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# GARFIELD & HECHT, P.C.

ATTORNEYS AT LAW

Since 1975

www.garfieldhecht.com

TO: Mayor Frank Breslin and New Castle Town Council Members

FROM: Garfield & Hecht, P.C.

RE: Parkland Dedication and Construction Ordinance

DATE: August 29, 2013

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Attached for your consideration on first reading is an ordinance recommending changes to Chapter 16.24 of the Municipal Code concerning parkland dedication and public and private incentives. As you will recall, the Council and the POSTr committee have been reviewing the status of recreational amenities and capital construction within the Town. After a few discussions concerning funding options, it was Council's direction to Staff to pursue amendments to the code to increase the amount of incentive-based flexibility in order to both give developers options and to formally state the Town's preferences concerning raw land dedications versus capital construction of amenities in existing parks.

The Planning Commission considered the attached language at their August 14 meeting and unanimously voted to recommend that Council approve the changes. The main discussion points, and items for the Council to consider, include:

1. The amount of the dedication requirement. The code currently requires a dedication of ten percent (10%) of the gross land area. The amended ordinance increases that requirement of twelve percent (12%).
2. The impacts that the code changes would have on existing developments, understanding that both CVR and Lakota have at least contractually satisfied their dedication requirements by virtue of their respective annexation agreements. The hope is that these code changes will further empower both the developer and the Town to come up with more options to have amenities constructed when development resumes.
3. The desire to allow flexibility while maintaining a strict requirement. The P&Z wanted to ensure that the Town did not sacrifice park dedications in the name of encouraging creativity.
4. Permitting credits for public amenity construction rather than just private amenity construction.
5. The method of calculating the cash-in-lieu or credit for recreational amenity construction.

Finally, the Planning Commission wanted to revisit the issue of the kinds of slopes that would be deemed “acceptable” for land dedication to the Town to ensure that the Town was not merely stuck with unusable land. In light of that the P&Z lowered the requirement from 35 degree slopes to 30 degree slopes.

Staff will be in attendance at your 9/3 meeting to discuss this matter further.

**TOWN OF NEW CASTLE, COLORADO**  
**RESOLUTION NO. PZ 2013-5**

A RESOLUTION OF THE NEW CASTLE PLANNING COMMISSION RECOMMENDING  
APPROVAL OF AMENDMENTS TO PORTIONS OF THE NEW CASTLE MUNICIPAL  
CODE CONCERNING PARKLAND DEDICATION REQUIREMENTS.

WHEREAS, the Town Council, in consultation with the POSTr committee and the Planning Commission is reviewing the long-term recreational needs of the community; and

WHEREAS, the Town has addressed some potential future recreational needs within the Comprehensive Plan, but that plan is largely designed for future development outside of existing Town boundaries; and

WHEREAS, the Town wishes to reiterate its support and commitment to the values set forth in the Comprehensive Plan and wants to provide a variety of recreational amenities within the existing Town boundaries; and

WHEREAS, the Town code currently provides that at the time of subdivision a developer must dedicate 10% of the land area for parks purposes, or pay a cash-in-lieu amount; and

WHEREAS, the Town code provides a credit against this dedication requirement for the construction of private recreational facilities, but not for public recreational facilities; and

WHEREAS, the Town desires to increase the flexibility provided to the developer and to the Town concerning park dedication requirements to ensure that adequate and desired recreational amenities are constructed within the Town as development progresses; and

WHEREAS, such amenities do not just include the dedication of raw land for active parks, but may include the construction of facilities on existing parklands; and

WHEREAS, the Town Council referred the issue of parkland dedication the Planning Commission for review; and

WHEREAS, pursuant to section 17.92.030(B) of the New Castle Municipal Code the Planning Commission held a public hearing on August 14, 2013 to formally consider the Town's application to amend the municipal code to address parkland dedication; and

WHEREAS, based on the testimony presented throughout these meetings by staff and the general public, the Planning Commission hereby recommends that the Town Council approve changes to the municipal code to alter the parkland dedication requirements as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the New Castle Planning Commission.

2. Amendment. The Planning Commission hereby recommends that the Town Council approve the following amendments to the New Castle Municipal Code (deletions are shown with strikethroughs and additions are shown with underlines):

16.24.010 - Land dedication.

A. The town council shall require the dedication of a minimum of ~~ten (10)~~ twelve (12) percent of the total gross land area of the parcel being subdivided to the public for schools, parks and open space or other public purpose, exclusive of the dedications of streets and other rights-of-way and areas of private recreation and open space. Such dedications shall be indicated on the preliminary and final plats. The town council, at its discretion, may require ~~of or~~ permit the subdivider to provide a cash payment in lieu of land dedication determined in accordance with the provisions of Section 16.24.040 of this chapter to be used only for the purchase of land for open space and/or for providing additional recreational facilities, upgrading existing recreational facilities and other public purposes. In determining whether to accept land dedication or cash in lieu thereof, the planning commission and town council shall consider the following: the size of the development and its adequacy for accommodating a suitable public use site; the community facility aspects of the comprehensive plan and any comprehensive plan of the school district; existing parks and other public uses in the area; the topography, geology and location of land in the subdivision available for dedication; the needs of the people in the area; and any other appropriate factors. If land is dedicated to the town, it shall be free of all liens and encumbrances except as approved by the town council.

B. The town council may require reservation of sites for schools and other public purposes. Land dedicated may include the one hundred (100) year floodplain, national and state historical or natural features, and proposed public areas set aside in state, regional, county or city comprehensive plans. Land dedicated shall not include sites for technical or private schools, sites for service organizations which are not open to the general public, and sites unsuitable for public use due to steep slopes (over ~~thirty-five (35)~~ 30 percent grade), rock formations, adverse topography, utility easements, or other features which may be harmful to the health and safety of the citizens of the town.

C. The above requirements shall not apply in cases where satisfactory dedication arrangements were made and approved by the town council at the time of final subdivision of the same property.

16.24.020 - Reservation of land for schools and other public agencies.

If requested by a public agency, the town council may require a subdivider or developer to reserve land areas sufficient for development of school or other public agency facilities. A public agency includes the state of Colorado, or any political subdivision thereof.

A. Land reserved shall, by the nature of its natural topography, soil condition and connecting utilities, lend itself to development of the desired facility.

B. Land reserved shall be purchased by the public agency at its fair market value as determined below, according to the following schedule:

1. Within ninety (90) days following approval of the final plat, the requesting agency and the subdivider or developer shall enter into an option agreement for a period of no greater than one year, with a renewal provision for one additional year.

2. When the option is signed, the public agency shall deposit with an escrow agent an amount that shall be determined by the public agency and the developer to equal the actual costs and expenses, plus ten (10) percent, of replatting the subdivision if the option is not exercised. In the event the public agency and developer cannot agree upon the estimated expenses, then the town administrator shall make the determination. In the event the option is extended for an additional year, the public agency shall deposit an additional ten (10) percent of the estimated costs and expenses with the escrow agent.

3. For the purpose of this section, the fair market value of the land reserved shall be the value of the raw, undeveloped land, plus a proportionate share, as they benefit the reserved land, of the actual cost of the improvements required by the subdivider or developer.

4. In the event the public agency and the subdivider or developer cannot agree as to the fair market value, the parties shall submit the matter to binding arbitration, under such rules and regulations as the town council may prescribe by resolution.

#### 16.24.030 - Credit for ~~private~~ construction of recreation facilities.

If requested by the subdivider or developer the town may give the subdivider or developer credit towards the parkland dedication requirement for private the construction of public or private recreation facilities in the development within the town, provided that:

A. ~~The amount of land to be dedicated may be reduced by no more than fifty (50) percent of the requirements of this chapter;~~ At the time of approval of the final subdivision the town council, upon recommendation from the planning commission, shall determine how much of the land dedication requirements of this Chapter, if any, may be credited due to the construction of the recreation facilities. The town council shall refer to the process set forth in Section 16.24.040 to determine the relative value of the land dedication requirement overall as compared to the costs of the facilities to be constructed. By way of example only, if the amount of acreage required to be dedicated would result in a cash-in-lieu value of \$100,000 pursuant to section 16.24.040 and the facilities to be constructed by the developer and approved by the town cost \$75,000, then the guideline is that the town council could relieve the developer of 75% of the dedication requirement. Ultimately, however, the town council shall determine the final amount of the credit and it may be

more or less than this guideline, after taking into consideration the overall recreational needs of the town and the proposed development and how those needs are met by the developer's proposal.

B. The town council determines that the ~~private~~ recreation facilities ~~offered~~ constructed will absorb a major portion of the recreational demands of the residents or employees of the proposed development or, in the case of construction that does not occur within the boundaries of the proposed development, that the proposed subdivision is adequately served by existing recreational facilities and the proposed off-site construction will provide a significant benefit to the town;

C. The ~~private~~ recreation facilities will be constructed at the same time as or prior to the housing, industrial or commercial facilities in the development;

D. There are sufficient safeguards in the subdivision improvement agreement to ensure that the ~~private~~ recreation facilities are completed at the same time as or before the remainder of the development.

#### 16.24.040 - Cash payment in lieu of dedication.

A. At the option of the town council, the subdivider or developer may be required or permitted on or before final passage of the ordinance approving subdivision, to pay to the town payment in cash or to transfer other property in lieu of land dedication. The amount of cash payment shall be determined by multiplying the square footage of the area required to be dedicated by this chapter by the parkland fee, as determined below, calculated as of the year of final subdivision approval. If the council determines to accept other property instead of, or as a partial payment toward the cash payment required hereunder, the council shall determine the value of the other property.

B. Payment in lieu of land dedication shall be made prior to final approval of the ordinance approving the subdivision, and such payment shall be placed in a recreation fund to be established and maintained by the town for the acquisition of land and for the improvement of parks, playground and recreation areas in the town, and may benefit the residents of the town in general, as well as those of the proposed subdivision.

C. The park land fee that may be accepted in lieu of land dedication shall be established each year by the town council upon a recommendation from the planning commission. In the event the town council does not establish a park land fee that may be accepted in lieu of land dedication in a given year the fee last adopted by the town council shall remain in effect until revised. These fees shall approximate the cost to acquire land sufficient to meet park needs for the ensuing year.

THIS RESOLUTION PZ 2013-5 was adopted by the New Castle Planning and Zoning Commission by a vote of 6 to 0 on the 14<sup>th</sup> day of August, 2013.

NEW CASTLE PLANNING AND  
ZONING COMMISSION

By: \_\_\_\_\_  
Chuck Apostolik, Chairman

ATTEST:

\_\_\_\_\_  
Mindy Andis, Deputy Town Clerk

**TOWN OF NEW CASTLE, COLORADO  
ORDINANCE 2013-7**

AN ORDINANCE OF THE NEW CASTLE TOWN COUNCIL APPROVING  
AMENDMENTS TO PORTIONS OF THE NEW CASTLE MUNICIPAL CODE  
CONCERNING PARKLAND DEDICATION REQUIREMENTS.

WHEREAS, the Town Council, in consultation with the POSTr committee and the Planning Commission is reviewing the long-term recreational needs of the community; and

WHEREAS, the Town has addressed some potential future recreational needs within the Comprehensive Plan, but that plan is largely designed for future development outside of existing Town boundaries; and

WHEREAS, the Town wishes to reiterate its support and commitment to the values set forth in the Comprehensive Plan and wants to provide a variety of recreational amenities within the existing Town boundaries; and

WHEREAS, the Town code currently provides that at the time of subdivision a developer must dedicate 10% of the land area for parks purposes, or pay a cash-in-lieu amount; and

WHEREAS, the Town code provides a credit against this dedication requirement for the construction of private recreational facilities, but not for public recreational facilities; and

WHEREAS, the Town desires to increase the flexibility provided to the developer and to the Town concerning park dedication requirements to ensure that adequate and desired recreational amenities are constructed within the Town as development progresses; and

WHEREAS, such amenities do not just include the dedication of raw land for active parks, but may include the construction of facilities on existing parklands; and

WHEREAS, the Town Council referred the issue of parkland dedication the Planning Commission for review; and

WHEREAS, pursuant to section 17.92.030(B) of the New Castle Municipal Code the Planning Commission held a public hearing on August 14, 2013 to formally consider the Town's application to amend the municipal code to address parkland dedication; and

WHEREAS, based on the testimony presented the Planning Commission recommended that the Town Council approve changes to the municipal code to alter the parkland dedication requirements as set forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW CASTLE, COLORADO:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the New Castle Town Council.

2. Amendment. The Council hereby approves the following amendments to Chapter 16.24 of the New Castle Municipal Code (deletions are shown with strikethroughs and additions are shown with underlines):

16.24.010 - Land dedication.

A. The town council shall require the dedication of a minimum of ~~ten (10)~~ twelve (12) percent of the total gross land area of the parcel being subdivided to the public for schools, parks and open space or other public purpose, exclusive of the dedications of streets and other rights-of-way and areas of private recreation and open space. Such dedications shall be indicated on the preliminary and final plats. The town council, at its discretion, may require ~~of or~~ permit the subdivider to provide a cash payment in lieu of land dedication determined in accordance with the provisions of Section 16.24.040 of this chapter to be used only for the purchase of land for open space and/or for providing additional recreational facilities, upgrading existing recreational facilities and other public purposes. In determining whether to accept land dedication or cash in lieu thereof, the planning commission and town council shall consider the following: the size of the development and its adequacy for accommodating a suitable public use site; the community facility aspects of the comprehensive plan and any comprehensive plan of the school district; existing parks and other public uses in the area; the topography, geology and location of land in the subdivision available for dedication; the needs of the people in the area; and any other appropriate factors. If land is dedicated to the town, it shall be free of all liens and encumbrances except as approved by the town council.

B. The town council may require reservation of sites for schools and other public purposes. Land dedicated may include the one hundred (100) year floodplain, national and state historical or natural features, and proposed public areas set aside in state, regional, county or city comprehensive plans. Land dedicated shall not include sites for technical or private schools, sites for service organizations which are not open to the general public, and sites unsuitable for public use due to steep slopes (over ~~thirty-five (35)~~ 30 percent grade), rock formations, adverse topography, utility easements, or other features which may be harmful to the health and safety of the citizens of the town.

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B. Land reserved shall be purchased by the public agency at its fair market value as determined below, according to the following schedule:

1. Within ninety (90) days following approval of the final plat, the requesting agency and the subdivider or developer shall enter into an option agreement for a period of no greater than one year, with a renewal provision for one additional year.

2. When the option is signed, the public agency shall deposit with an escrow agent an amount that shall be determined by the public agency and the developer to equal the actual costs and expenses, plus ten (10) percent, of replatting the subdivision if the option is not exercised. In the event the public agency and developer cannot agree upon the estimated expenses, then the town administrator shall make the determination. In the event the option is extended for an additional year, the public agency shall deposit an additional ten (10) percent of the estimated costs and expenses with the escrow agent.

3. For the purpose of this section, the fair market value of the land reserved shall be the value of the raw, undeveloped land, plus a proportionate share, as they benefit the reserved land, of the actual cost of the improvements required by the subdivider or developer.

4. In the event the public agency and the subdivider or developer cannot agree as to the fair market value, the parties shall submit the matter to binding arbitration, under such rules and regulations as the town council may prescribe by resolution.

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more or less than this guideline, after taking into consideration the overall recreational needs of the town and the proposed development and how those needs are met by the developer's proposal.

B. The town council determines that the ~~private~~ recreation facilities ~~offered~~ constructed will absorb a major portion of the recreational demands of the residents or employees of the proposed development or, in the case of construction that does not occur within the boundaries of the proposed development, that the proposed subdivision is adequately served by existing recreational facilities and the proposed off-site construction will provide a significant benefit to the town;

C. The ~~private~~ recreation facilities will be constructed at the same time as or prior to the housing, industrial or commercial facilities in the development;

D. There are sufficient safeguards in the subdivision improvement agreement to ensure that the ~~private~~ recreation facilities are completed at the same time as or before the remainder of the development.

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A. At the option of the town council, the subdivider or developer may be required or permitted on or before final passage of the ordinance approving subdivision, to pay to the town payment in cash or to transfer other property in lieu of land dedication. The amount of cash payment shall be determined by multiplying the square footage of the area required to be dedicated by this chapter by the parkland fee, as determined below, calculated as of the year of final subdivision approval. If the council determines to accept other property instead of, or as a partial payment toward the cash payment required hereunder, the council shall determine the value of the other property.

B. Payment in lieu of land dedication shall be made prior to final approval of the ordinance approving the subdivision, and such payment shall be placed in a recreation fund to be established and maintained by the town for the acquisition of land and for the improvement of parks, playground and recreation areas in the town, and may benefit the residents of the town in general, as well as those of the proposed subdivision.

C. The park land fee that may be accepted in lieu of land dedication shall be established each year by the town council upon a recommendation from the planning commission. In the event the town council does not establish a park land fee that may be accepted in lieu of land dedication in a given year the fee last adopted by the town council shall remain in effect until revised. These fees shall approximate the cost to acquire land sufficient to meet park needs for the ensuing year.

4. Effective Date. This Ordinance shall be effective fourteen days after final publication pursuant to section 4.3 of the Town Charter.

INTRODUCED on September 3, 2013, at which time copies were available to the Council and to those persons in attendance at the meeting, read by title, passed on first reading, and ordered

published in full and posted in at least two public places within the Town as required by the Charter.

INTRODUCED a second time at a regular meeting of the Council of the Town of New Castle, Colorado on \_\_\_\_\_, 2013, read by title and number, passed without amendment, approved, and ordered published as required by the Charter.

TOWN OF NEW CASTLE, COLORADO

By: \_\_\_\_\_  
Frank Breslin, Mayor

ATTEST:

\_\_\_\_\_  
Melody Harrison, Town Clerk