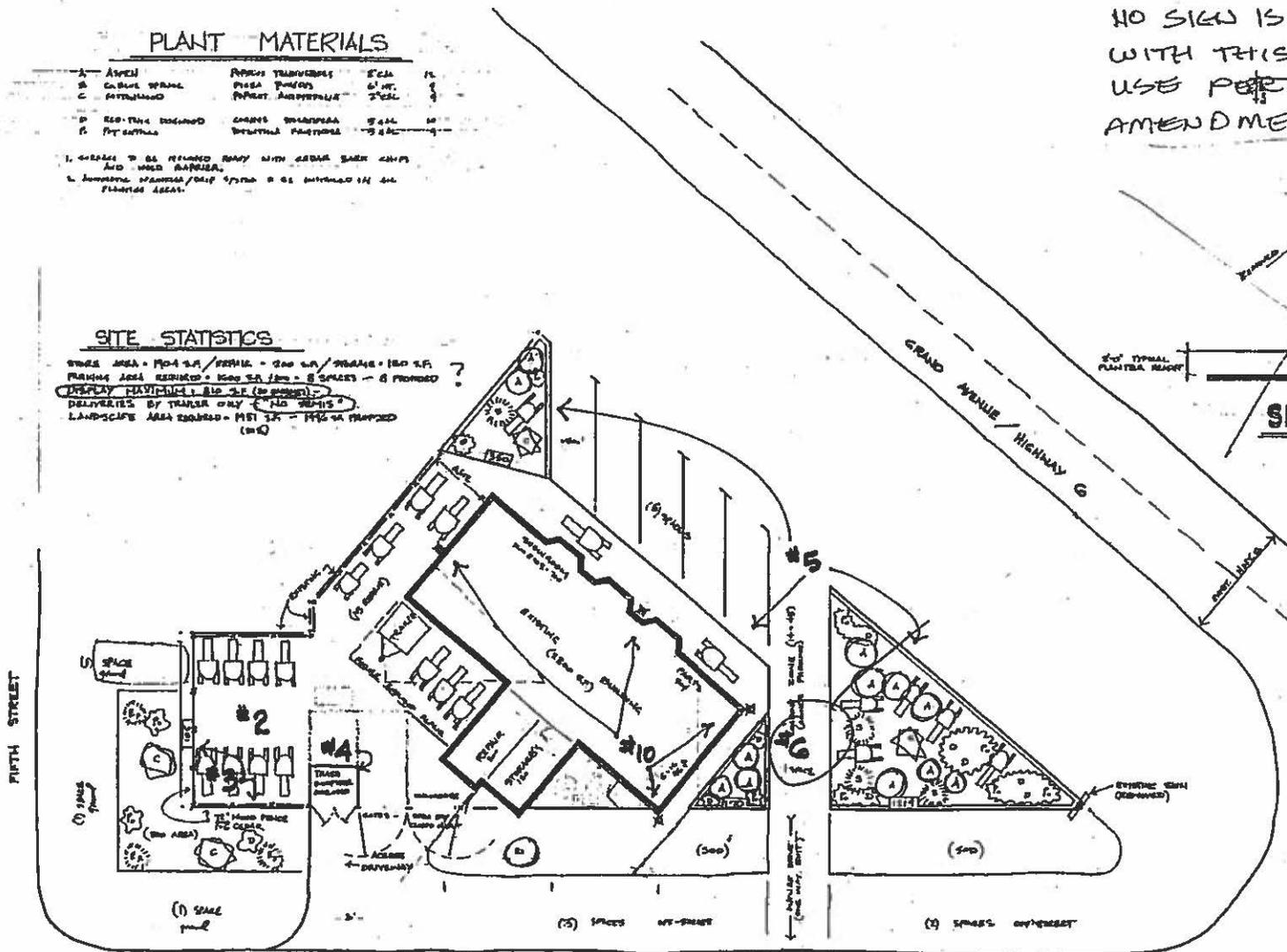
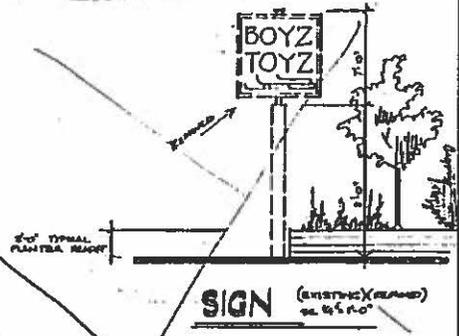
A. ASPEN	FRONTS TRANSPARENT	5' x 4'	12
B. COLUMBIA SPRUCE	FRONT TRANSPARENT	5' x 4'	8
C. FORTYWOOD	FRONT TRANSPARENT	5' x 4'	8
D. RED-TINE DOGWOOD	FRONT TRANSPARENT	5' x 4'	10
E. PINE STRIATA	FRONT TRANSPARENT	5' x 4'	10

1. TREES TO BE PLANTED SPRING WITH 20% BAKED CHIPS AND 10% MULCH.
2. IRRIGATION SYSTEM/PIPE SYSTEM TO BE INSTALLED IN ALL PLANTED AREAS.

**SITE STATISTICS**

STAGING AREA - 1004 S.F. / PERMITS - 200 S.F. / STORAGE - 180 S.F.  
 PARKING AREA REQUIRED - 1000 S.F. / 20 - 8 SPACES - 8 PROVIDED  
 DISPLAY PLANTING - 810 S.F. (2000 S.F.)  
 DELIVERIES BY TRUCK ONLY - NO TRUCKS  
 LANDSCAPE AREA REQUIRED - 1851 S.F. - 1851 S.F. PLANNED (100%)

NO SIGN IS APPROVED WITH THIS SPECIAL USE PERMIT OR AMENDMENT



#12 IMPROVEMENTS COMPLETED BY OCT. 15TH, 2003  
 MONTIURE STREET  
 2' EDGE OF SIDEWALK PARKING (EXISTING)

SCOTT SMITH \_\_\_\_\_  
 GARY RATKOWSKI \_\_\_\_\_

**LANDSCAPE / SITE PLAN 1"=20'-0"**

2109-051-07-001 LOT AREA - 264 AC.

RICH ARCHITECTURAL DESIGN  
 1010 10TH AVENUE  
 DENVER, CO 80202  
 TEL: 303.733.1111  
 FAX: 303.733.1112  
 WWW.RICHARCHITECTURALDESIGN.COM

BOYZ TOYZ  
 432 GRAND AVENUE



McKinzie stated that this application was continued at the prior meeting to allow for the drafting of the ordinance to approve the Lot Line Adjustment. Staff identified no issues associated with this application and recommended approval of the ordinance and the Final Plat with the condition that concerns of staff are addressed prior to recording of the document with Eagle County.

Craig Kinney was present.

**Ordinance No. 36**

Stavney made a motion to approve Ordinance No. 36, an ordinance approving the Lot Line Adjustment vacating a common lot line and creating Lot A of the Mayer Addition pending the submittal of a Final Plat and comments from the Town of Eagle Engineer, Attorney and Staff. Ehrenberg seconded. The motion passed unanimously.

**Boyz Toyz  
SU-97**

Mayor Deane reopened the Public Hearing on File No. SU-97, Eagle Interchange South, requesting amendment to a Special Use Permit to Operate a Sales and Service Business for Snowmobiles and ATV's.

Richards stepped down.

McKinzie gave the background of the application and noted that the applicant is proposing to remove the residence to accommodate more storage uses at the site and suggests that this will enable the business to come into compliance with all conditions of approval. In addition the business owner is proposing to construct an additional structure of approximately 300 sq. ft. to house 2 repair bays. McKinzie stated that removing the residence may help the applicant in meeting the conditions of approval but did not encourage the 300 sq. ft. structure. Staff recommended approval of the proposed amendment to SU-97 with the following conditions.

1. The property owner shall apply for and comply with a CDOT Access Permit.
2. Storage for vehicles for uses other than display shall be limited to the fenced storage area at the south end of the property.
3. All screening fencing shall not exceed 6' in height.
4. A trash enclosure shall be constructed at the location indicated on the amended site plan.
5. Vehicle display shall be limited to eight vehicles with not more than 2 in the walk area in front of the building. No

- display vehicles are to be parked in the 5 parking located in the front of the building.
6. A 14 wide, signed loading area shall be provided in the drive-through area north of the building.
  7. Parking on McIntire shall be parallel and delineated with landscaping and worked out in a sufficient manner with the Town Engineer.
  8. Landscaping shall be installed and maintained to Town standards, including the grass areas on Town property in the right-of-way and worked out in a sufficient manner with the Town Engineer.
  9. A new sign is to be constructed for the business that complies with the Town Sign Code.
  10. Applicant shall provide an approved lighting plan that complies with the Town Lighting Code.
  11. The Special Use Permit shall be subject to review upon change of business, or substantial change in ownership of business or property.
  12. On-site improvements shall be completed within 90 days of approval by the Town Board. If at the end of 90 days the property is not in compliance with all conditions of approval, the Special Use Permit shall be revoked.
  13. Applicant shall study the possibility of replacing the fence along the common property line and if replacement is proposed, staff shall review the materials.
  14. No additional structures are permitted by approval of this amended Special Use Permit.
  15. All testimony, submitted plans, Town Engineer's plans and Town Attorney recommendations will be included as record.

Ehrenberg made a motion to close SU-97. Stavney seconded. The motion passed unanimously.

Ehrenberg made a motion to approve SU-97 with the following conditions:

- Staff recommendations 1- 2 as written.
- Staff recommendation 3 to read as follows:  
All screening fencing shall not exceed 6' in height and all materials stored within the fence shall not exceed 6' in height. Fencing materials to be cedar or redwood and must create a full screen.
- Staff recommendations 4-15.
- Condition No. 16 as follows:

16. Cartons and Crates for merchandise are not to remain on property for more than 48 hours from time the merchandise is removed from them.

Hasbrouck seconded. The motion passed unanimously.

Richards was rescated.

**Kinney Parcel Annexation  
RZ-45**

Mayor Deane reopened the Public Hearing on File No. RZ-45, Kinney Parcel, requesting rezoning of a .9 acre parcel to RR, Rural Residential.

McKinzie stated the Town recently annexed this parcel and per state statutes the parcel must be rezoned within 90 days. The applicant has requested that the property be rezoned to a zone district that will allow for future construction of an ADU. Staff recommended approval.

Craig Kinney was present.

Hasbrouck made a motion to close RZ-45. Witt seconded. The motion passed unanimously.

**Ordinance No. 37**

Hasbrouck made a motion to approve Ordinance No. 37, an ordinance amending the Town of Eagle Zone District Map by zoning the Kinney Parcel as Rural Residential. Stavney seconded. The motion passed unanimously.

**Eagle Ranch, LLC  
PUD-14, S-14, PUD-27, S-28**

Mayor Deane reopened the Public Hearing on File No. PUD-14 and S-14, Eagle Ranch LLC, requesting approval of combined PUD zoning and development plans and subdivision concept preliminary plans. File No. PUD-27 and S-28, a request for approval of combined PUD zoning and development plans and subdivision concept and preliminary plans. File No. S-14, a request for approval of a final plat creating 16-single family lots.

McKinzie reviewed the issues pertaining to these requests and recommended approval with conditions for S-14 as follows:

1. That all comments of the Town Attorney, Engineer and Survey Consultant shall be satisfactorily addressed prior to the Town recording the plat and associated documents at the County.



# The Town of Eagle

Box 609 • Eagle, Colorado 81631  
(970) 328-6354 • Fax 328-5203

Meetings:  
2nd and 4th Tuesdays

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## CERTIFICATE OF RECOMMENDATION

**TO:** Planning & Zoning Commission

**FROM:** Department of Community Development

**DATE:** June 7, 2016

**PROJECT NAME:** Revisions to Section 4.03.040 - Definitions and Section 4.04 - Zoning of the Town of Eagle Land Use & Development Code.

**FILE NUMBER:** LURA16-01

**APPLICANT:** Town of Eagle

**APPLICABLE SECTION(S) OF MUNICIPAL CODE:** Section 4.03, Section 4.04 & Section 5.15

**EXHIBIT(S):** A. Proposed revisions to Section 4.03.040 – Definitions & proposed revisions to Section 4.04 – Zoning

**STAFF CONTACT:** Matt Farrar (Assistant Town Planner)

**REQUEST(S):**

1. Revise Section 4.03.040 to define dog daycare facility.  
*(Staff requests continuation to July 19, 2016)*
2. Revise Section 4.04.070 to define regulations for dog daycare facilities.  
*(Staff requests continuation to July 19, 2016)*
3. ~~Revise Section 4.04.070 to modify regulations for indoor recreation facilities.~~ *(Approved by Board of Trustees – April 26, 2016)*
4. Revise Section 4.04.070 to define regulations for marijuana testing facilities.
5. Revise Section 4.04.100 to modify regulations regarding medical and retail marijuana cultivation facilities and infused-product manufacturing facilities and to expand the area in the Town of Eagle where these uses are permitted.

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## **DISCUSSION:**

The following Land Use & Development Code amendments were continued from the Planning Commission's May 3, 2016 hearing:

### 1. Dog Daycare Facilities:

The discussion on the proposed Code amendments related to dog daycare facilities was continued from the Planning Commission's May 3, 2016 hearing to the June 7, 2016 hearing. At the Planning Commission's May 3 hearing, there was a robust discussion about the proposed Code amendments between the Planning Commission, staff and local business owners. The Planning Commission requested that staff research any federal and state regulations related to these types of facilities, as well as research related land use regulations from other communities.

Unfortunately, staff has not had the time to complete this research and would request that the hearing on these Code amendments be continued to the Planning Commission's meeting on July 19, 2016.

### 2. Marijuana Regulations:

Per the discussion at the Planning Commission's meeting on May 3, 2016, Staff has revised the proposed Code amendments to:

- Maintain the limit on Medical and Retail Stores and Cultivation facilities to one (1) per 5,000 people in the town of Eagle or fraction thereof.
- Create an expanded area along Chambers Avenue where both Medical and Retail marijuana Infused-Products Manufacturing facilities and Testing facilities would be permitted.
- Allow for two (2) Medical Marijuana Infused-Products Manufacturing facilities and two (2) Retail Infused-Products Manufacturing facilities per 5,000 people in the town of Eagle or fraction thereof.
- Allow for one (1) Marijuana Testing facility per 5,000 people in the town of Eagle or fraction thereof.
- Remove the "Penalty for Violation" for Special Use Permit violations for Medical and Retail Marijuana businesses.
- Define hours of operation for medical and retail marijuana businesses as 8am – 12am / Monday – Sunday.

In addition staff noticed some additional modifications that needed to be made. Those additional modifications were:

- Adding definitions for “Licensed Premise” and “Licensee.” These definitions were modeled after the definitions for these terms included in the Colorado Medical Marijuana Code and Colorado Retail Marijuana Code.
- Modifying the definition of “Medical Marijuana Business” to more closely mirror the definition for “Retail Marijuana Business.”
- Modifying the definition for “Marijuana Testing Facilities.”
- Adding supplemental regulations specific to “Marijuana Testing Facilities,” which were modeled off of the supplemental regulations for “Medical Marijuana Businesses” and “Retail Marijuana Businesses.”

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## **COMPLIANCE WITH THE TOWN’S GOALS, POLICIES & PLANS**

The Board of Trustees may, after receiving a recommendation from the Planning and Zoning Commission, amend any regulation in the Town of Eagle Land Use & Development Code. Amendments to the Town’s Land Use and Development Code may be made upon a finding that the amendments are consistent with the Town’s goals, policies and plans.

In Chapter 11 – Economic Development and Sustainability of the 2010 Eagle Area Community Plan (EACP), there is discussion about creating a more diverse economy in Eagle and encouragement of opportunities to expand the local job market. On pages 147 - 149, the EACP provides Goals, Policies and Recommended Strategies for economic development in the town. The recommended strategies under Economic Development Policy 1.2 – Expand retail diversity to reduce sales tax leakage include:

- A. Support opportunities to expand the number and diversity of businesses in Eagle;
- C. Work to create more local jobs and additional outlets for goods and services;
- D. Optimize commercial development. Determine factors that are preventing build-out of existing commercial centers.

In addition, under Land Use Policy 2.2 – New development should be compact, pedestrian friendly and located within or adjacent to existing development to minimize infrastructure and service needs, in Chapter 3 – Land Use of the EACP, the recommended strategies include:

- B. As determined appropriate, work to increase residential and commercial densities in established neighborhood retail center areas.
- C. Work to amend regulatory barriers that prevent the intensification of development in identified areas already served by Town infrastructure.

Staff believes that the proposed code amendments will work towards achieving the Economic Development and Land Use objectives set forth in the EACP.

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### **STAFF RECOMMENDATION**

Staff recommends continuation of LURA16-01, items 1 and 2, to the Planning Commission's meeting on July 19, 2016.

Staff recommends approval of LURA16-01, items 4 and 5 based on a finding of compliance with the town's goals, policies and plans.

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### **PLANNING & ZONING COMMISSION**

1. Questions of Staff
2. Public Comment
3. Deliberations

~~Kennel-Animal Services: Any establishment where dogs, cats, or other household pets domestic animals are bred or raised for sale, boarded, or cared for, and/or groomed commercially, exclusive of veterinary care, commercial grooming, and commercial boarding and/or care of five (5) or less dogs, cats or other household pets.~~

Indoor Recreation Facility: A for profit establishment that provides opportunities for amusement and/or recreation where such activities are conducted within an enclosed structure; including but not limited to bowling alleys, skating rinks, health and fitness clubs, private gymnasiums, pool halls, and video game arcades. The term “indoor recreation” shall not include:

1. Shooting range

Landscaping, Landscaped Area, Landscape Materials: As defined in Chapter 4.07.

Licensed Premise: The premises specified in an application for a license pursuant to the Colorado Medical Marijuana Code or Colorado Retail Marijuana Code that are owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, sell, or test Medical or Retail Marijuana in accordance with the provisions of the Town of Eagle Municipal Code, Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code.

Licensee: Any person licensed or registered pursuant to the Colorado Medical Marijuana Code and/or Colorado Retail Marijuana Code.

Lodging, Extended Stay: To be supplied by Town Attorney: Overnight sleeping accommodations which are managed with the intent of providing extended stay occupancy, generally more than three (3) weeks, to fee paying transients. Extended stay lodging accommodations may be leased on a daily or week to week basis only, and no transient is permitted to reside in an extended stay lodging accommodation for more than 150 days within a consecutive 12 month period.

Lodging, Temporary: Overnight sleeping accommodations which are managed with the intent of providing short term occupancy, generally less than three weeks, to fee paying transients.

Lot: A piece, plot or parcel of land or assemblage of contiguous parcels of land as established by survey, plat or deed.

Lot Area: The total horizontal land area within the boundaries of a lot.

Lot Coverage: Lot or site coverage means the portion of a lot or site covered by materials forming any unbroken surface impervious to water, including:

1. Buildings, decks, patios, structures
2. Streets, driveways, parking lots, and other impervious materials.

Lot Line, Front: The property line of a lot dividing said lot from the adjoining street. On a corner lot the property owner may elect which street frontage shall be the designated front lot line for the purpose of determining the rear yard only.

Lot Line, Rear: The property line of a lot opposite the front lot line.

Lot Line, Side: Any lot property line other than a front or rear lot line.

Major Street Plan: An advisory planning document officially adopted by resolution of the Town Board, which document classifies existing and proposed streets according to size and use.

Marijuana: Marijuana shall have the same meaning as set forth in Section 16(2)(f) of Article XVIII of the Colorado Constitution.

Marijuana Testing Facility: A public or private laboratory licensed and certified, or approved by the State of Colorado Marijuana Enforcement Division, to conduct research and analyze Medical and/or Retail Marijuana, Medical and/or Retail Marijuana Infused Products, and Medical and/or Retail Marijuana Concentrate for contaminants and potency.

Marijuana Accessories: Marijuana Accessories shall have the same meaning as set forth in Section 16 (2)(g) of Article XVIII of the Colorado Constitution.

Medical Marijuana Business or Medical Marijuana Establishment: A medical marijuana center, an optional medical marijuana cultivation premises, a medical marijuana infused products manufacturer, or a medical marijuana testing facility. ~~A person or entity holding a Medical Marijuana Center license as defined in Section 12-43.33-402 C.R.S., a Medical Marijuana—Infused Products Manufacturer license, as defined in Section 12-43.3-404, C.R.S.; and/or an optional premises Cultivation Operation license as defined in Section 12.43.3-403, C.R.S.~~

For the purpose of this definition, a patient that cultivates, produces, possesses or transports medical marijuana, or a primary caregiver that cultivates, produces, sells, distributes, possesses, transports, or makes available marijuana in any form to one or more patients shall not be deemed a “Medical Marijuana Business”. ~~Signage for Medical Marijuana Businesses shall be limited to five (5) square feet permitted on a wall or blade sign. “Sandwich board” signs are permitted only when the business is not adjacent to the public street providing access.~~  
(Ord. 17-2012 §2, 2012)

Manufactured Home: A single-family dwelling which is partially or entirely manufactured in a factory and designed for long-term residential or nonresidential use and transported to its occupancy site; and is not less than twenty-four feet in width and thirty-six feet in length; and is installed on an engineered permanent foundation; and has brick, wood, or cosmetically equivalent exterior siding and a pitched roof; and is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974" 42 U.S.C. 5401 et. seq. as amended and bears such certification label.

Mobile Home: A structure manufactured partially or entirely in a factory, designed for long-term residential use and transported to its occupancy site, which is twelve (12) feet or more in width, is a minimum of 600 square feet and constructed in accordance with the National Mobile Home Construction and Safety Standards Act of 1974 and is licensed by

Proof of Ownership: A notarized affidavit executed by fee simple title holder.

Recreational Vehicle: A vehicular-type unit designed primarily as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or drawn by another vehicle, and which is licensed in any state as a recreational vehicle, travel trailer, camping trailer, truck camper, motor home, or similar title.

Retail Marijuana: Retail Marijuana shall have the same meaning as defined in Section 16 (2)(f) of Article XVIII of the Colorado Constitution, that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.

Retail Marijuana Business or Retail Marijuana Establishment: Retail Marijuana Business or Retail Marijuana Establishment means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturer, or a retail testing facility.

Retail Marijuana Cultivation Facility: Retail Marijuana Cultivation Facility shall have the same meaning as “marijuana cultivation facility” as defined in Section 16 (2)(h) of Article XVIII of the Colorado Constitution that is licensed pursuant to the Colorado Retail Marijuana Code, Sections 12-43.4-101 *et. seq.*, C.R.S.

Retail Marijuana Products: Retail Marijuana Products means “marijuana products” as defined in Section 16 (2)(k) of Article XVIII of the Colorado Constitution that are produced at a retail marijuana products manufacturer.

Retail Marijuana Products Manufacturer: Retail Marijuana Products Manufacturer has the same meaning as a “marijuana product manufacturing facility” as defined in Section 16 (2)(j) of Article XVIII of the Colorado Constitution that is licensed pursuant to the Colorado Retail Marijuana Code, Sections 12-43.4-101 *et. seq.*, C.R.S.

Retail Marijuana Store: Retail Marijuana Store shall have the same meaning as defined in Section 16(2)(n) of Article XVIII of the Colorado Constitution that is licensed pursuant to the Colorado Retail Marijuana Code, Sections 12-43.4-101 *et. seq.*, C.R.S.

Self-Service Storage Facility: A building consisting of individual, small, self-contained units that are leased or owned for the storage of business and household goods or contractor’s supplies.

Service Bay: An interior space designed for the repair of vehicles and which has unrestricted ingress and egress.

Service Establishment: A commercial business that primarily renders personal or commercial services rather than the sale of goods as the principal use of the property such as printing, copy, hairdressing, shoe repair, appliance repair, upholstery, roofing, plumbing and janitorial services, etc. Activities incidental to the primary service business are permitted as accessory uses.

Setback: The minimum dimension of a required yard.

Sign: The term "sign" shall include any writing, letter, word, numeral, pictorial

4.04.070 SCHEDULE OF USES PERMITTED IN NON-RESIDENTIAL ZONE DISTRICTS  
 (continued)

ZONING DISTRICT	CBD	CL	CG	PA	I
<b>USE</b>					
Recreational Vehicle Park	*	*	S	*	*
Railroad Transfer Yard, Motor Freight Depot	*	*	S	*	S
Petroleum Products Bulk Plant	*	*	S	*	S
Mobile Home	*	*	*	*	*
Outside Storage	*	S	S	S	P
Self Service Storage Facility	*	*	*	*	S
Wholesale or Distribution Establishment, except mobile home and vehicular sales	S	S	P	*	P
Retail, except mobile home and vehicular Accessory to a principal permitted use	P	P	P	*	P
Service Establishment, except vehicular service – accessory to a principal permitted use	P	P	P	*	P
Sexually Oriented Businesses	*	*	*	*	S
Medical Marijuana Center <del>Business</del> <sup>2</sup> Amended 11/13/12	*	*	S	*	S
Medical Marijuana Infused Products Manufacturer <sup>2</sup>	*	*	S	*	S
Optional Medical Marijuana Cultivation Premises <sup>2</sup>	*	*	S	*	S
Retail Marijuana Store <sup>4</sup> <del>Business (excluding Retail Marijuana Testing Facilities)</del> Amended 10/22/13	*	*	S	*	S
Retail Marijuana Products Manufacturing Facility <sup>4</sup>	*	*	S	*	S
Retail Marijuana Cultivation Facility <sup>4</sup>	*	*	S	*	S
<del>Retail</del> Marijuana Testing Facility <sup>5</sup>	<del>P</del> *	<del>P</del> *	<del>PS</del>	*	<del>SP</del>
Cultivation of Medical Marijuana by Patients and Caregivers in Non-Residential Units ( <b>Commercial or Industrial Spaces</b> ) <sup>3</sup>	*	*	*	*	P
Cultivation of Medical Marijuana by Patients and Caregivers in Residential Dwelling Units ( <b>permitted within Non-Residential Zone Districts</b> ) <sup>3</sup>	P	P	P	P	P
Cultivation of Marijuana for Personal Use in Residential Units <sup>6</sup>	p <sup>5</sup>				
Cultivation of Marijuana for Personal Use in Non- Residential Units or Structures <sup>7</sup>	*	*	*	*	p <sup>6</sup>

SCHEDULE OF USES PERMITTED IN NON-RESIDENTIAL ZONE DISTRICTS  
(continued)

<b>KEY:</b>	
<sup>1</sup> Pursuant to Section 4.05.010.A.3.b	CBD = CENTRAL BUSINESS DISTRICT CL = COMMERCIAL LIMITED CG = COMMERCIAL GENERAL PA = PUBLIC AREA I = INDUSTRIAL
<p><sup>2</sup> Medical Marijuana Centers and Optional Medical Marijuana Cultivation Premises <del>Businesses</del> allowed only on Commercial General and Industrial zoned properties East of Nogal Gulch. <del>Please Refer to attached map at the end of this Section labeled Exhibit A.</del></p> <p>Medical Marijuana Infused Products Manufacturer allowed only on Commercial General and Industrial zoned properties along Chambers Avenue, east of Eby Creek Road. <del>Please Refer to attached map at the end of this Section labeled Exhibit B.</del></p> <p>Refer to Section 4.04.100 (P) concerning supplementary regulations and standards for Medical Marijuana <del>Businesses.</del></p>	
<p><sup>3</sup> See Section 4.04.100(R) concerning supplementary regulations and standards for the cultivation of medical marijuana by patients and primary caregivers in Non-Residential Zone Districts.</p>	
<p><sup>4</sup> Retail Marijuana Stores and Retail Marijuana Cultivation Facilities <del>Businesses</del> allowed only on Commercial General and Industrial zoned properties east of Nogal Gulch. Refer to map at the end of this Section labeled Exhibit A. <del>Retail Marijuana Testing Facilities are not permitted in any zone district.</del></p> <p>Retail Marijuana Products Manufacturing Facility allowed only on Commercial General and Industrial zoned properties along Chambers Avenue, east of Eby Creek Road. Refer to map at the end of this Section labeled Exhibit B.</p> <p>Refer to Section 4.04.100 (U) for supplementary regulations and standards for Retail Marijuana <del>Businesses.</del></p>	
<p><sup>5</sup> Marijuana Testing Facilities allowed only on Commercial General and Industrial zoned properties along Chambers Avenue, east of Eby Creek Road. Refer to map at the end of this Section labeled Exhibit B</p>	

<p>Refer to Section 4.04.100 (V) for supplementary regulations and standards for Marijuana Testing Facilities.</p>	
<p><sup>6</sup> See Section 4.04.100(S) concerning supplementary regulations and standards for the cultivation of marijuana for personal use in residential units in both residential and non-residential zone districts.</p>	
<p><sup>7</sup> See Section 4.04.100(T) concerning supplementary regulations and standards for the cultivation of marijuana for personal use in non-residential units or structures in non-residential zone districts.</p>	
<p>* = NOT PERMITTED USE</p>	
<p>P = USE BY RIGHT</p>	
<p>S = SPECIAL USE</p>	

3. The owner of an extended stay temporary lodging facility shall provide at all times an adequate number of beds within each unit contained in the lodging facility for the stated capacity of each respective unit. The owner of the lodging facility shall not permit persons in excess of the stated capacity for each unit to reside in the respective units.
4. No pets or domestic animals of any kind, except service dogs for the disabled, shall be kept or harbored by guests within any unit of the lodging facility.

P. Medical Marijuana Businesses

~~Medical Marijuana Businesses shall only be located east of Nogal Gulch in the Commercial General (CG) and Industrial Zone Districts pursuant to a special use permit. All Medical Marijuana Businesses shall be located a minimum of 1,000 feet from schools, as defined in the Colorado Medical Marijuana Code, Section 12-43.3-101, et. Seq., C.R.S., licensed childcare facilities, as defined in the Colorado Medical Marijuana Code, alcohol or drug treatment facilities, as defined in the Colorado Medical Marijuana Code, and the campus of a college or university, as defined in the Colorado Medical Marijuana Code. In addition, Medical Marijuana businesses shall be located a minimum of 100 feet from any residential zone district. The required distances specified above shall be measured from a District boundary line to the subject property line. Signage for Medical Marijuana Businesses shall be limited to five (5) square feet permitted on a wall or blade sign. "Sandwich board signs" are permitted only when the business is not adjacent to the public street providing access. (Ord. 17-2012 §5, 2012)~~

1. Limitation on the Number of Medical Marijuana Centers within the Town.

~~The number of Medical Marijuana Centers permitted within the Town is based on population. A maximum of one (1) Medical Marijuana Center shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.~~

~~In the event more than one (1) Land Use Application for a Medical Marijuana Center of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter and the Colorado Medical Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, or their designee.~~

2. Limitation on the Number of Optional Medical Marijuana Cultivation Premises within the Town.

The number of Optional Medical Marijuana Cultivation Premises permitted within the Town is based on population. A maximum of one (1) Optional Medical Marijuana Cultivation Premises shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.

In the event more than one (1) Land Use Application for an Optional Medical Marijuana Cultivation Premises of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter and the Colorado Medical Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, or their designee.

3. Limitation on the Number of Medical Marijuana Infused Products Manufacturer within the Town.

The number of Medical Marijuana Infused Products Manufacturer permitted within the Town is based on population. A maximum of two (2) Medical Marijuana Infused Products Manufacturers and Optional Medical Marijuana Cultivation Premises shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.

In the event more than one (1) Land Use Application for a Medical Marijuana Infused Products Manufacturer of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter and the Colorado Medical Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, or their designee.

4. Permitted Locations.

Medical Marijuana Centers and Optional Medical Marijuana Cultivation Premises shall only be located in the Commercial General (CG) and Industrial (I) Zone Districts east of Nogal Gulch pursuant to a Special Use Permit. Refer to map at the end of this Section labeled Exhibit A.

Medical Marijuana Infused Products Manufacturer shall only be located on properties along Chambers Avenue that are within the Commercial General (CG) and Industrial (I) Zone Districts and are located a minimum of one thousand seven hundred and fifty feet (1,750') from the centerline of Eby Creek Road pursuant to a Special Use Permit. If any portion of such property is within the required minimum distance from Eby Creek Road, no

Medical Marijuana Infused Products Manufacturer shall be permitted on that property. Refer to map at the end of this Section labeled Exhibit B.

5. Distance from Schools, Licensed Childcare Facilities, Alcohol or Drug Treatment Facilities and College Campus.  
All Medical Marijuana Businesses shall be located a minimum of one thousand feet (1000') from schools, as defined in the Colorado Medical Marijuana Code, licensed childcare facilities, alcohol or drug treatment facilities, and the campus of a college or university.
6. Distance from Residential Zone District.  
All Medical Marijuana Businesses shall be located a minimum of one hundred feet (100') from any residential zone district which shall be measured from the zone district boundary line to the subject property line.
- ~~7. Distance from Other Medical Marijuana Businesses.  
There shall be no distance requirement between Medical Marijuana Businesses.~~
8. Restrictions on Mobile Facilities and Delivery of Marijuana Products.  
No Medical Marijuana Business shall be located in a movable or mobile vehicle or structure and no Medical Marijuana products shall be delivered in the Town unless such delivery is specifically permitted by the Colorado Medical Marijuana Code.
9. Hours of Operation.  
Medical Marijuana Businesses shall limit their hours of operation to ~~between 11:00 a.m. and 7:00 p.m.~~ 8:00 a.m. to 12:00 a.m., Monday – Sunday, ~~to those permitted by the Colorado Medical Marijuana Code~~ or as otherwise provided in the Special Use Permit.
10. Operation of Multiple Businesses at a Single Location.  
A person may operate any Medical Marijuana Business and any Retail Marijuana Business permitted by this Section at the same location if in full compliance with the requirements of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code.
11. Specific Requirements for a Medical Marijuana Center.  
Small samples of Medical Marijuana products offered for sale may be displayed on shelves, counters and display cases. All bulk marijuana products shall be locked within a separate vault or safe (no other items in this safe), securely fastened to a wall or floor, as approved by the Police Department.

A Medical Marijuana Center may sell “~~drug~~ marijuana paraphernalia” as that term is defined in Chapter 9.15 of the Eagle Municipal Code to Patients only and shall be exempt from the prohibitions contained in said Chapter. ~~Provided, however, a Medical Marijuana Center shall not display “drug paraphernalia” for~~

~~sale on the Licensed Premises and such “drug paraphernalia” shall only be shown to Patients upon request.~~

12. Specific Requirements for an Optional Medical Marijuana Cultivation Premises.

If co-located with an Optional Medical Marijuana Cultivation Premises, the area of the proposed Licensed Premises utilized for cultivation shall be physically separated from the area of the premises open to the public or to Patients. Walls, barriers, locks, signage and other means shall be employed to prevent the public or Patients from entering the area of the Licensed Premises utilized for cultivation of marijuana.

13. No Products to be Visible from Public Places.

Marijuana plants, products, accessories, and associated paraphernalia contained in any Medical Marijuana Business shall not be visible from a public sidewalk, public street or right-of-way, or any other public place.

14. No Beer or Alcohol on Premises.

No fermented malt beverages and no alcohol beverages, as defined in the Colorado Beer Code and the Colorado Liquor Code, respectively, shall be kept, served or consumed on the Premises of a Medical Marijuana Business.

15. ~~Restrictions Regarding Signage.~~

~~Signs shall not be permitted on the exterior of Optional Premises Cultivation Operation facilities and Medical Marijuana Infused Products Manufacturing facilities.~~

~~All signage associated with a Medical Marijuana Center shall meet the standards established in the Eagle Municipal Code and the Eagle Land Use and Development Code. In addition, no sign associated with a Medical Marijuana Center shall use the word “marijuana”, “cannabis”, or any other word or phrase commonly understood to refer to marijuana unless such word or phrase is immediately preceded by the word “medical” or the message of such sign includes the words “for medical use” or “for medicinal purposes” in letters that are no smaller than the largest letter on the sign. No depiction of marijuana plants or leaves shall appear on any exterior sign of a Medical Marijuana Center.~~

16. Storage of Products.

All products and accessories shall be stored completely indoors and on-site.

17. Consumption of Marijuana Prohibited.

No consumption of any Medical Marijuana product shall be allowed or permitted on the Licensed Premises or adjacent grounds.

18. Storage of Currency.

All currency over \$1,000.00 shall be stored within a separate vault or safe (no marijuana in safe), securely fastened to a wall or floor, as approved by the Police Department.

19. Prevention of Emissions and Disposal of Materials.

Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the Licensed Premises shall be provided at all times. In the event that any debris, dust, fluids or other substances shall exit the Licensed Premises, the landowner and licensee shall be jointly and severally responsible for the full cleanup immediately.

Businesses shall properly dispose of all materials and other substances in a safe and sanitary manner in accordance with State regulations and Eagle County Landfill regulations.

~~A Medical Marijuana Center and an Optional Medical Marijuana Cultivation Premises~~ As applicable, Medical Marijuana Businesses shall be equipped with ventilation systems with carbon filters sufficient in type and capacity to eliminate marijuana odors emanating from the interior to the exterior of the premises discernible by reasonable persons. The ventilation system must be inspected and approved by the Building Official.

If carbon dioxide will be used in any cultivation area, sufficient physical barriers or a negative air pressure system shall be in place to prevent carbon dioxide from moving into the ambient air, into other units in the same building or into an adjacent building in a concentration that would be harmful to any person, including persons with respiratory disease, and shall be inspected and approved by the Building Official and the Greater Eagle Fire Protection District.

All State regulations concerning ventilation systems shall be followed.

20. Compliance with Other Codes.

The Licensed Premises and adjacent grounds of a Medical Marijuana Business shall comply with all zoning, health, building, fire, and other codes and ordinances of the Town as shown by completed inspections and approvals by the Town Planner, Building Department, Greater Eagle Fire Protection District, and the Eagle County Health Department, if applicable.

21. No Harm to Public Health, Safety or Welfare.

The Licensed Premises and adjacent grounds of a Medical Marijuana Business shall be operated in a manner that does not cause any substantial harm to the public health, safety and welfare.

22. Additional Requirements.

At the time a Special Use Permit is granted, amended, or the Board of Trustees approves a major change to a Medical Marijuana Business, the Board of Trustees may impose on the applicant any

conditions related to the proposed use that is reasonably necessary to protect the public health, safety or welfare, including but not limited to the following:

- a. Additional security requirements;
- b. Limits and requirements on parking and traffic flows;
- c. Requirements for walls, doors, windows, locks and fences on the licensed premises and adjacent grounds;
- d. Limits on Medical Marijuana Products that may be sold;
- e. Requirements and limits on ventilation and lighting;
- f. Limits on noise inside the licensed premises or on the adjacent grounds;
- g. Prohibitions on certain conduct in the Medical Marijuana Business;
- h. Limits on hours of operation that are more restrictive than prescribed by subsection (9) above;
- i. A requirement that the Applicant temporarily close the Medical Marijuana Business to the public until certain changes, inspections or approvals are made; and
- j. A limitation on the square footage of the Medical Marijuana Business.

~~23. Penalty for Violation.~~

~~Any violation of the provisions of this subsection or the conditions of the Special Use Permit granted, by a Medical Marijuana Business shall be punishable by a civil fine of up to one thousand dollars (\$1,000.00). Each day that a violation is committed, exists or continues shall be deemed a separate and distinct offense. In addition, any violation of the provisions of this subsection, or any conditions imposed by the Special Use Permit may result in the revocation of the Special Use Permit.~~

Q. Cultivation of Medical Marijuana by Patients and Primary Caregivers in Residential Dwelling Units

The cultivation, production, or possession of marijuana plants for medical use by a patient or primary caregiver, as such terms are defined by Article XVIII, Section 14 of the Colorado Constitution, shall be allowed in residential dwelling units subject to the following conditions:

1. The cultivation, production or possession of marijuana plants shall be in full compliance with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution.
2. No more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants per person may be cultivated.
3. Marijuana plants shall not be grown in the common area of any commercial or industrial building.
4. The cultivation of marijuana plants in any building or unit within Industrial (I) Zone Districts shall meet the requirements of all adopted Town building and safety codes. In addition to these codes, these personal grow operations shall meet State of Colorado standards for retail or medical marijuana grow operations. Any person cultivating marijuana for personal use shall have an initial building and safety inspection conducted by the Town, shall comply with any conditions of said inspection, and shall submit to a periodic building and safety code inspection thereafter.
5. All cultivation shall be located within a secure building. Grow operations in permanent or temporary greenhouses are not permitted.
6. No more than 36 plants may be grown in any industrial unit.
7. The cultivation of marijuana plants shall not be permitted on exterior portions of a lot or a building. The cultivation, production or possession of marijuana plants within a building or unit must not be perceptible from the exterior of the building or unit.
8. Any form of signage shall be prohibited; unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited; light pollution, glare or brightness resulting from grow lamps that disturbs adjacent property shall be prohibited; and excessive noise from ventilation fans shall be prohibited.
9. Pursuant to Section 9-7-113, C.R.S., the use of a compressed flammable gas as a solvent in the extrication of THC or other cannabinoids is prohibited.

U. Retail Marijuana Businesses (Amended ####/16)

1. Limitation on the Number of Retail Marijuana Stores Businesses within the Town.  
The number of Retail Marijuana Stores Businesses permitted within the Town is based on population. A maximum of one (1) Retail Marijuana Store, ~~one (1) Retail Marijuana Cultivation Facility, and one (1) Retail Marijuana Products Manufacturer~~ shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.

In the event more than one (1) land use application for a Retail Marijuana ~~Store Business~~ of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter and the Colorado Retail Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, ~~or their designee.~~

2. Retail Marijuana Cultivation Facilities ~~Businesses~~ within the Town. The number of Retail Marijuana Cultivation Facilities ~~Businesses~~ permitted within the Town is based on population. A maximum of one (1) Retail Marijuana Cultivation Facility, ~~one (1) Retail Marijuana Cultivation Facility, and one (1) Retail Marijuana Products Manufacturer~~ shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.

In the event more than one (1) land use application for a Retail Marijuana Cultivation Facility ~~Business~~ of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter and the Colorado Retail Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, or their designee.

3. Limitation on the Number of Retail Marijuana Products Manufacturing Facilities ~~Businesses~~ within the Town. The number of Retail Marijuana Products Manufacturing Facilities ~~Businesses~~ permitted within the Town is based on population. A maximum of two (2) Retail Marijuana Products Manufacturing Facilities ~~one (1) Retail Marijuana Cultivation Facility, and one (1) Retail Marijuana Products Manufacturer~~ shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.

In the event more than one (1) land use application for a Retail Marijuana Products Manufacturing Facility ~~Business~~ of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter and the Colorado Retail Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, or their designee.

4. Permitted Locations.

Retail Marijuana Stores and Retail Marijuana Cultivation Facilities shall only be located in the Commercial General (CG) and Industrial (I) Zone Districts east of Nogal Gulch pursuant to a Special Use Permit. Refer to map at the end of this Section labeled Exhibit A.

Retail Marijuana Products Manufacturing Facilities shall only be located on properties along Chambers Avenue that are within the Commercial General (CG) and Industrial (I) Zone Districts and are located a minimum of one thousand seven hundred and fifty feet (1,750') from the centerline of Eby Creek Road pursuant to a Special Use Permit. If any portion of such property is within the required minimum distance from Eby Creek Road, no Retail Marijuana Products Manufacturing Facility or Retail Marijuana Cultivation Facility shall be permitted on that property. Refer to map at the end of this Section labeled Exhibit B.

5. Distance from Schools, Licensed Childcare Facilities, Alcohol or Drug Treatment Facilities and College Campus.

All Retail Marijuana Businesses shall be located a minimum of one thousand feet (1000') from schools, as defined in the Colorado Retail Marijuana Code, licensed childcare facilities, alcohol or drug treatment facilities, and the campus of a college or university.

6. Distance from Residential Zone District.

All Retail Marijuana Businesses shall be located a minimum of one hundred feet (100') from any residential zone district which shall be measured from the zone district boundary line to the subject property line.

7. Restrictions on Mobile Facilities and Delivery of Marijuana Products.

No Retail Marijuana Business shall be located in a movable or mobile vehicle or structure and no Retail Marijuana products shall be delivered in the Town unless such delivery is specifically permitted by the Colorado Retail Marijuana Code.

8. Hours of Operation.

Retail Marijuana Stores shall limit their hours of operation to ~~those permitted by the Colorado Retail Marijuana Code between 11:00 a.m. and 7:00 p.m.~~ 8:00 a.m. to 12:00 a.m., Monday - Sunday, or as otherwise provided in the Special Use Permit.

9. Operation of Multiple Businesses at Single Location.

A person may operate any Medical Marijuana Business and any Retail Marijuana Business permitted by this Section ~~a licensed Medical Marijuana Center and Medical Marijuana Optional Premises Cultivation Facility, Medical Marijuana Infused Products Manufacturing Facility, and any Retail Marijuana Business permitted by this subsection~~ at the same location if in full compliance with the requirements of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code.

10. Specific Requirements for a Retail Marijuana Store.  
A Retail Marijuana Store may only sell Retail Marijuana, Retail Marijuana Products, Marijuana Accessories and non-consumable products such as apparel, and marijuana related products such as childproof packaging containers. Retail Marijuana Stores shall be prohibited from selling or giving away any consumable product, including but not limited to tobacco products or alcohol, or edible products that do not contain marijuana, including but not limited to sodas, candies or baked goods.
11. No Products to be Visible from Public Places.  
Marijuana plants, products, accessories, and associated paraphernalia contained in a Retail Marijuana Business shall not be visible from a public sidewalk, public street or right-of-way, or any other public place.
12. No Beer or Alcohol on Premises.  
No fermented malt beverages and no alcohol beverages, as defined in the Colorado Beer Code and Colorado Liquor Code, respectively, shall be kept, served or consumed on the premises of a Retail Marijuana Business.
13. Consumption of Marijuana Prohibited.  
No consumption or smoking of any Retail Marijuana Products shall be allowed or permitted on the premises or adjacent grounds of a Retail Marijuana Business.
- ~~14. Signage shall be specifically approved as part of the special use permit application process for the Retail Marijuana Business.~~
15. Storage of Products.  
All products and accessories shall be stored completely indoors and on site.
16. Prevention of Emissions and Disposal of Materials.  
Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the business premises shall be provided at all times. In the event that any debris, dust, fluids or other substances shall exit the business premises, the property owner and operator shall be jointly and severally responsible for the full cleanup immediately.

Businesses shall properly dispose of all materials and other substances in a safe and sanitary manner in accordance with State regulations and Eagle County Landfill Regulations.

~~A Retail Marijuana Cultivation Facility, Retail Marijuana Store and Retail Marijuana Testing Facility~~ As applicable, Retail Marijuana Businesses shall be equipped with ventilation systems with carbon filters sufficient in type and capacity to eliminate marijuana odors emanating from the interior to the exterior of the premises

discernible by reasonable persons. The ventilation system must be inspected and approved by the Building Official.

If carbon dioxide will be used in any cultivation area, sufficient physical barriers or a negative air pressure system shall be in place to prevent carbon dioxide from moving into the ambient air, into other units in the same building or into an adjacent building in a concentration that would be harmful to any person, including persons with respiratory disease, and shall be inspected and approved by the Building Official and the Greater Eagle Fire Protection District.

All State regulations concerning ventilation systems shall be followed.

17. Compliance with Other Codes.

Any Retail Marijuana Business and the adjacent grounds of the Retail Marijuana Business shall comply with all zoning, health, building, fire and other codes and ordinances of the Town as shown by completed inspections and approvals by the Town Planner, Building Department, Greater Eagle Fire Protection District, and the Eagle County Health Department, if applicable.

18. No Harm to Public Health, Safety or Welfare.

The Licensed Premises and adjacent grounds of a Retail Marijuana Business shall be operated in a manner that does not cause any substantial harm to the public health, safety and welfare.

19. Additional Requirements.

At the time a Special Use Permit is granted, amended or any time the Board of Trustees approves a major change to a Retail Marijuana Business, the Board of Trustees may impose on the Applicant any conditions related to the proposed use that is reasonably necessary to protect the public health, safety or welfare, including but not limited to the following:

- a. Additional security requirements;
- b. Limits and requirements on parking and traffic flows;
- c. Requirements for walls, doors, windows, locks and fences on the licensed premises and adjacent grounds;
- d. Limits on Retail Marijuana Products that may be sold;
- e. Requirements and limits on ventilation and lighting;
- f. Limits on noise inside the licensed premises or on the adjacent grounds;
- g. Prohibitions on certain conduct in the Retail Marijuana Business;

- h. Limits on hours of operation that are more restrictive than prescribed by subsection (38) above;
- i. A requirement that the Applicant temporarily close the Retail Marijuana Business to the public until certain changes, inspections or approvals are made; and
- j. A limitation on the square footage of the Retail Marijuana Business.

~~20. Penalty for Violation.~~

~~Any violation of the provisions of this subsection or the conditions of the Special Use Permit granted, by a Retail Marijuana Business shall be punishable by a civil fine of up to one thousand dollars (\$1,000.00). Each day that a violation is committed, exists or continues shall be deemed a separate and distinct offense. In addition, any violation of the provisions of this subsection, or any conditions imposed by the Special Use Permit may result in the revocation of the Special Use Permit.~~

V. Marijuana Testing Facilities (Amended ###/###/16)

1. Limitation on the Number of Marijuana Testing Facilities within the Town.

The number of Marijuana Testing Facilities permitted within the Town is based on population. A maximum of one (1) Marijuana Testing Facility shall be permitted for every 5,000 people or fraction thereof. Population shall be determined by the most recent data available from the U.S. Census Bureau and the State of Colorado Demographer's Office.

In the event more than one (1) land use application for a Marijuana Testing Facility of the same classification are submitted to the Town in close proximity to one another, the applications comply with all the requirements of this Chapter, the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, but the Town is not permitted to approve all of the applications because of the limitations set forth in this subsection, the Board of Trustees shall first review for approval the application which was first submitted and determined to be complete by the Town Planner, or their designee.

2. Permitted Locations.

Marijuana Testing Facilities shall only be located on properties along Chambers Avenue that are within the Commercial General (CG) and Industrial (I) Zone Districts and are located a minimum of one thousand seven hundred and fifty feet (1,750') from the centerline of Eby Creek Road pursuant to a Special Use Permit. If any portion of such property is within the required minimum distance from Eby Creek Road, no Marijuana Testing

Facility shall be permitted on that property. Refer to map at the end of this Section labeled Exhibit B.

3. Distance from Schools, Licensed Childcare Facilities, Alcohol or Drug Treatment Facilities and College Campus.

All Marijuana Testing Facilities shall be located a minimum of one thousand feet (1000') from schools, as defined in the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code, licensed childcare facilities, alcohol or drug treatment facilities, and the campus of a college or university.

4. Distance from Residential Zone District.

All Marijuana Testing Facilities shall be located a minimum of one hundred feet (100') from any residential zone district which shall be measured from the zone district boundary line to the subject property line.

5. Restrictions on Mobile Facilities and Delivery of Marijuana Products.

No Marijuana Testing Facility shall be located in a movable or mobile vehicle or structure and no marijuana products shall be delivered in the Town unless such delivery is specifically permitted by the Colorado Medical Marijuana Code or the Colorado Retail Marijuana Code.

6. Hours of Operation.

Marijuana Testing Facilities shall limit their hours of operation to 8:00 a.m. to 12:00 a.m., Monday - Sunday, or as otherwise provided in the Special Use Permit.

7. Operation of Multiple Businesses at Single Location.

A person may operate any Medical Marijuana Business and any Retail Marijuana Business permitted by this Section at the same location if in full compliance with the requirements of the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code.

8. No Products to be Visible from Public Places.

Marijuana plants, products, accessories, and associated paraphernalia contained in a Marijuana Testing Facility shall not be visible from a public sidewalk, public street or right-of-way, or any other public place.

9. No Beer or Alcohol on Premises.

No fermented malt beverages and no alcohol beverages, as defined in the Colorado Beer Code and Colorado Liquor Code, respectively, shall be kept, served or consumed on the premises of a Marijuana Testing Facility.

10. Consumption of Marijuana Prohibited.

No consumption or smoking of any marijuana products shall be allowed or permitted on the premises or adjacent grounds of a Marijuana Testing Facility.

11. Storage of Products.

All products and accessories shall be stored completely indoors and on site.

12. Prevention of Emissions and Disposal of Materials.

Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting the business premises shall be provided at all times. In the event that any debris, dust, fluids or other substances shall exit the business premises, the property owner and operator shall be jointly and severally responsible for the full cleanup immediately.

Testing Facilities shall properly dispose of all materials and other substances in a safe and sanitary manner in accordance with State regulations and Eagle County Landfill Regulations.

As applicable, Marijuana Testing Facilities shall be equipped with ventilation systems with carbon filters sufficient in type and capacity to eliminate marijuana odors emanating from the interior to the exterior of the premises discernible by reasonable persons. The ventilation system must be inspected and approved by the Building Official.

If carbon dioxide will be used in any cultivation area, sufficient physical barriers or a negative air pressure system shall be in place to prevent carbon dioxide from moving into the ambient air, into other units in the same building or into an adjacent building in a concentration that would be harmful to any person, including persons with respiratory disease, and shall be inspected and approved by the Building Official and the Greater Eagle Fire Protection District.

All State regulations concerning ventilation systems shall be followed.

13. Compliance with Other Codes.

Any Marijuana Testing Facility and the adjacent grounds of the Marijuana Testing Facility shall comply with all zoning, health, building, fire and other codes and ordinances of the Town as shown by completed inspections and approvals by the Town Planner, Building Department, Greater Eagle Fire Protection District, and the Eagle County Health Department, if applicable.

14. No Harm to Public Health, Safety or Welfare.

The Licensed Premises and adjacent grounds of a Marijuana Testing Facility shall be operated in a manner that does not cause any substantial harm to the public health, safety and welfare.

15. Additional Requirements.

At the time a Special Use Permit is granted, amended or any time the Board of Trustees approves a major change to a Marijuana Testing Facility, the Board of Trustees may impose on the applicant any conditions related to the proposed use that is reasonably necessary to protect the public health, safety or welfare, including but not limited to the following:

- a. Additional security requirements;
- b. Limits and requirements on parking and traffic flows;
- c. Requirements for walls, doors, windows, locks and fences on the licensed premises and adjacent grounds;
- d. Requirements and limits on ventilation and lighting;
- e. Limits on noise inside the licensed premises or on the adjacent grounds;
- f. Prohibitions on certain conduct in the Marijuana Testing Facility;
- g. Limits on hours of operation that are more restrictive than prescribed by subsection (6) above;
- h. A requirement that the applicant temporarily close the Marijuana Testing Facility to the public until certain changes, inspections or approvals are made; and
- i. A limitation on the square footage of the Marijuana Testing Facility.

Amended 03/20/90  
Amended 06/02/91  
Amended 04/16/95  
Amended 02/13/00  
Amended 10/27/10  
Amended 11/13/12  
Amended 10/22/13

Exhibit A. Area where Medical Marijuana Centers, Optional Medical Marijuana Cultivation Premises, Retail Marijuana Stores, and Retail Marijuana Cultivation Facilities are permitted.

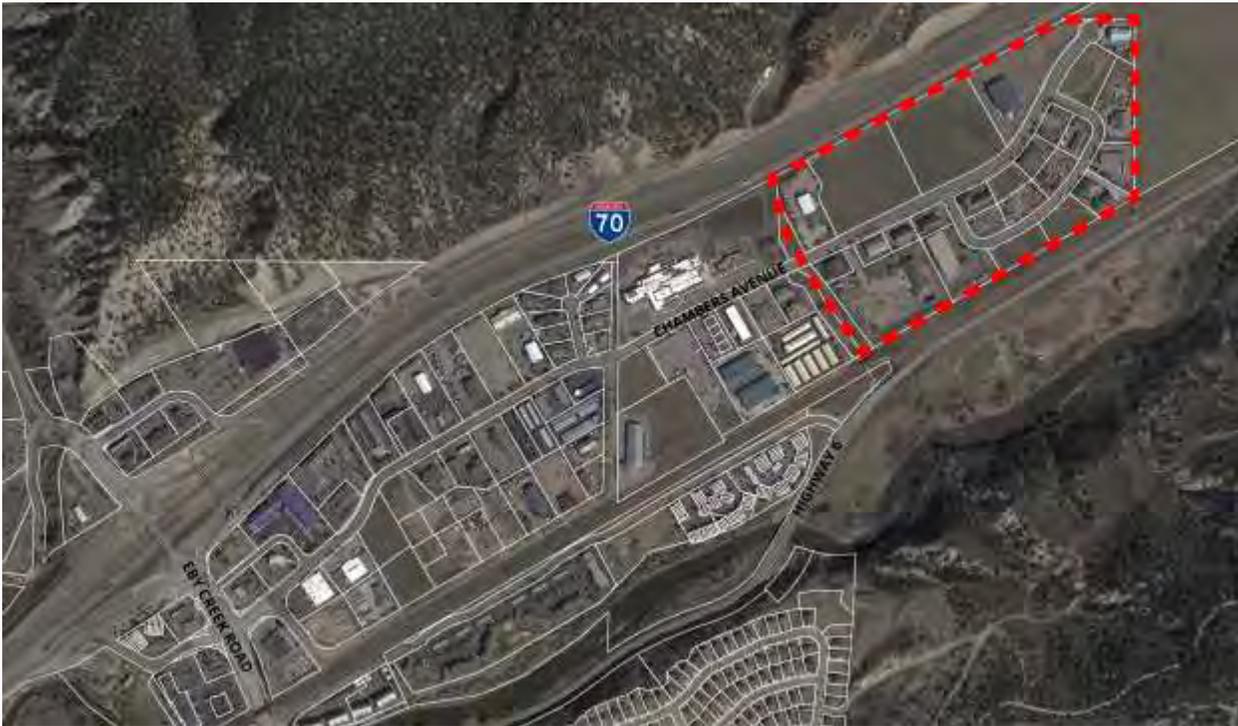


Exhibit B. Area where Medical Marijuana Infused Products Manufacturers, Retail Marijuana Products Manufacturers, and Marijuana Testing Facilities are permitted.

