



FORMAL AGENDA ITEM

COUNCIL MEETING DATE: March 26, 2013

TO: President and Members of City Council
CC: Mayor Steve Bach
VIA: Laura Neumann, Chief of Staff/Chief Administrative Officer
FROM: Peter Wysocki, Planning and Development Director
Rick O'Connor, Senior Planner

Subject Title: Amendment to the Dublin Terrace Townhomes Development Plan

SUMMARY: This is an appeal by MLP Receiverships LLC, as receiver for Today's Homes, of a Planning Commission denial of an amended development plan. The amended plan would make the following changes to the southern portion of the previously-approved development plan:

- a. To allow a different building elevation than what was approved;
- b. To allow a different roofline from what was approved;
- c. To modify the grading plan to raise the grade (additional fill) approximately seven feet (at the highest point) along the south portion of the property; and
- d. To increase the amount of landscaping along the south side of the southerly most townhomes, including a four-foot retaining wall.

PREVIOUS COUNCIL ACTION: City Council approved of an annexation, rezoning, development plan and final plat for this property in 2006.

BACKGROUND: In 2006, a development plan for the 142-lot townhome development was approved and construction began by Today's Homes (aka Heritage Homes). Ten townhome units were constructed along the southern portion of the property which violated the approved development plan. After the violation of the development plan was vetted, Today's Homes, in early May 2012, determined that they would relocate (move) the units to other lots within the development. In May 2012, Today's Homes closed their Colorado Springs operation and the parent company in Canada filed for Credit Protection. PNC Bank, the lender who provided a construction loan on the buildings, requested that the court appoint a receiver for their defaulted loan. The property covered by the construction loan was placed into a receivership estate and a receiver was appointed in June, 2012. An amended development plan was submitted by the receiver for approval which reflects the units "as constructed."

Staff denied the amended development plan which was appealed to the Planning Commission. The Planning Commission subsequently denied the appeal on February 21, 2013

FINANCIAL IMPLICATIONS: The affected residents to the south argue that they are financially impacted. Additionally, the existing townhome residents and investors of the remaining undeveloped lots argue that they are financially impacted if the project is not approved.

BOARD/COMMISSION RECOMMENDATION: The Planning Commission denied the appeal of an administrative denial on a 6-1 vote. The commissioners disagreed with the options presented by the applicant and voiced concern with their lack of communication with the affected neighbors since September 2012. All commissioners, with the exception of Commissioner Henninger, supported denial of the appeal for the following reasons: 1) there has been no compromise on either side of the issue and were disappointed no further solutions were provided by the applicant; 2) the appeal is a case of seeking forgiveness rather than permission; and 3) they were disappointed with the lack of cooperation by the parties to reach a solution and suggested mediation to move the project forward. The attached CPC Record-of-Decision of the meeting provides further discussion of the application.

Supporting denial of the appeal - Gonzalez, Magill, Markewich, Shonkwiler, Suthers, Walkowski

Opposing denial of the appeal - Henninger

Absent - Ham, Phillips

STAKEHOLDER PROCESS: A notification to 111 property owners within 500 feet was provided during the internal review period and the property was posted. An additional mailing and posting was completed prior to the Planning Commission meeting.

Staff received three (3) written comments and one phone message from neighbors located to the south of this request; all comments were against the proposed changes. The opposition noted the following: the developer built the wrong units; they raised the grade extensively and caused flooding on an adjoining property. Additionally, a letter has been received in favor of the amended applications from the Dublin Terrace Townhome Association, representing their 56 members, and letters in support from the 20 investors owning vacant lots within the undeveloped portion of the project. Staff is aware of additional letters in support of the request from the existing townhome owners that were submitted separately to City Council.

ALTERNATIVES:

1. Deny the appeal, thereby upholding the Planning Commission's denial of the amended development plan;
2. Approve the amended development plan, thereby reversing the Planning Commission's decision; or
3. Refer the matter back to Planning Commission for further consideration.

RECOMMENDATION: Staff recommends that the appeal be denied.


PROPOSED MOTION: Deny the appeal, upholding both the denial by staff and that of the Planning Commission.

Attachments:

- Appeal Statement
- PowerPoint Presentation
- Revised Development Plan (11 x 17 copies sent under separate cover)
- Application Review Criteria
- CPC Record-of-Decision
- CPC Agenda Report



**PLANNING AND DEVELOPMENT DEPARTMENT
Land Use Review Division**

DATE: March 22, 2013
TO: President and Members of City Council
CC: Mayor Steve Bach
VIA: Laura Neumann, Chief of Staff/Chief Administrative Officer
FROM: Peter Wysocki, Planning and Development Director
Rick O'Connor, Senior Planner 

Subject Title: Formal Item 17-A: Reduced Development Plans/Additional information

The Amended Development Plan for the Dublin Terrace Townhomes (Item 17-A) is scheduled for the March 26, 2013 Formal Council meeting and is listed under the Public Hearing calendar (Appeal of a Planning Commission decision). Attached are copies of the current development plan illustrating the components required as part of a development plan. Several letters and correspondence have been provided directly to City Council and through other sources; those copies provided to staff are enclosed.

c: Sarah B. Johnson, City Clerk
Chris Melcher, City Attorney

Attachment:

- Amended Dublin Terrace Development Plan (reduced size)
- Correspondence

From: Amy Phillips <amy_p@mac.com>
Date: February 10, 2013 9:52:15 AM MST
To: <allCouncil@springsgov.com>
Cc: Amy Phillips <amy_p@mac.com>
Subject: Dublin Terrance townhomes

Dear City Council Members,

I am writing in response to an article in the Gazette:

<http://www.gazette.com/news/vogrin-150715-dublin-terrace.html>
(SIDE STREETS: Bankrupt townhomes could be abandoned by bank)

Having served for 10 years chairman of the Black Forest Land Use Committee (1998 - 2008), and having worked on the revision of El Paso County's Land Development Code, I have a good understanding of what the codes are trying to achieve, and how building heights are to be measured. Here are my thoughts on the subject of the Dublin Terrace townhouses being built 11 feet higher than what was approved.

Let them walk away from the project. They knew they were violating the rules when they brought in the 7 feet of fill dirt - a typical trick to "game" the height rule. (<http://www.gazette.com/articles/vogrin-136364-developer-neighbors.html>) And even at that, they still admit they are at least 4 feet above what they agreed to build. This isn't an accident or a math error, it's an intentional violation. They are no doubt hoping that they'll get away with it, setting the precedent for all other builders to violate the terms and conditions of all future approvals.

Let them walk away from the project. Then have a big weekend event (or 4 weekends in a row) where people can come and disassemble the buildings and take the timbers, and other materials home with them. Perhaps invite Habitat for Humanity as the main beneficiary. The city can pay for hot dogs and sodas for all participants, and be done with it. That type of action will serve the community better in many ways. The violating property is dismantled at low cost to the city, the developers near and far learn the lesson that they cannot get away with cheating the City of Colorado Springs, you turn a quagmire into a charitable event. and the neighbors get the integrity of their neighborhood restored.

My two cents' worth.

Respectfully yours,

Amy Phillips
amy_p@mac.com
80908

"A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty." - Winston Churchill

February 11, 2013

City of Colorado Springs
107 N. Nevada, Suite 300
Colorado Springs, CO 80903

Attention: Aimee Cox, Administrator

Dear Aimee:

Always appreciate your help, information, and support. I have enclosed my personal letter to the City Council Members as well as the Planning Commission members.

I appreciate your copying and including in their packets for consideration before the upcoming Public Planning Commission Meeting, February 21, 2013.

I am truly sorry to be out of town, but do so appreciate your facilitating the distribution of my letter to all concerned.

Again, thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Wooley", with a long horizontal flourish extending to the right.

Elizabeth Wooley
5612 Saint Patrick View
Colorado Springs, CO 80923

719-418-5147
217-303-1777 (cell)

City of Colorado Springs
Council Members, etal
City Planning Committee

RE: CPC PUD5-00301-A2MJ12 (Proposed Forfeiture Ordinance)
Amendment Proposal: Court Appointed Receiver


Dear Council Members/Planning Committee Members:

I believe that the issues at hand have caused irrefutable harm to all parties concerned with the completion of the Town Home development – i.e. Dublin Terrace Town Homes. I cannot fathom the City or the Planning Members would contemplate “no” solution to the pending debacle.

As a taxpayer/homeowner, I believe it is obligatory for the City Council to weigh the circumstances of issuing a “forfeiture ordinance” without careful consideration of all possible solutions. Fair and equitable solutions can be achieved and I am therefore against any kind of “forfeiture” to this development. To date you have been presented plans that mutually resolve the concerns by putting into effect landscaping improvements to afford (additional) privacy to the single home owners adjacent and the entire development plan, thereby allowing the development to move forward, with occupancy of the buildings now completed along with completion of the entire project. The tax base at this point in time is being eroded by non-action, and assuredly would not be positive if this entire project were allowed to “stop”. I can’t imagine any City Council Member or Planning Committee Member would support “tearing down” the current structures, a cost unfeasible and in no way could be construed cost productive. I assure you I would be vehemently against use of my tax dollars to tear down perfectly well built, symmetrically pleasing structures due to a communication and project planning approval failure— i.e. inspection, verifying compliance with development plan, etc. There is nothing wrong with these structures and it is sad that they are not “occupied”, offering an additional tax base premium, while the hold up to proceed is solvable. It is time to see the possibilities and act within reason/accordingly.

In retort to arguments from the neighbors directly behind these structures, whom I believe have subjectively purported the structures as “too tall” and yet have not supported this stance with any constructive reasoning except – “they don’t like them”; no documented proof is available to sustain their claims. They have been unreasonable in listening to good solutions – thereby ignoring and refusing to listen to any solution without any consideration of their neighbors or adjacent community. The continued argument they make are statements that allude to their being the affected parties, but their facts do not support property value changes, and they offer no palpable solutions. I do not agree with their view, in fact I believe the structures are in architectural symmetry with the rest of the town homes. They are not ugly, they are not restrictive; in fact, they will be a definite asset (taxable) to the community.

I implore you to consider the ramifications of doing nothing. Vacant buildings with no hope of being finished in a timely manner could lead to vandalism/squatter issues and eventually be a safety issue for the children/residents of this area. It is imperative we do not allow this to happen. Please do not consider voting in favor of “forfeiture” and do please see the possibilities of the proposed development plans submitted by the court appointed Receiver. So much depends on your open mindedness to being progressive in your decision. It is time to move forward!


5612 SAINT PATRICK
28923

Dear Planning
Commission and City
Council Members:

My name is Nicolo Maostas / Jerry Maostas. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 6503 Pennywhistle Pt in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.



Date:

Jan 30th 2013

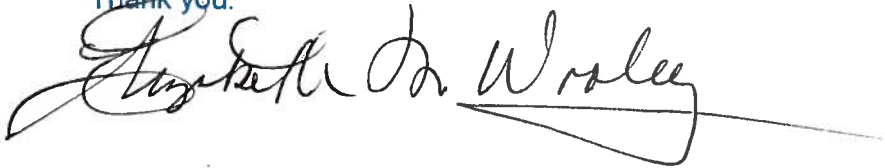
(2 Signatures)

Dear Planning
Commission and City
Council Members:

My name is Elizabeth M. Woolley. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5612 SAINT PATRICK VIEW, 80923, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.



Date: 1-29-13

①

Dear Planning
Commission and City
Council Members:

My name is Wendy Fuller. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5625 Saint Patrick View, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

Wendy A. Fuller

Date:

2/3/2013

Dear Planning
Commission and City
Council Members:

My name is Aurelie Cook. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5619 Celtic Cross Grove, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.



Date: 31 January 2013

Dear Planning Commission
and City Council Members:

My name is Brett Stanley. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5616 St. Patrick Vw, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.



DATE: 02/10/13

Dear Planning Commission
and City Council Members:

My name is Kenneth Young. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5608 Saint Patrick View, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 10 Feb 13

Dear Planning Commission
and City Council Members:

My name is Thomas Fendon. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5643 Celtic Cross, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

Thomas Fendon

DATE: 2/8/13

Dear Planning Commission
and City Council Members:

My name is Heidi Owens. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5636 St. Patrick Way, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

Heidi M. Owens

DATE: 2/8/13

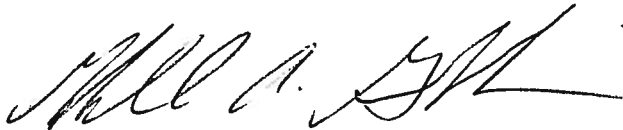
Dear Planning Commission
and City Council Members:

My name is Mitchell Gudmundson. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 6527 Pennywhistle Pt, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 2/7/13



Dear Planning Commission
and City Council Members:

My name is Monique Foster-Loggins. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5661 Saint Patrick View, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 2/8/13



Dear Planning Commission
and City Council Members:

My name is Courtney Moynahan. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5608 Saint Patrick View, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 10 Feb 13.

Dear Planning Commission
and City Council Members:

My name is Rarinne Gibbons. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5616 St Patrick Vw, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 2/8/13

Dear Planning Commission
and City Council Members:

My name is James McColland. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5608 SAINT PATRICK VIEW, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 10 Feb 2013

Dear Planning Commission
and City Council Members:

My name is Cindy Hoyt. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5613 Saint Patrick View, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.

DATE: 2/10/2013

Cindy Hoyt

Dear Planning
Commission and City
Council Members:

My name is SAMUEL C VLAHAVAS. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at ~~5657 SAINT PATRICK VW~~ 5657 SAINT PATRICK VW CO S CO 80973, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.



Date:

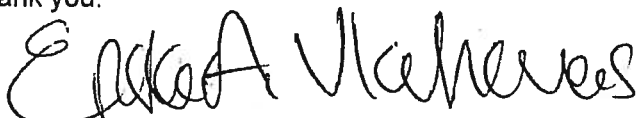
2/11/2013

Dear Planning
Commission and City
Council Members:

My name is ERICA A VLAHAVAS. I am writing in regard to CPC PUD5-00301-A2MJ12 and the proposed forfeiture ordinance. I SUPPORT THE AMENDMENT AND OPPOSE THE FORFEITURE ORDINANCE.

I reside at: 5657 ST. PATRICK VIEW, in Colorado Springs, Colorado. I am a neighbor of 6552-6596 Emerald Isle Heights (those town homes are in the Dublin Terrace Town Home development). I support allowing the town homes to be completed as they are currently framed ("too tall"). I do not want to risk having derelict buildings in the neighborhood for any amount of time. I would like to see the town homes completed and occupied sooner rather than later. I would like the entire development to proceed as soon as possible. I believe that any objections to the current structures can be cured with a landscaping buffer along the property line and believe the buildings are architecturally appealing and harmonious with the original development plan as approved. Please vote to approve the amendment proposed by the court appointed Receiver. Please vote against the forfeiture ordinance.

Thank you.



January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013

Colorado Springs
Land Use Review

Dear Sir or Madam:

RE: Undeveloped Dublin Terrace lots and Receivership Proceedings involving Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc. or Unity Investments USA.

I am a private investor that has an interest in the 67 lots in the community of Dublin Terrace in Colorado Springs. I do not have any direct involvement or connection with Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc., Unity Investments USA, UBG Alberta Builders Limited or any of the Canadian based UBG entities.

I have invested in the community of Dublin Terrace through Unity Investments and now have this investment subject to the results of the Today's Homes Inc. receivership proceedings. My investment is secured on title through ABC (US) Series A2. ABC (US) Series A2 is a group of private investors that has provided mortgage financing through a syndicated mortgage for the purchase of these lots.

I have been following the proceedings during the receivership and understand that there are several townhomes that are substantially built in this community that are currently in a violation of the building code that are in need of a solution. I also understand that these assets are now in the control of the Receiver and part of the Receivership Estate. I further understand that the city of Colorado Springs has refused any further development approval for the balance of the lots in the community of Dublin Terrace.

The current situation has a significant effect on my ability to recover my investment capital.

I am writing this letter to request that the city of Colorado Springs consider offering a variance for these partially built townhomes. I make this request based on the following reasons;

- I am 1 private investor in a group of 20 with a total investment of just over \$1.3 Million (CDN) into these lots in this community.
- I, along with the group of private investors, had no involvement in the planning, construction or financing of the townhomes in violation of the building code and feel it is unfair of the city of Colorado Springs to penalize us, as mortgage holders of the adjacent lots, for the actions of the builder.
- Without the ability to build on our lots, the value is tremendously reduced if not eliminated.
- Without the ability build on these lots, the possibility of selling these lots is non-existent.
- My investment in these lots is separate and distinct from the negligence and disregard demonstrated by Today's Homes in Colorado.
- Current lot sale values are lower today than they were when the lots were initially purchased so any equity that the builder may have had in the undeveloped lots is gone; this leaves our first

mortgage as the only stakeholder with an opportunity for recovering any capital following a lot sale.

- Alternatives such as moving or demolishing these townhomes are not feasible as there is limited capital available to cover the costs and recovery for the bank would be greatly compromised.
- I believe that foreclosure by the bank would be very costly and time consuming and the community would remain stagnant and in disrepair for a significant amount of time.

The best possible solution that I can see for this issue is for the city of Colorado Springs to offer a variance on these townhomes which would create the best possible outcome for all stakeholders that are involved.

I am open to continuing this conversation with a view to reaching an amicable solution for all stakeholders. I am interested in recovering as much of my investment capital as possible and I am willing to provide assistance where necessary.

Best Regards,

A handwritten signature in black ink, appearing to read 'D. Olorenshaw', with a long horizontal flourish extending to the right.

David Olorenshaw
148 Canyoncrest Pointe W
Lethbridge, AB T1K 5C6

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013

Colorado Springs
Land Use Review

Dear Sir or Madam:

RE: Undeveloped Dublin Terrace lots and Receivership Proceedings involving Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc. or Unity Investments USA.

I am a private investor that has an interest in the 67 lots in the community of Dublin Terrace in Colorado Springs. I do not have any direct involvement or connection with Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc., Unity Investments USA, UBG Alberta Builders Limited or any of the Canadian based UBG entities.

I have invested in the community of Dublin Terrace through Unity Investments and now have this investment subject to the results of the Today's Homes Inc. receivership proceedings. My investment is secured on title through ABC (US) Series A2. ABC (US) Series A2 is a group of private investors that has provided mortgage financing through a syndicated mortgage for the purchase of these lots.

I have been following the proceedings during the receivership and understand that there are several townhomes that are substantially built in this community that are currently in a violation of the building code that are in need of a solution. I also understand that these assets are now in the control of the Receiver and part of the Receivership Estate. I further understand that the city of Colorado Springs has refused any further development approval for the balance of the lots in the community of Dublin Terrace.

The current situation has a significant effect on my ability to recover my investment capital.

I am writing this letter to request that the city of Colorado Springs consider offering a variance for these partially built townhomes. I make this request based on the following reasons;

- I am 1 private investor in a group of 20 with a total investment of just over \$1.3 Million (CDN) into these lots in this community.
- I, along with the group of private investors, had no involvement in the planning, construction or financing of the townhomes in violation of the building code and feel it is unfair of the city of Colorado Springs to penalize us, as mortgage holders of the adjacent lots, for the actions of the builder.
- Without the ability to build on our lots, the value is tremendously reduced if not eliminated.
- Without the ability build on these lots, the possibility of selling these lots is non-existent.
- My investment in these lots is separate and distinct from the negligence and disregard demonstrated by Today's Homes in Colorado.
- Current lot sale values are lower today than they were when the lots were initially purchased so any equity that the builder may have had in the undeveloped lots is gone; this leaves our first


mortgage as the only stakeholder with an opportunity for recovering any capital following a lot sale.

- Alternatives such as moving or demolishing these townhomes are not feasible as there is limited capital available to cover the costs and recovery for the bank would be greatly compromised.
- I believe that foreclosure by the bank would be very costly and time consuming and the community would remain stagnant and in disrepair for a significant amount of time.

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Best Regards,


MSC INVESTMENTS
Michael Faunt
131 Arbour Vista Heights NW
Calgary, AB T3G 4T8

January 16, 2013

PETER WYSOCKI, AICP

Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

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Colorado Springs
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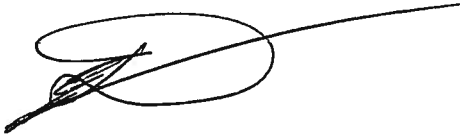
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Best Regards,

A handwritten signature in black ink, appearing to read 'David Wells', is written over a large, hand-drawn oval. A long horizontal line extends from the right side of the oval across the page.

David Wells
126 Sunset Place SE
Calgary, AB T2X 3J4

January 16, 2013

PETER WYSOCKI, AICP

Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

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Colorado Springs
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Best Regards,

A handwritten signature in black ink, appearing to read 'Mona Messner', with a stylized, cursive script.

Mona Messner
148 Canyoncrest Pointe W
Lethbridge, AB T1K 5C6

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

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Colorado Springs
Land Use Review

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Best Regards,

A handwritten signature in black ink that reads "William R. Frankish". The signature is written in a cursive style with a large, sweeping flourish at the end.

William Frankish
111 Stonepine Drive SW
Calgary, AB T3Z 3B4

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013

Colorado Springs
Land Use Review

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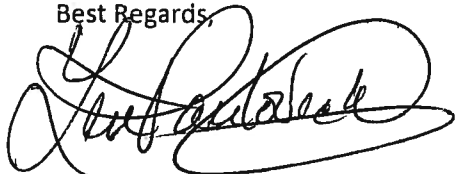
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Best Regards,

A handwritten signature in black ink, appearing to read 'Len Paulovich', written in a cursive style with a large loop at the end.

Len Paulovich
2281 Neptune Way
Comox, BC V9M 4E8

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013

Colorado Springs
Land Use Review

Dear Sir or Madam:

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Best Regards,

A handwritten signature in black ink, appearing to read 'B. Giebelhaus', with a large, stylized flourish at the end.

Bill Giebelhaus
52328 RR 233 507 Balmoral Crescent
Sherwood Park, AB T8B 0A2

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

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Colorado Springs
Land Use Review

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Best Regards,

A handwritten signature in black ink, appearing to read 'Thad Ostrowski', with a stylized flourish at the end.

Thad Ostrowski
236 Heritage Lane Drive RR 3
De Winton, AB T0L 0X0

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

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Colorado Springs
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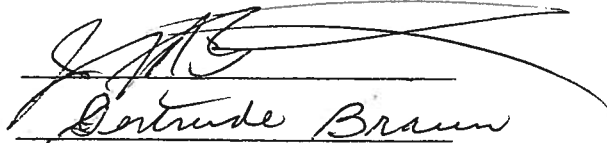
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Best Regards,

A handwritten signature in cursive script, appearing to read "Gertrude Braun", is written over a horizontal line. The signature is fluid and somewhat stylized, with a long, sweeping underline that extends to the right.

Jack & Gertrude Braun
12 Eagleview Way
Cochrane, AB T4C 1P5

January 16, 2013

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mortgage as the only stakeholder with an opportunity for recovering any capital following a lot sale.

- Alternatives such as moving or demolishing these townhomes are not feasible as there is limited capital available to cover the costs and recovery for the bank would be greatly compromised.
- I believe that foreclosure by the bank would be very costly and time consuming and the community would remain stagnant and in disrepair for a significant amount of time.

The best possible solution that I can see for this issue is for the city of Colorado Springs to offer a variance on these townhomes which would create the best possible outcome for all stakeholders that are involved.

I am open to continuing this conversation with a view to reaching an amicable solution for all stakeholders. I am interested in recovering as much of my investment capital as possible and I am willing to provide assistance where necessary.

Best Regards,

A handwritten signature in black ink, appearing to read 'W. Ilenseer', with a horizontal line underneath the name.

Walter Ilenseer
351 Park Ridge Place
Qualicum Beach, BC V9K 2S6

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013
Colorado Springs
Land Use Review

Dear Sir or Madam:

RE: Undeveloped Dublin Terrace lots and Receivership Proceedings involving Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc. or Unity Investments USA.

I am a private investor that has an interest in the 67 lots in the community of Dublin Terrace in Colorado Springs. I do not have any direct involvement or connection with Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc., Unity Investments USA, UBG Alberta Builders Limited or any of the Canadian based UBG entities.

I have invested in the community of Dublin Terrace through Unity Investments and now have this investment subject to the results of the Today's Homes Inc. receivership proceedings. My investment is secured on title through ABC (US) Series A2. ABC (US) Series A2 is a group of private investors that has provided mortgage financing through a syndicated mortgage for the purchase of these lots.

I have been following the proceedings during the receivership and understand that there are several townhomes that are substantially built in this community that are currently in a violation of the building code that are in need of a solution. I also understand that these assets are now in the control of the Receiver and part of the Receivership Estate. I further understand that the city of Colorado Springs has refused any further development approval for the balance of the lots in the community of Dublin Terrace.

The current situation has a significant effect on my ability to recover my investment capital.

I am writing this letter to request that the city of Colorado Springs consider offering a variance for these partially built townhomes. I make this request based on the following reasons;

- I am 1 private investor in a group of 20 with a total investment of just over \$1.3 Million (CDN) into these lots in this community.
- I, along with the group of private investors, had no involvement in the planning, construction or financing of the townhomes in violation of the building code and feel it is unfair of the city of Colorado Springs to penalize us, as mortgage holders of the adjacent lots, for the actions of the builder.
- Without the ability to build on our lots, the value is tremendously reduced if not eliminated.
- Without the ability build on these lots, the possibility of selling these lots is non-existent.
- My investment in these lots is separate and distinct from the negligence and disregard demonstrated by Today's Homes in Colorado.
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mortgage as the only stakeholder with an opportunity for recovering any capital following a lot sale.

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The best possible solution that I can see for this issue is for the city of Colorado Springs to offer a variance on these townhomes which would create the best possible outcome for all stakeholders that are involved.

I am open to continuing this conversation with a view to reaching an amicable solution for all stakeholders. I am interested in recovering as much of my investment capital as possible and I am willing to provide assistance where necessary.

Best Regards,

A handwritten signature in black ink, appearing to read "Bruce Deal". The signature is fluid and cursive, with a large initial "B" and "D".

Bruce Deal
114 Appleyard Cove
Hinton, AB T7V 1Y8

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013
Colorado Springs
Land Use Review

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I have been following the proceedings during the receivership and understand that there are several townhomes that are substantially built in this community that are currently in a violation of the building code that are in need of a solution. I also understand that these assets are now in the control of the Receiver and part of the Receivership Estate. I further understand that the city of Colorado Springs has refused any further development approval for the balance of the lots in the community of Dublin Terrace.

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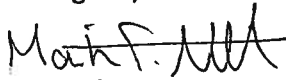
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I am open to continuing this conversation with a view to reaching an amicable solution for all stakeholders. I am interested in recovering as much of my investment capital as possible and I am willing to provide assistance where necessary.

Best Regards,

A handwritten signature in black ink, appearing to read "Martin Arlitt". The signature is stylized with a large, sweeping "M" and "A".

Martin Arlitt
39 Arbour Vista Close NW
Calgary, AB T3G 5P4

January 16, 2013

PETER WYSOCKI, AICP
Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

RECEIVED

FEB 13 2013
Colorado Springs
Land Use Review

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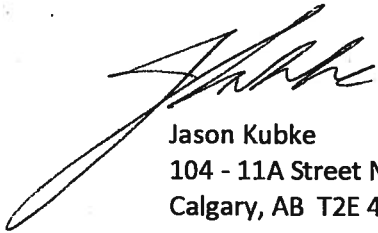
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Best Regards,

A handwritten signature in black ink, appearing to read 'Jason Kubke', with a long, sweeping underline that extends to the left.

Jason Kubke
104 - 11A Street NE
Calgary, AB T2E 4N8

Additional
comments of 2/20

O'Connor, Rick

From: Dale Sampson AOL [dalewsampson@aol.com]
Sent: Wednesday, February 20, 2013 6:22 AM
To: O'Connor, Rick
Subject: Re: Public hearing for CRT Engineering on behalf of Receiver for Today's homes Emerald Isle Heights

Mr O'Connor, thank you for the update and I would like to add again my concern in the beginning as a homeowner adjacent to the proposed development, we did not want to stop the town homes. Rather as a community we worked together to formulate an acceptable plan to meet everyone's needs. Because we were so involved in the initial proposal, I considered the changes made by Today's Homes representatives without seeking prior approval as a complete end run on the integrity required in the planning and zoning process. As professionals working in the building industry, I believe they were fully aware of the scope and impact of their decisions to deviate from the approved plans, which left many good people and businesses holding the bag. I do not seek a pound of flesh as might have been indicated in describing the few vocal adjacent homeowners. Yes, formulating an acceptable remedy can be complicated. However, at the end of the day we must have integrity in following our planning and zoning approval process. Why have rules if we fail to enforce them.

Thanks again,

Dale

-----Original Message-----

From: Dale Sampson AOL [<mailto:dalewsampson@aol.com>]
Sent: Monday, January 07, 2013 12:21 PM
To: O'Connor, Rick
Cc: Yvette Sampson
Subject: Public hearing for CRT ENGINEERING on behalf of Receiver for Today's homes Emerald Isle Heights

Hello Mr O'Connor, i am the homeowner at 5572 Many Springs Drive and currently live in Germany deployed in support of our Military. Concerning the New application to accept the changes the builder "Today's Homes" on Emerald Isle Heights made without zoning approval and their NEW attempt to make the property acceptable. As my home is one that has the building right in our back yard, my position has not changed from earlier discussion and messages. In the original process Mr Moore with CRT Engineering has all the time in the world to come around the neighborhood and show the development plans before public hearings and from our input changes were made in the development for more parking and landscaping along our fence line. At that time I made it clear that the height and style of home were very important to me and I did not want the type of home that they have put illegally on the property. That is why the style and setback were closely reviewed and changed in the final development. If I had been living in the home on Many Springs at the time I would have noticed the elevation changes and been one of the people at your office expressing concern. However, I am very glad for good neighbors who have been active in this process. Mail takes a while to get over here and with the holiday volume and my travels it resulted in just receiving the mass mailing only in the

last few days to respond.

I have two principle concerns 1) they have changed the grade of the land an I now am the lowest point in the area and ripe for flooding as happened back in the spring of 2000. 2) I am sorry for the position they are in now, but it is unacceptable to try after the fact to get approval for what the homeowners opposed to in the initial meetings and discussion with Mr Moore. I find it very offensive that we had assurances which were documented in the development that they chose to ignore and attempt to get away with. My property value has been adversely affected more that others because these homes are in my immediate back yard! The smell does not get any sweeter with age or attempts to try and fix the violation of the zoning process, other than remove the home and follow the original plan. I close by restating my position, they made a choice to build contrary to what was approved and had the neighbors not pointed out the violation they might have got away with it. I oppose any "making it right action" If they continue to try and save their investment in the models they have built. Perhaps they could offer to buy all of our homes at a market premium (need some type of punitive action) and then resell to new buyers who would have full disclosure of the elevated home in their backyard. I would appreciate feedback from the meeting and information on any future meetings.

Thanks for your time and letting me vent, this is a classic text book example of seeking absolution when they went in knowing full well they were braking the rules from the first load of extra dirt.

Dale Sampson
PSC 2 Box 8487
APO AE 09012
719 260 1999

O'Connor, Rick

From: Koehn, Alayna
Sent: Monday, February 25, 2013 8:13 AM
To: O'Connor, Rick; Wysocki, Peter
Subject: FW: Topic du Jour - Too-Tall Townhomes

FYI –

From: Gjczirjak@aol.com [<mailto:Gjczirjak@aol.com>]
Sent: Saturday, February 23, 2013 1:28 PM
To: Williams, Brandy; Herpin, Bernie; Dougan, Angela; Hente, Scott; Leigh, Tim; Snider, Val; Martin, Jan; Czelatdko, Lisa; Bennett, Merv
Cc: Koehn, Alayna; gjczirjak@aol.com
Subject: Topic du Jour - Too-Tall Townhomes

Dear City Council Members,

First let me congratulate the City Planning Commission for taking such a strong stand regarding the "Too-Tall Townhomes" at the Dublin Terrace Townhomes. According to an article in The Gazette, 22 Feb 2013, this issue may surface on appeal to City Council. This is an opportunity for the City Planning Commission, the City Council and the City Government itself to start playing hardball with, what amounts to be, blatant disregard for city codes and city planning guidance.

It is clear that the developer violated various codes while building the structures too high and on incorrect elevation. Thankfully the structures were never completed or occupied which, in my view, makes resolution a little easier. In The Gazette article, Ms. Suthers indicates that perhaps the other homeowners need to be compensated as a solution. While we can feel their pain in all this, I don't think that is the right approach. Another suggestion seems to be moving the offending structures to a different part of the property. I submit this would be cost prohibitive and make the structures not affordable for the type of families that they are targeting in the first place. Finally, Ms. Suthers (and others) accurately point out that the court-appointed receiver has done nothing to resolve this issue. Therefore, time to play hardball,

The City has been reluctant in the past to condemn properties but this is a case that warrants that option. The property should be condemned by The City and give the owner notice and time to remove the structures. If the owner cannot oblige, the City can then seize the property, raze the structures, and re-sell the property to cover costs of demolition. This would put the adjacent homeowners back to the position of not having the offending structures obstructing their view, put the proper back to development condition, gain income to cover the expenses of demolition, and finish the property as was intended. Stand up for the citizens of Colorado Springs, don't back down from the developers, and send a message to others that violations of building codes will not be tolerated.

Respectfully,
Jim Czirjak
concerned citizen

Response to email

O'Connor, Rick

From: O'Connor, Rick
Sent: Monday, March 11, 2013 7:54 AM
To: 'Mona Messner'
Cc: Wysocki, Peter
Subject: PC and Council memo
Attachments: Scanned from a Xerox multifunction device.pdf

Mr. Olorenshaw: I have attached scanned copies of the information that you had questioned which clearly notes a letter to the Planning Commission noting the concerns of your group and a memo to Council that was prepared 10 days ago and noted the 20 letters that were received.

I would also note that I was out of town on the 7th and 8th and your email went into a blocked email/spam folder. Otherwise you would have received an out of office email.

This should address your concerns.

Rick O'Connor

O'Connor, Rick

From: Mona Messner [mmessner@shaw.ca]
Sent: Friday, March 08, 2013 5:36 PM
To: Council Members
Cc: O'Connor, Rick; Wysocki, Peter
Subject: building permit freeze on Dublin Terrace lots
Attachments: CCF03082013_00001.jpg; CCF03082013_00002.jpg

email date
sent/received

To Colorado Springs City Council:

On January 16, 2013 I and 19 other investors wrote individual letters to Peter Wysock explaining our position as real 1st mortgage holders of 67 Dublin Terrace lots. The letters were mailed January 28, 2013 and should have been received by February 8, 2013.

On March 6, 2013 I emailed Peter Wysocki asking for acknowledgement of these letters. Mr. Wysocki referred my email to Rick O'Connor and said he had not received the 20 investor letters.

Today, March 8, 2013, I emailed Mr. O'Connor asking if he had received these letters. I also attached a copy of my individual letter. I have not yet received a response from Mr. O'Connor.

I am starting to think that this is more than just a planning issue; it is an issue of general fairness that can only be addressed by city council. I understand that the city was justified in placing the building permit freeze on the other Dublin Terrace lots as they were owned by Todays Homes, the entity that has caused all the problems. However, now Todays Homes is bankrupt with no chance of ever coming back and the permit freeze is serving no real purpose. What it is doing is preventing the 1st mortgage holders from seizing and selling these lots to liquidate as much as possible of their outstanding investment.

I feel the need to address this issue with Colorado Springs City Council prior to the upcoming March 12, 2013 council meeting and am attaching a copy of my January 16th letter for your reference. This letter explains that we are not associated with Todays Homes, but are the real investors who financed ABC Builders (USA) as 1st mortgage holders of 67 Dublin Terrace lots.

I also want to acknowledge the pain/suffering/problems to the neighbors surrounding the the 3 "too tall townhomes" and the possible financial loss that PNC Bank may suffer. They have our sympathy; however, we as the debenture holders (investors) will be suffering a partial loss of our investment through no fault of our own, as is further described in my January 16th letter.

So the neighbors, PNC Bank and the 20 investors all have something in common - we are all suffering various losses due to the actions of Todays Homes and whoever was inspecting the building of the 3 townhomes on behalf of the City of Colorado Springs. We do not understand why the height issue was not caught at the planning approval stage, or during the actual construction, considering the importance placed on the height of the townhomes.

Todays Homes is a bankrupt company and the building permit freeze does nothing to resolve the issue of the "too tall townhomes". The permit freeze now only penalizes our group of 1st mortgage holders and destroys all of our investment. Please note that our 1st mortgage position is on OTHER Dublin Terrace lots - NOT on the lots on which the "too tall townhomes" are located.

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Todays Homes is a bankrupt company and the building permit freeze does nothing to resolve the issue of the "too tall townhomes". The permit freeze now only penalizes our group of 1st mortgage holders and destroys all of our investment. Please note that our 1st mortgage position is on OTHER Dublin Terrace lots - NOT on the lots on which the "too tall townhomes" are located.

I now ask, on behalf of myself and the other 19 investors, that you do not further penalize us by continuing the building permit freeze, thereby reducing the value of the Dublin Terrace lots to nothing and creating a total loss to people who had no part in creating the problem of the "too tall townhomes".

If you see the unfairness of continuing to punish the 1st mortgage holders, please point this out to your fellow council members.

Proof of our claim as 1st mortgage holders is available upon request. Thank you for your consideration.

Dave Olorenshaw

O'Connor, Rick

From: Mona Messner [mmessner@shaw.ca]
Sent: Friday, March 15, 2013 3:56 PM
To: O'Connor, Rick
Cc: Wysocki, Peter; Council Members
Subject: forfeiture ordinance on undeveloped Dublin Terrace lots

We are 2 of a group of 20 investors who hold the first mortgages (debentures) on the 67 undeveloped lots in Dublin Terrace. Our combined investment is 12% of the total.

We have read March 12th city council formal agenda item #8 regarding the forfeiture of vested rights of the Dublin Terrace townhomes development plan. Some of the details covered the necessary steps for the issuance of a new development plan, which would be conditioned upon abatement of the violations of the 10 non-compliant townhomes. This would be impossible for our group of investors to attempt to do, and the costs would be prohibitive, which would seriously impair the value of the mortgages we hold on the 67 undeveloped lots.

We would like to restate our position regarding the building permit freeze and forfeiture ordinance on these lots. Our group of investors had no involvement in the operations of Today's Homes and/or Unity Builders Group and have no responsibility for their incompetence in the building of the non-compliant townhomes. We simply hold the first mortgages on 67 undeveloped lots. We have no financial involvement in the 10 non-compliant townhomes or the lots on which they are built. We can understand your position on the building permit freeze and the forfeiture ordinance as a means to remediate the non-compliant townhouses, but this is punitive to our group of investors, but not to Today's Homes which is in bankruptcy. These 67 undeveloped lots were never owned by Today's Homes which is why the receiver for Today's Homes is not dealing with these 67 lots. While ownership of these 67 lots is registered to a corporation associated with Unity Builders Group, this corporation is indebted, by debentures, to our group of 20 investors. This corporation has no equity in the lots.

In the spirit of general fairness we ask that this be taken into consideration. Our group of investors is no more responsible for Today's Homes actions than are the owners of completed homes in Dublin Terrace who are not included in the forfeiture ordinance. If this ordinance is passed, it would not only be detrimental to us, but to the whole Dublin Terrace neighborhood and the homeowners there to have a stalled and incomplete development.

The complete loss of lot value and therefore mortgage value due to the forfeiture ordinance has caused the 2 of us to agree to offer some monetary compensation that would be put towards the solve of the non-compliant townhouse problem. We have spoken to Andrew Checkley, receiver for Today's Homes, who is negotiating with the affected neighbors as a method of solving this problem.

We would be willing to approach the other 18 investors in our group with the idea that a contribution from them would go a long ways in resolving this issue. To do this we would of course need a further postponement of at least 1 month of the discussion/vote on the forfeiture ordinance. We realize that you have already postponed this ordinance several times but we are confident that within 1 month we can get responses from the other investors. We will report the results to you as soon as we receive them. However, if we do not get the postponement and the ordinance is passed and becomes final, there will be nothing to discuss with the other investors. This proposed cash contribution is a new element that is worthy of consideration.

Please let us know as soon as possible, by email, so that we can start the process of communicating with the other investors.

Yours truly,

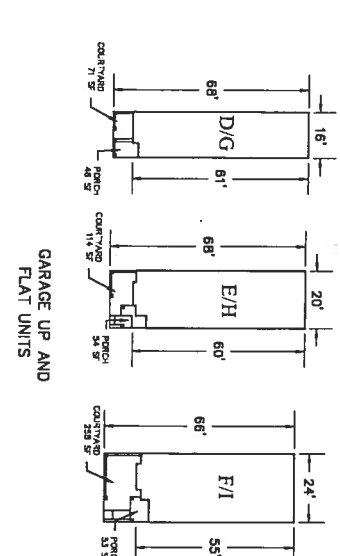
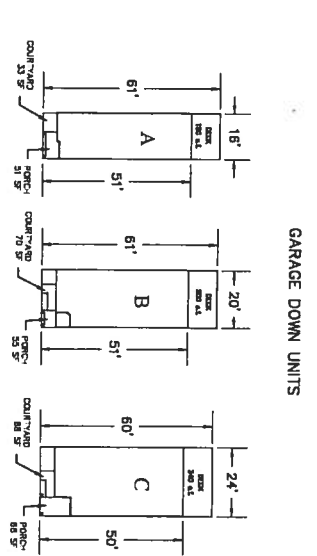
Dave Olorenshaw & Mona Messner
403-380-4760

DUBLIN TERRACE TOWNHOMES

CITY OF COLORADO SPRINGS

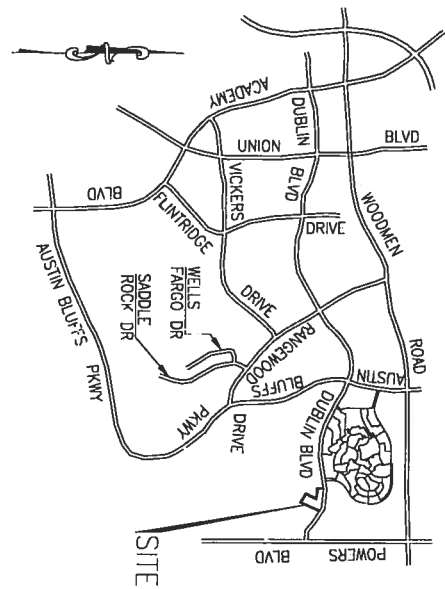
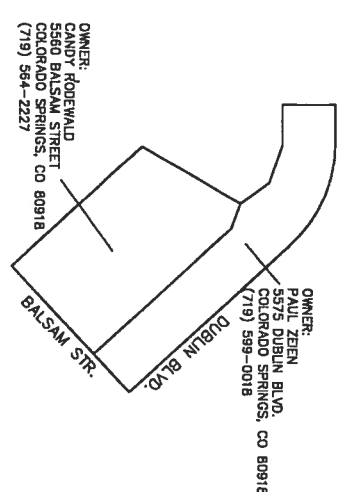
AMENDED DEVELOPMENT PLAN

NOVEMBER, 2012



LEGAL DESCRIPTION:
 LOT 23 IN TEMPLETON GAP HEIGHTS FILING NO. 3, EL PASO COUNTY, COLORADO,
 AND LOT 4 IN TEMPLETON GAP HEIGHTS FILING NO. 2, EL PASO COUNTY, COLORADO,
 ADDITIONAL PROPERTY FROM VACATION OF BALSAM STREET AS SHOWN AS PART OF THE
 REPLATTED LOT #2.
 CONTAINING: 12.78 +/- ACRES, MORE OR LESS.

EXISTING OWNERSHIP EXHIBIT:



VICINITY MAP

SITE DATA:

AS DETERMINED BY THE FLOOD INSURANCE RATE MAP, COMMUNITY PANEL #04040336 F REVISED DATE MARCH 17, 1997, THIS SITE IS NOT WITHIN A DESIGNATED F.E.M.A. FLOODPLAIN AS SHOWN.
 EXISTING ZONE: A1 (COUNTY)
 PROPOSED ZONE: PUD
PARKING CALCULATIONS:
 TOTAL UNITS = 142
 PARKING SPACES REQUIRED: 1.7 PER UNIT x 69 = 117
 PARKING SPACES REQUIRED: 2.0 PER UNIT x 73 = 146
 PARKING PROVIDED: TOTAL = 263
 GARAGE A, D & G: 39 x 1 = 39
 GARAGE C, D, E, F, H & I: 103 x 2 = 206
 ON STREET PARKING: 13
 PARKING LOTS: 54
 DRIVEWAY PARKING A, B & C: 114
 TOTAL VISITOR PARKING PROVIDED: 181
 SPACES PROVIDED: 426

GROSS LOT COVERAGE:
 (INCLUDES ROW & DRAINAGE WAY)
 LOT #1 = 480,728 SF
 BUILDING = 169,240 SF
 LANDSCAPING = 237,216 SF
 (USEABLE OPEN SPACE = 110,274 SF 22%)
 STREETS/PARKING = 84,270 SF
 DENSITY = 12.69 DU/ACRE

NET LOT COVERAGE:
 (MINUS ROW & DRAINAGE WAY)
 LOT #2 = 461,445 SF
 BUILDING = 169,240 SF
 LANDSCAPING = 207,935 SF
 (USEABLE OPEN SPACE = 80,992 SF 18%)
 STREETS/PARKING = 84,270 SF
 DENSITY = 13.40 DU/ACRE

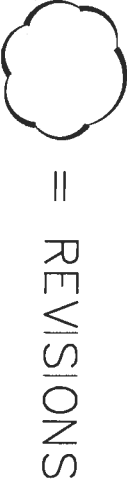
SHEET INDEX

1	TS01	COVER SHEET/NOTES
2	SP01	SITE PLAN
3	GP01	GRADING PLAN
4	UT01	UTILITY PLAN
5	LS01	LANDSCAPE PLAN
6	LS02	LANDSCAPE PLAN
7	LS03	LANDSCAPE PLAN
8	S01	ELEVATIONS A, B & C
9	S02	ELEVATIONS D, E & F
10	S03	ELEVATIONS G, H & I

- GENERAL NOTES**
- COMMON ACCESS AND PARKING AGREEMENTS SHALL BE PROVIDED FOR THE BENEFIT OF ALL OWNERS AND USERS.
 - SIGNAGE SHALL BE IN ACCORDANCE WITH THE CITY ZONING CODE PROVISIONS.
 - A MASTER TRAFFIC STUDY HAS BEEN SUBMITTED FOR THIS SITE.
 - A SITE SPECIFIC GEOLOGIC HAZARD REPORT HAS BEEN SUBMITTED FOR THIS SITE.
 - THE FINAL DRAINAGE REPORT HAS BEEN SUBMITTED FOR THIS SITE.
 - THE SITE SHALL MEET ALL CITY REQUIREMENTS FOR LANDSCAPING.
 - THIS SITE DOES NOT CONTAIN ANY SIGNIFICANT NATURAL FEATURES.
 - ALL FIRE LANES WILL BE A MINIMUM OF 28 FEET IN WIDTH AND WILL MEET ALL THE TURNING RADI FOR FIRE DEPARTMENT VEHICLE ACCESS.
 - A VACATION PLAT FOR 60- FEET OF BALSAM STREET SHALL BE RECORDED PRIOR TO PLATTING. DOCUMENT HAS BEEN PROVIDED TO CITY PLANNING WITH THIS SUBMITTAL.
 - CONSTRUCTION TO BEGIN IN SPRING/SUMMER 2006.
 - MAXIMUM HEIGHT OF PROPOSED BUILDINGS = 35- FEET.
 - \$28,000.00 WILL BE COMMITTED TO AN ESCROW ACCOUNT FOR THE TRAFFIC SIGNAL AT TEMPLETON GAP/DUBLIN BLVD. INTERSECTION PRIOR TO A BUILDING PERMIT APPROVAL.

BLDG.	SQUARE FEET	NO. OF BLDG.	NO. OF BEDROOMS/ BLDG.
A	1,421	22	2
B	1,513	35	2
C	1,882	22	3
D	1,388	10	2
E	1,626	17	3
F	1,785	10	3
G	1,388	7	2
H	1,626	12	3
I	1,785	7	3
TOTAL	226,716	142	342

CALL UTILITY NOTIFICATION CENTER OF COLORADO 1-800-922-1987
 CALL 2-BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, DRILL OR EXCAVATE FOR THE NUMBER UTILITIES



CPC PUZ 05-300
 CPC PUD 05-301

CTR ENGINEERING, INC.
 13350 NORTHGATE ESTATES, SU E 200
 COLORADO SPRINGS, CO 80921
 (719) 984-8654

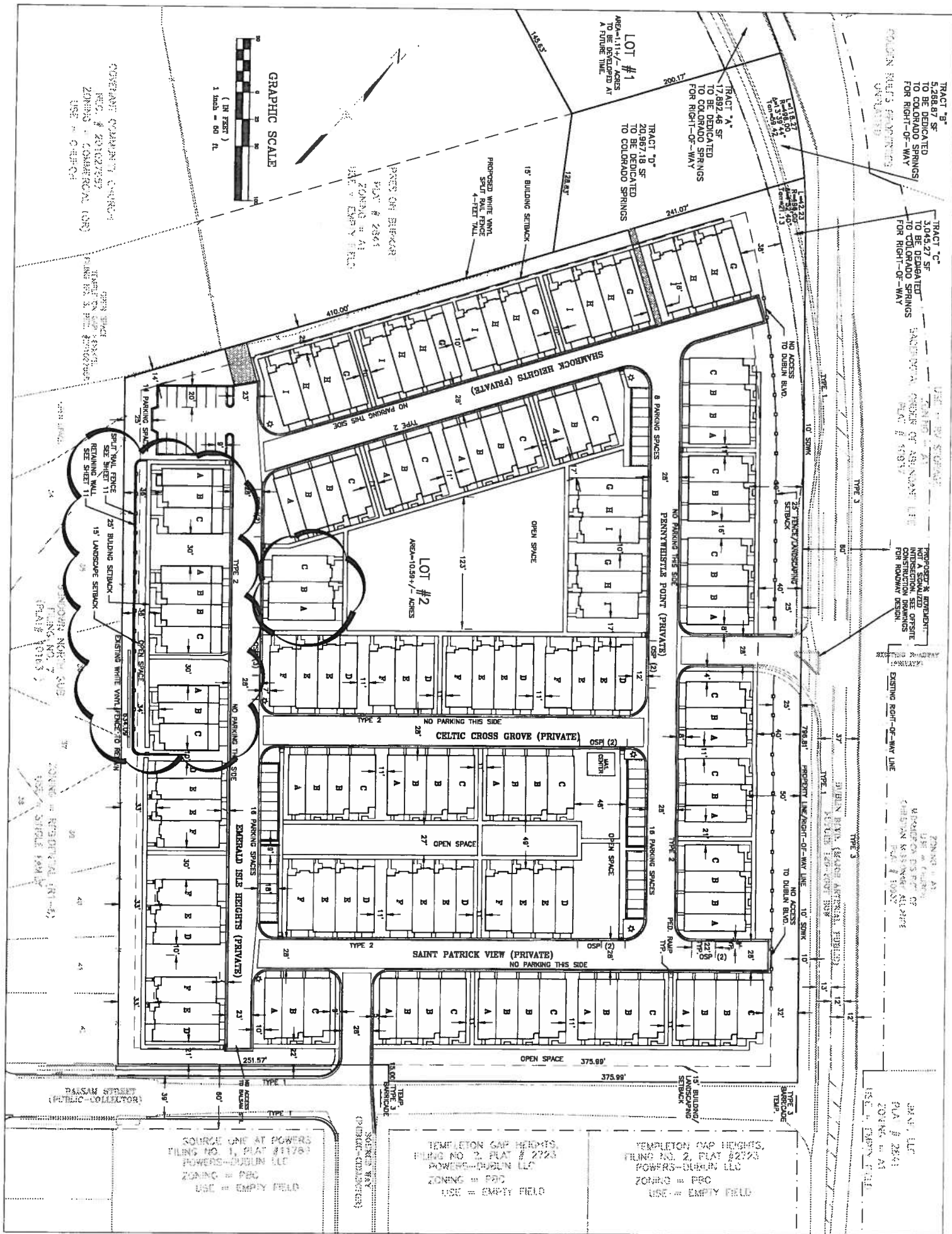
CLIENT/OWNER:
 MLP Management, LLC
 President
 1242 Strossner Drive
 St. Louis, MO 63144
 314-983-9500 ext. 207

REFERENCE DRAWINGS

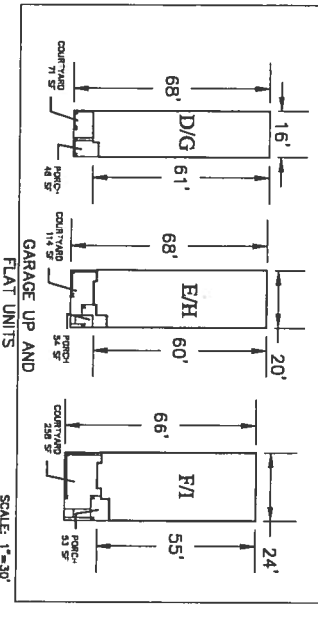
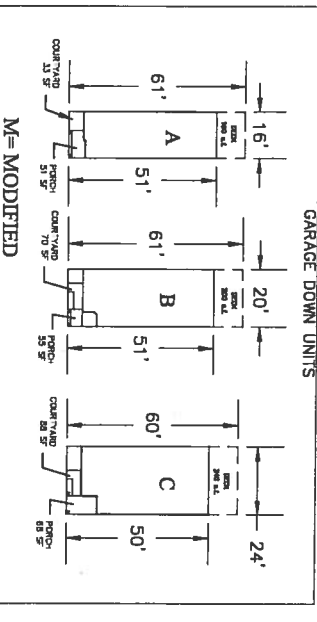
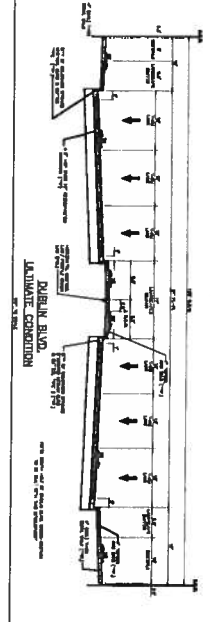
NO.	DATE	DESCRIPTION	BY
		BENCHMARK DATA(ELEV.)	
		(DATUM)	
		(DESCRIPTION/LOCATION)	

DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN TITLE SHEET

DRAWN BY	JCM	SCALE	N/A	DATE ISSUED	NOV. 2012	SHEET NO.	1	OF	10	SHEET S	TS01
CHECKED BY	JCM	DATE	N/A								



- NOTES:
- 1) ONLY ELEVATION "B" CAN BE USED ADJACENT TO THE SINGLE FAMILY HOMES ALONG THE SOUTHERN BOUNDARY.
 - 2) OSP (3) = ON STREET PARKING FOR 3 CARS.
 - 3) US POSTAL SERVICE TO BE DELIVERED TO A CENTRAL LOCATION.
 - 4) EACH UNIT WILL BE RESPONSIBLE FOR THEIR OWN CARGAGE.
 - 5) ALL ON-SITE SIDEWALKS SHALL BE 4-FOOT WIDE.
 - 6) RIGHT-OF-WAY ALONG BALSAM STREET NORTH OF SOURCE WAY SHALL BE VACATED BY SEPARATE INSTRUMENT.
 - 7) EXISTING RIGHT-OF-WAY ALONG THE SOUTH SIDE OF DUBLIN BLVD. NORTH OF PLUMB, SOUTH RIGHT-OF-WAY FOR THE ULTIMATE RIGHT-OF-WAY (20-FOOT CROSS SECTION, EXCEPT WHERE SHOWN NEAR THE GREENBELT).
 - 8) A 6-FOOT SOUND FENCE SHALL BE BUILT 25-FEET OFF THE SOUTHERN RIGHT-OF-WAY LINE OF DUBLIN BLVD. AND SHALL MATCH THE NORTHWOOD CONCRETE FENCE TO THE WEST WITH THE ROCK FINISH.
 - 9) ALL OPEN SPACE, TREES & EASEMENTS WILL BE OWNED AND MAINTAINED BY THE HOME OWNERS ASSOCIATION.
 - 10) ALL ON-SITE CURB AND GUTTER WILL BE A TYPE 2. ALL ON-SITE FENCES ARE PROPOSED AS FENCED WITH THE EXISTING ASPHALT TO REMAIN UNLESS AN ASPHALT CURB AND GUTTER ON BALSAM STR. IS PROPOSED FOR BOTH SIDES OF THE STREET ALONG THE FRONTAGE OF THIS PROJECT ONLY.
 - 11) LOT #1 WILL BE REQUIRED TO REZONE PRIOR TO ANY DEVELOPMENT.
 - 12) ONLY ELEVATION "B" CAN BE USED ALONG THE SINGLE FAMILY RESIDENTIAL BOUNDARY ON THE SOUTHERN PROPERTY LINE.



CALL UTILITY NOTIFICATION CENTER OF COLORADO
 1-800-922-1987
 CALL 3-BUSINESS DAYS IN ADVANCE BEFORE YOU DIG, DRILL, OR EXCAVATE FOR THE HIDDEN UTILITIES.



DUBLIN TERRACE
 TOWNHOMES
 DEVELOPMENT PLAN

SITE PLAN

DESIGNED BY: JOM SCALE: 1"=30'
 DRAWN BY: JOM (REVISED) DATE: SEP 10, 2012
 CHECKED BY: JOM (REVISED) SHEET NO. 2 OF 10 SHEETS
 SP01

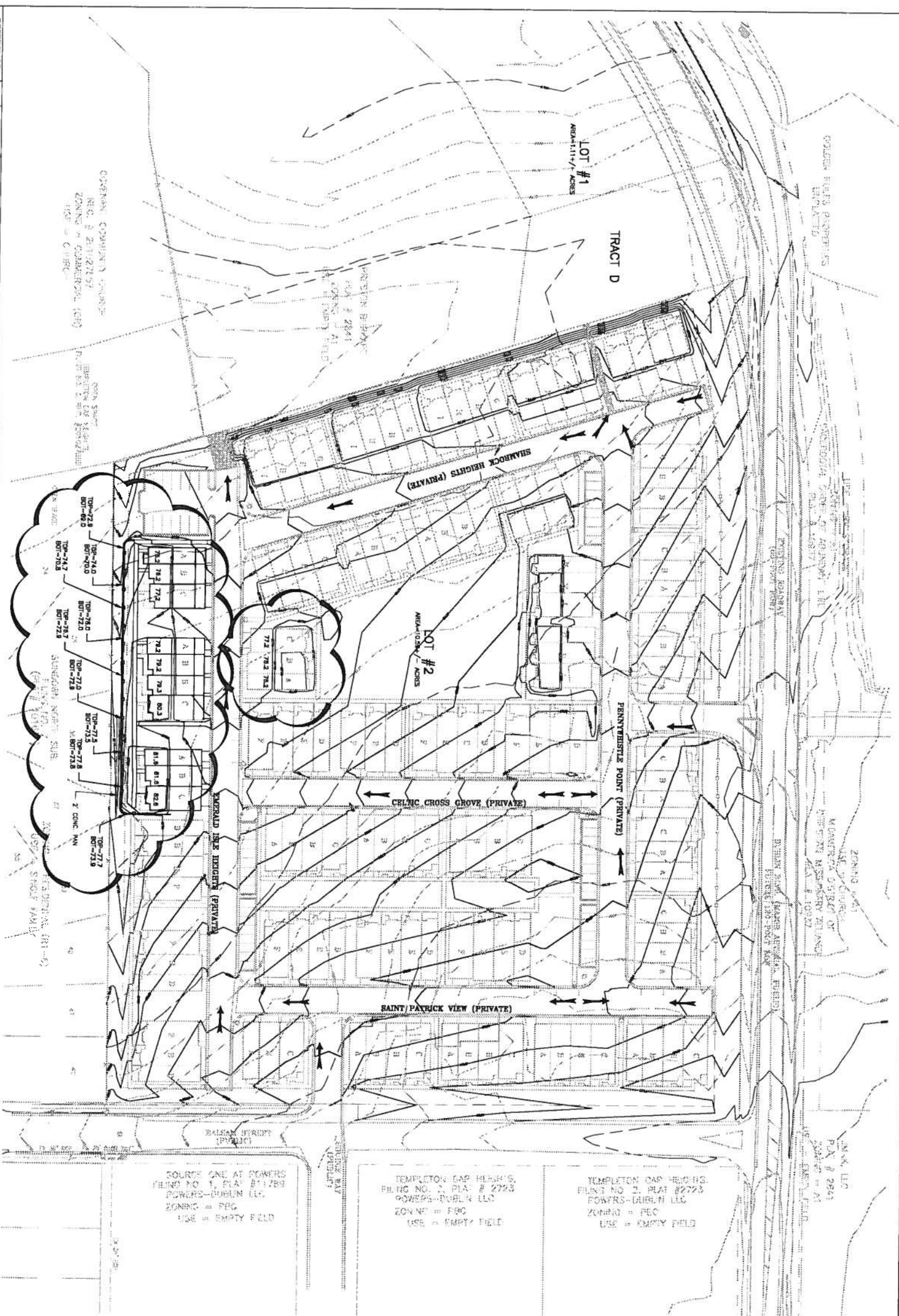
NO.	DATE	DESCRIPTION

CLIENT / OWNER:
 MLP Management, LLC
 President
 1242 Strosser Drive
 St. Louis, MO 63144
 314-983-9500 ext. 207

FOR AND ON BEHALF OF
 CTR ENGINEERING, INC.
 1350 NORTHGATE ESTATES, SUITE 200
 COLORADO SPRINGS, CO 80921
 (719) 564-6554

REFERENCE DRAWINGS
X-10-101
X-10-102
X-10-103
X-10-104
X-10-105
X-10-106
X-10-107
X-10-108
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X-10-200

GRAPHIC SCALE
 1" = 30' FT.
 1" = 60' FT.
 1" = 90' FT.



COLUMBIA FIELD PROPERTY
UNDEVELOPED

TEMPLETON CAP HEIGHTS
UNDEVELOPED
SUBDIVISION AGREEMENT
POWER-DUBLIN LLC
PLAT # 27223
ZONING = FPC

LOT #1
402.11 x 117.7 ACRES

LOT #2
462.10 x 125.1 ACRES

COLUMBIA COMMUNITY SQUARE
REC. # 211-2757
ZONING = QUARTERLY (QD)
PLAT # C-1100

SOURCE: SALE AT POWERS
FILED NO. 1, PLAT # 17289
POWER-DUBLIN LLC
ZONING = FPC
USE = EMPTY FIELD

TEMPLETON CAP HEIGHTS
FILED NO. 2, PLAT # 27223
POWER-DUBLIN LLC
ZONING = FPC
USE = EMPTY FIELD

TEMPLETON CAP HEIGHTS
FILED NO. 2, PLAT # 27223
POWER-DUBLIN LLC
ZONING = FPC
USE = EMPTY FIELD



LEGEND

- PROPOSED CONTOUR
- EXISTING CONTOUR
- FLOW DIRECTION

CALL UTILITY NOTIFICATION
CENTER OF COLORADO
1-800-922-1987
CALL 2-48 HOURS IN ADVANCE
BEFORE YOU DIG, DRILL OR EXCAVATE
FOR THE LOCATION OF UNDERGROUND
UTILITY LINES

DUBLIN TERRACE
TOWNHOMES
DEVELOPMENT PLAN
GRADING PLAN

REFERENCE DRAWINGS		REVISIONS	
X-11E			
X-11D			
X-11C			
X-11B			
X-11A			
X-11			
X-8000-2-18-08			

NO.	DATE	DESCRIPTION	BY
		BENCHMARK DATA(ELEV.)	
	(DATE)	(DESCRIPTION/LOCATION)	

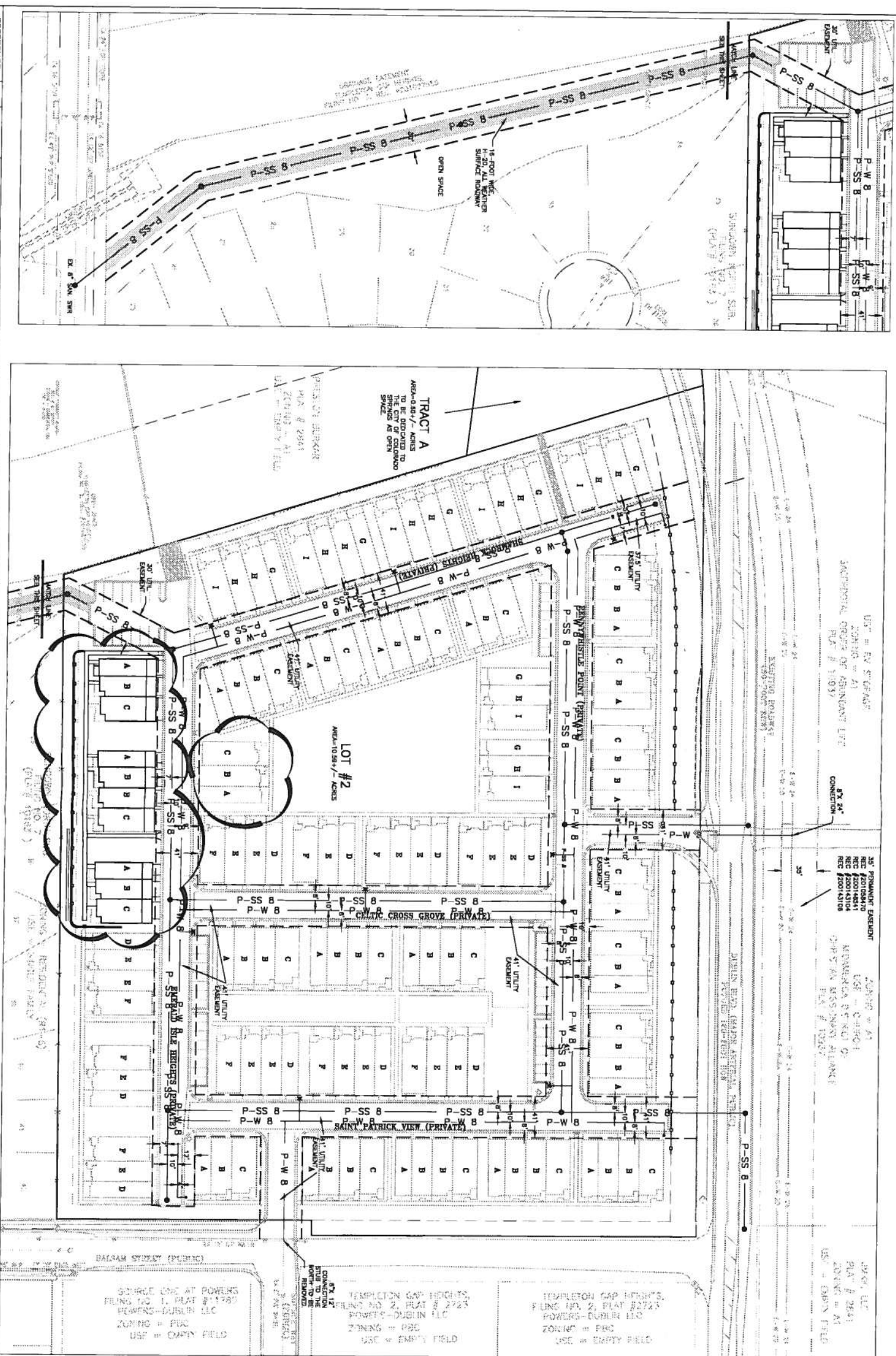
CLIENT/OWNER:
MLP Management, LLC
President
1242 Strössner Drive
St. Louis, MO 63144
314-983-9500 ext. 207

FOR AND ON BEHALF OF
CTR ENGINEERING, INC.
13430 NORTH GATE ESTATES, SUITE 200
COLORADO SPRINGS, CO 80921
(719) 984-6534

DESIGNED BY	CHECKED BY	DATE
JCA	JCA	NOV, 2012
JCA	JCA	

SCALE: 1" = 30'
SHEET NO. 3 OF 11 SHEETS

GP01



REFERENCE DRAWINGS

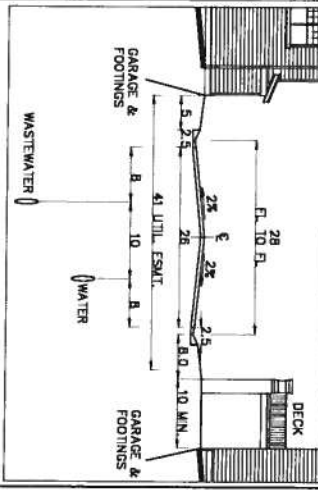
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X-2	SECTION
X-3	FOUNDATION
X-4	MECHANICAL
X-5	ELECTRICAL
X-6	PLUMBING
X-7	PAINT
X-8	LANDSCAPE
X-9	CONCRETE
X-10	IRONWORK
X-11	GLASS
X-12	STEEL
X-13	WOOD
X-14	ROOFING
X-15	MECHANICAL
X-16	ELECTRICAL
X-17	PLUMBING
X-18	PAINT
X-19	LANDSCAPE
X-20	CONCRETE
X-21	IRONWORK
X-22	GLASS
X-23	STEEL
X-24	WOOD
X-25	ROOFING
X-26	MECHANICAL
X-27	ELECTRICAL
X-28	PLUMBING
X-29	PAINT
X-30	LANDSCAPE
X-31	CONCRETE
X-32	IRONWORK
X-33	GLASS
X-34	STEEL
X-35	WOOD
X-36	ROOFING
X-37	MECHANICAL
X-38	ELECTRICAL
X-39	PLUMBING
X-40	PAINT
X-41	LANDSCAPE
X-42	CONCRETE
X-43	IRONWORK
X-44	GLASS
X-45	STEEL
X-46	WOOD
X-47	ROOFING
X-48	MECHANICAL
X-49	ELECTRICAL
X-50	PLUMBING
X-51	PAINT
X-52	LANDSCAPE
X-53	CONCRETE
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X-56	STEEL
X-57	WOOD
X-58	ROOFING
X-59	MECHANICAL
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X-61	PLUMBING
X-62	PAINT
X-63	LANDSCAPE
X-64	CONCRETE
X-65	IRONWORK
X-66	GLASS
X-67	STEEL
X-68	WOOD
X-69	ROOFING
X-70	MECHANICAL
X-71	ELECTRICAL
X-72	PLUMBING
X-73	PAINT
X-74	LANDSCAPE
X-75	CONCRETE
X-76	IRONWORK
X-77	GLASS
X-78	STEEL
X-79	WOOD
X-80	ROOFING
X-81	MECHANICAL
X-82	ELECTRICAL
X-83	PLUMBING
X-84	PAINT
X-85	LANDSCAPE
X-86	CONCRETE
X-87	IRONWORK
X-88	GLASS
X-89	STEEL
X-90	WOOD
X-91	ROOFING
X-92	MECHANICAL
X-93	ELECTRICAL
X-94	PLUMBING
X-95	PAINT
X-96	LANDSCAPE
X-97	CONCRETE
X-98	IRONWORK
X-99	GLASS
X-100	STEEL

REVISIONS

NO.	DATE	DESCRIPTION	BY
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CLIENT/OWNER:
MLP Management, LLC
President
1242 Strossner Drive
St. Louis, MO 63144
314-983-9500 ext. 207

CTR ENGINEERING, INC.
1330 NORTH GATE ST. SUITE 200
COLORADO SPRINGS, CO 80921
(719) 964-6654



CALL UTILITY NOTIFICATION CENTER OF COLORADO 1-800-922-1987
CALL CONTRACTORS FIRST IN ADVANCE BEFORE YOU DIG, GRAVE, OR EXCAVATE FOR THE MARKING OF UNDERGROUND UTILITY LINES.

LEGEND

- PROPOSED 8" PVC WATER
- PROPOSED 8" PVC SAN. SEWER
- PROPOSED SANITARY SEWER MANHOLE
- EXISTING WATER

NOTES:

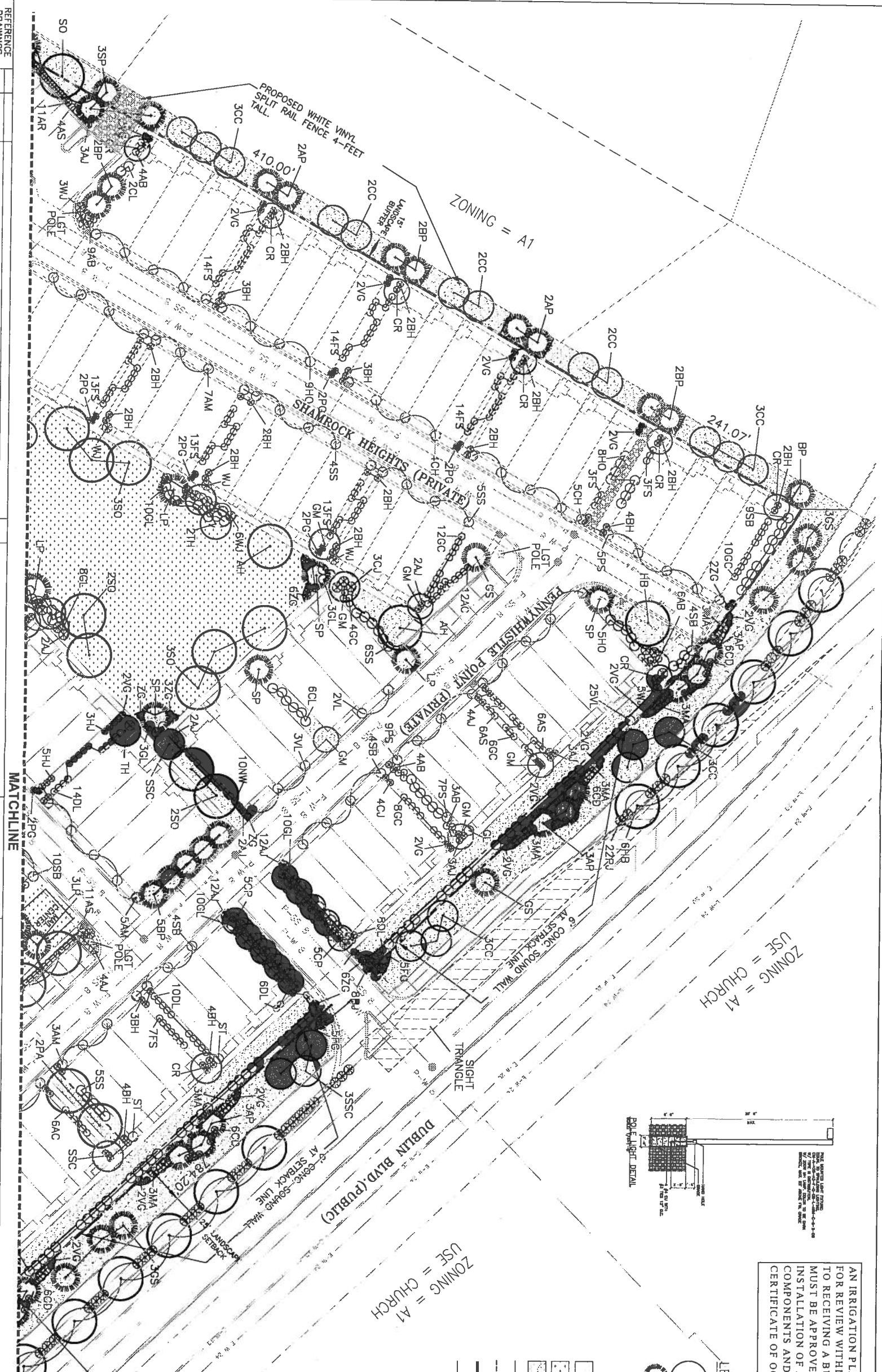
- 1) ONLY ELEVATION "R" CAN BE USED ALONG THE SINGLE FAMILY RESIDENTIAL BOUNDARY ON THE SOUTHERN PROPERTY LINE.
- 2) ALL UTILITIES WILL BE PUBLIC.
- 3) ROCK SONG WILL BE REQUIRED WHERE ELECTRIC FAULTS WILL WITHIN 10-FEET OF THE BUILDING AND THE ROCK SONG WILL MEET CSU STANDARDS FOR HEIGHT AND WIDTH ON BUILDING FACE.



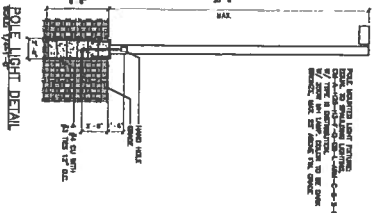
DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN

UTILITY PLAN

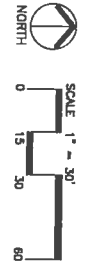
DATE: 11/19/2012
DRAWN BY: JDM
CHECKED BY: JDM
SCALE: 1"=30'
SHEET NO. 4 OF 10 SHEETS



AN IRRIGATION PLAN MUST BE SUBMITTED FOR REVIEW WITHIN 90 DAYS SUBSEQUENT TO RECEIVING A BUILDING PERMIT. THE PLAN MUST BE APPROVED PRIOR TO THE INSTALLATION OF ANY IRRIGATION COMPONENTS AND/OR ISSUANCE OF A CERTIFICATE OF OCCUPANCY.



- LEGEND**
- DECIDUOUS TREE
 - ORNAMENTAL TREE
 - EVERGREEN TREE
 - DECIDUOUS SHRUB
 - EVERGREEN SHRUB
 - ORNAMENTAL GRASS
 - WOOD MULCH
 - IRRIGATED BLUEGRASS TURF
 - FESCUE BLEND - WITH SUPPLEMENTAL IRRIGATION
 - STEEL LANDSCAPE EDGER
 - VINYL SPLIT RAIL FENCE
 - SETBACK / BUFFER BOUNDARY
 - 6" SOUND FENCE



REFERENCE DRAWINGS

- X-0100-01
- X-0100-02
- X-0100-03
- X-0100-04

NO.	DATE	DESCRIPTION	REVISIONS
			BY

Jump Design Company
 12015 Colfax Street
 Denver, CO 80202
 (719) 554-8888

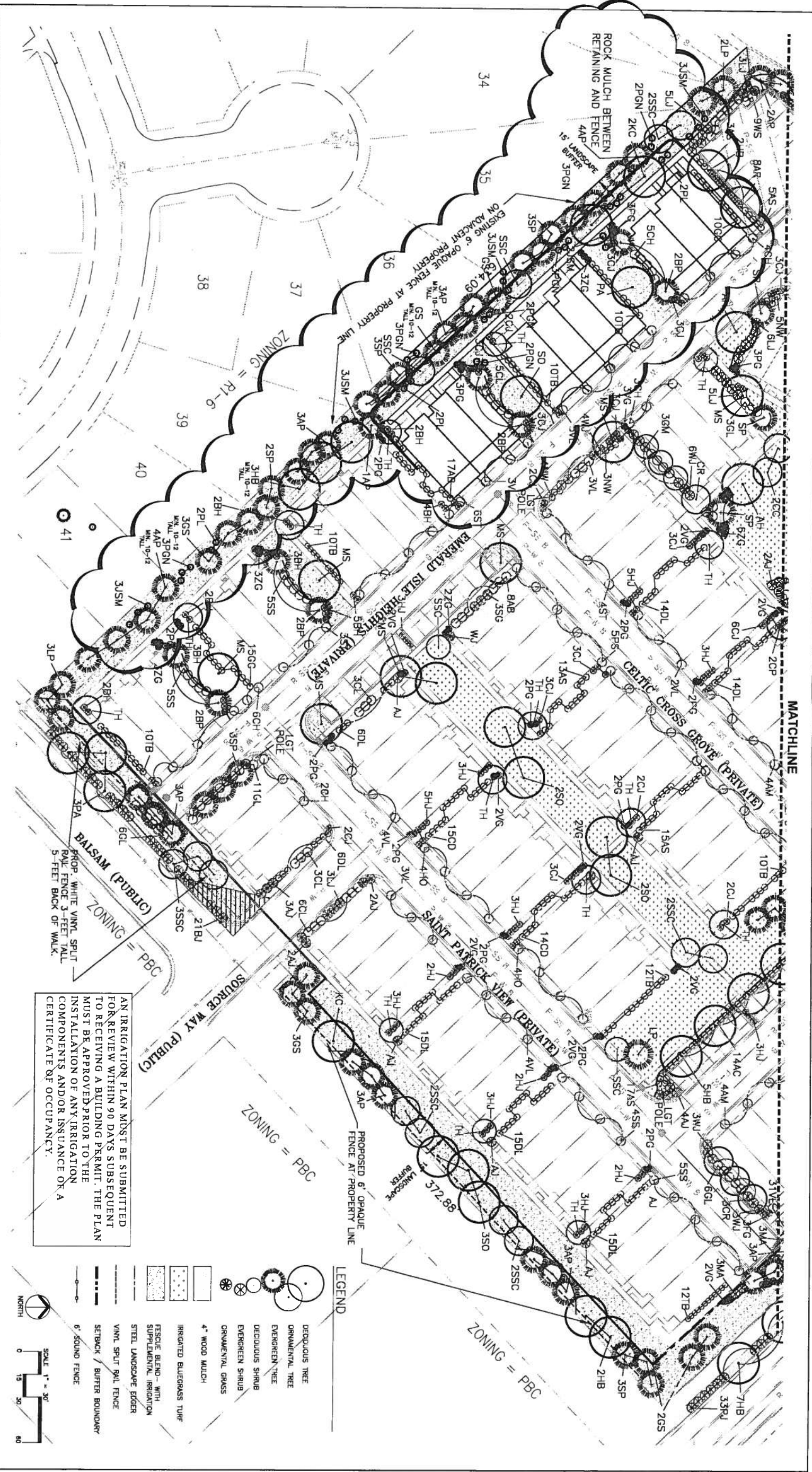
FOR AND ON BEHALF OF
CTR ENGINEERING, INC.
 1350 NORTH GATE STRAITS, SUITE 200
 COLORADO SPRINGS, CO 80921
 (719) 554-8854

DUBLIN TERRACE TOWNHOMES

FINAL LANDSCAPE PLAN

DESIGNED BY: JDC
 DRAWN BY: JDC
 CHECKED BY: JDC
 DATE: MARCH 2008
 SHEET NO. 5 OF 10 SHEETS

LS01



AN IRRIGATION PLAN MUST BE SUBMITTED FOR REVIEW WITHIN 90 DAYS SUBSEQUENT TO RECEIVING A BUILDING PERMIT. THE PLAN MUST BE APPROVED PRIOR TO THE INSTALLATION OF ANY IRRIGATION COMPONENTS AND/OR INSTANTANCE OF A CERTIFICATE OF OCCUPANCY.

LEGEND

- DECIDUOUS TREE
- ORNAMENTAL TREE
- EVERGREEN TREE
- DECIDUOUS SHRUB
- EVERGREEN SHRUB
- ORNAMENTAL GRASS
- 4" WOOD MULCH
- IRRIGATED BLUEGRASS TURF
- FESCUE BLEND - WITH SUPPLEMENTAL IRRIGATION
- STEEL LANDSCAPE EDGER
- VINYL SPLIT RAIL FENCE
- 6' SOUND FENCE
- SETBACK / BUFFER BOUNDARY

SCALE 1" = 30'
0 15 30 60

NORTH

REFERENCE DRAWINGS

X-01	2-16-08
X-02	2-16-08
X-03	2-16-08
X-04	2-16-08

REVISIONS

NO.	DATE	DESCRIPTION	BY

JDC
Jump Design Company
2721 S. CEDAR STREET
DENVER, CO 80222
303.751.8800

FOR AND ON BEHALF OF
CTR ENGINEERING, INC.

CTR ENGINEERING, INC.
1330 NORTHGATE ESTATES, SUITE 200
COLORADO SPRINGS, CO 80921
(719) 964-6654

DUBLIN TERRACE TOWNHOMES
FINAL LANDSCAPE PLAN
DRAWN BY: JDC
CHECKED BY: JDC
DATE ISSUED: MAR 2012
SHEET NO. 6 OF 10 SHEETS
LS02

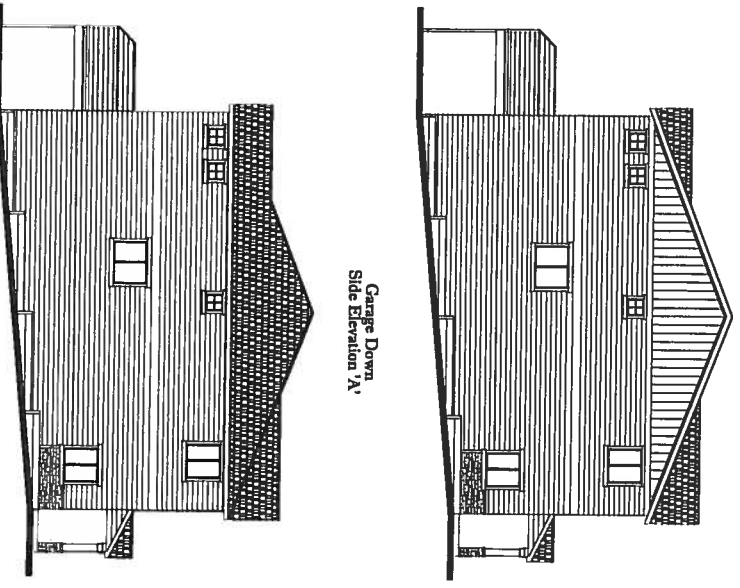
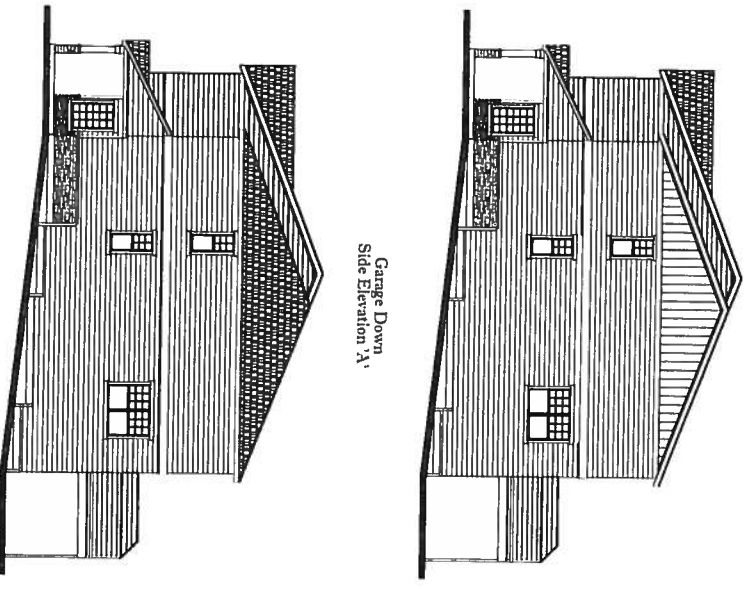
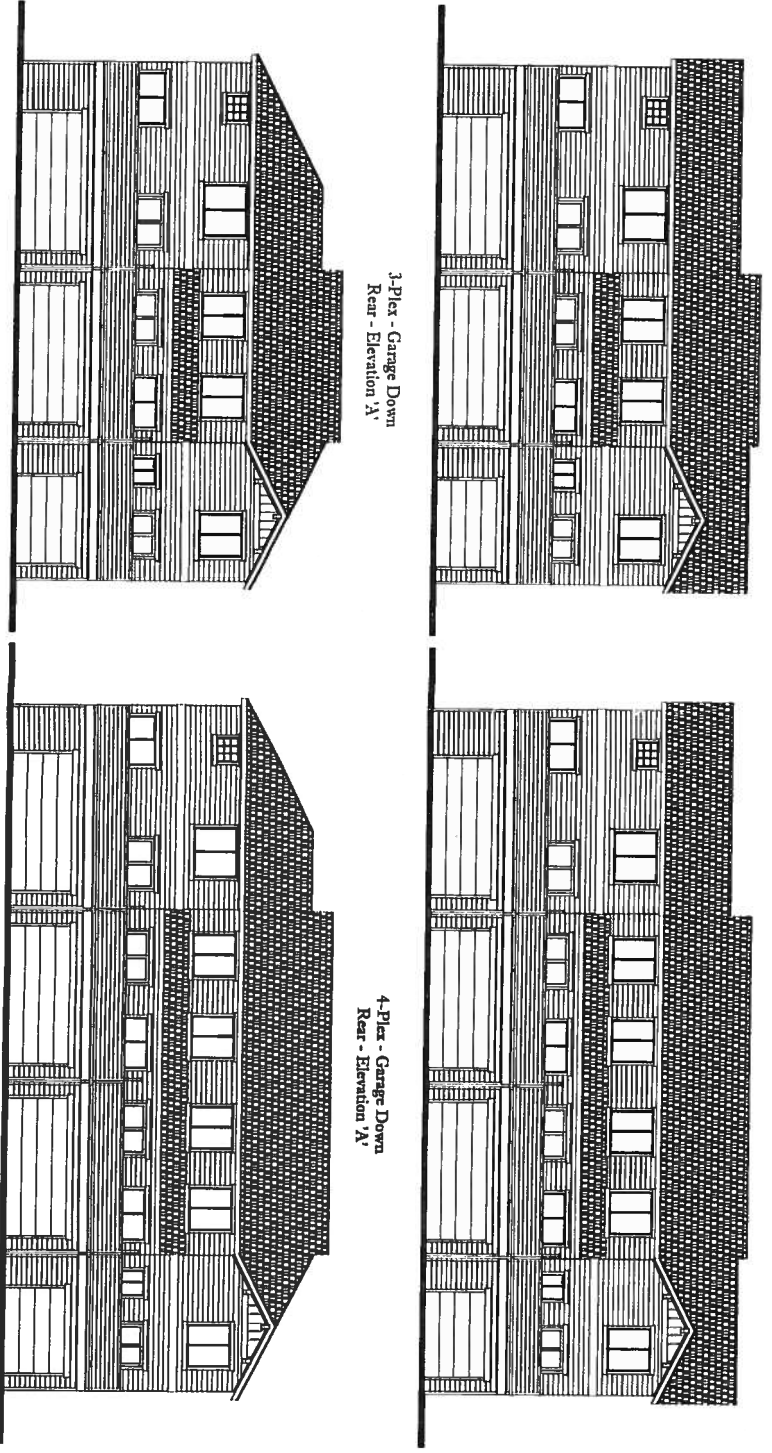
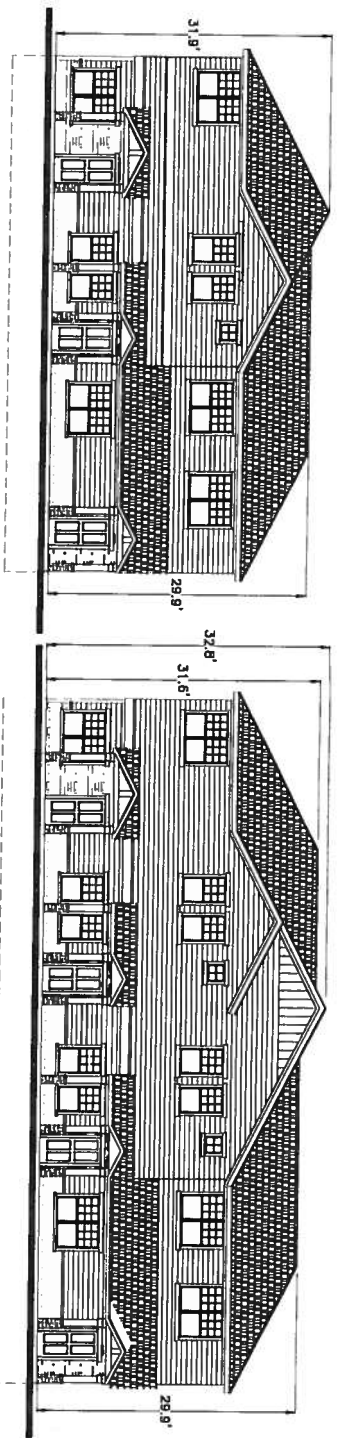
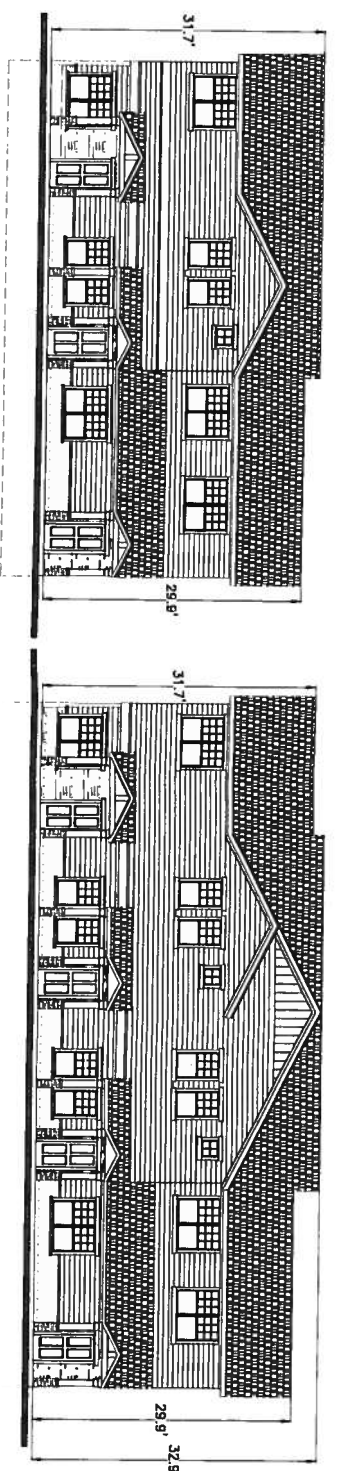
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PLOT DATE: Mon Nov 19, 2012 2:30pm

BENCHMARK DATA(ELEV.)
(DATAUM)
(DESCRIPTION/LOCATION)

FOR AND ON BEHALF OF
CTR ENGINEERING, INC.

FOR AND ON BEHALF OF
CTR ENGINEERING, INC.

DUBLIN TERRACE TOWNHOMES
FINAL LANDSCAPE PLAN
DRAWN BY: JDC
CHECKED BY: JDC
DATE ISSUED: MAR 2012
SHEET NO. 6 OF 10 SHEETS
LS02



NOTES:
 1) NO VINYL SIDING WILL BE USED.
 2) BOTTOM HALF OF BUILDING FRONTS WILL BE COVERED WITH ROCK SIDING.
 3) ROCK SIDING WILL BE REQUIRED WHERE ELECTRIC PANELS ARE WITHIN 5'-0" OF THE BUILDING AND THE ROCK SIDING WILL MEET CSU REQUIREMENTS FOR ROCK SIDING.
 4) A HOMEOWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF ALL LANDSCAPING REQUIRMENTS.



BUILDINGS A, B, & C

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DJA
 / JONES ARCHITECTURE, INC.

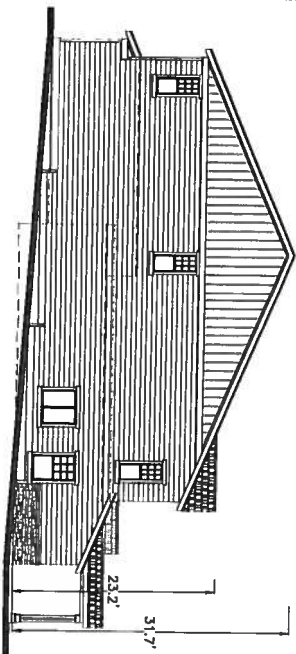
9996 ROSEBONT AVE
 SUITE 102
 LOVELTREE CO 80124
 303.414.1000
 WWW.DJAINC.COM

Colorado Springs Colorado

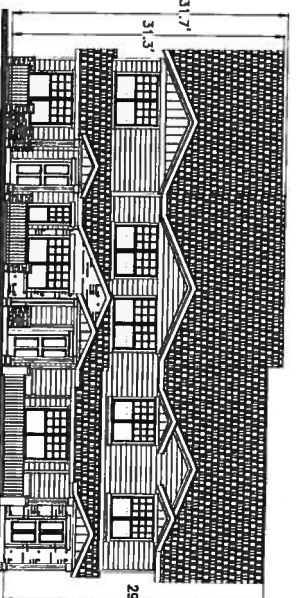
Dublin Terrace Townhomes

ISSUE DATE	1.06
ISSUE DESCRIPTION	
REV'S	
PROJECT NUMBER	052900.001
SHEET:	OF. 8 OF 10

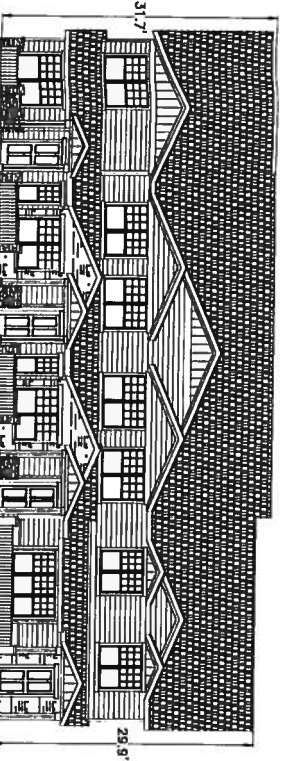
SDI



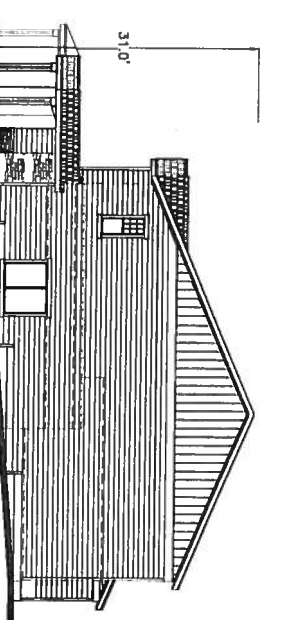
Garage Up
Side Elevation 'A'



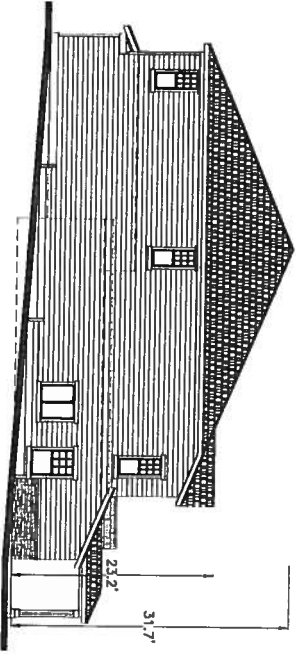
3-Plex - Garage Up
Front - Elevation 'A'



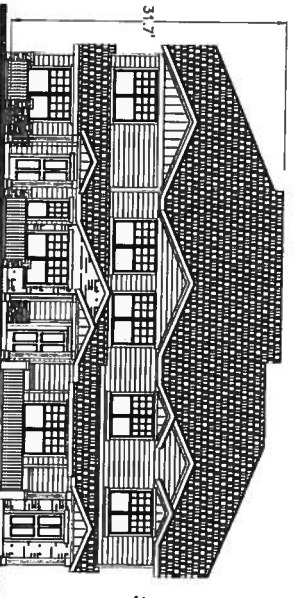
4-Plex - Garage Up
Front - Elevation 'A'



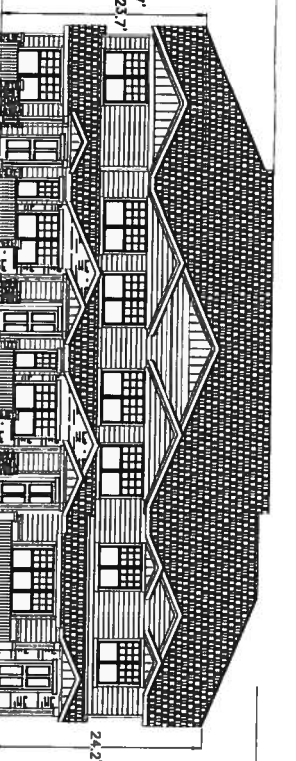
Garage Up
Side Elevation 'A'



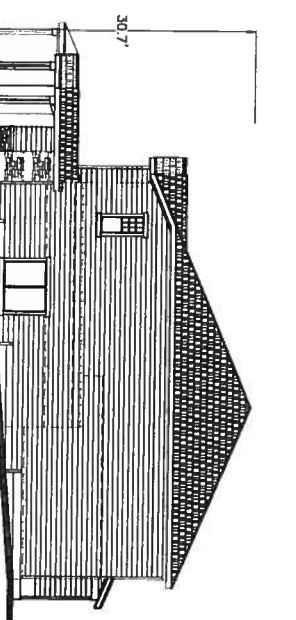
Garage Up
Side Elevation 'B'



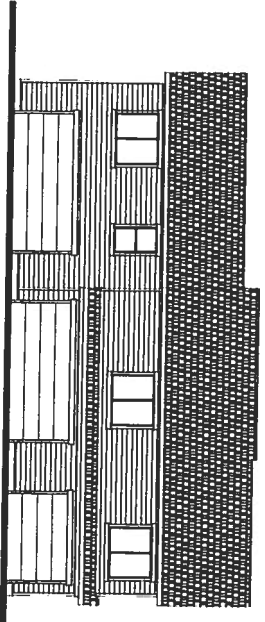
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Front Elevation 'B'



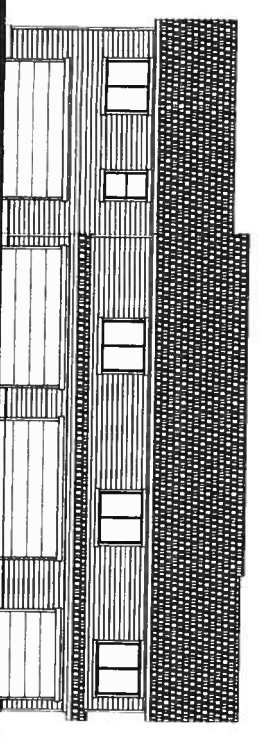
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Front Elevation 'B'



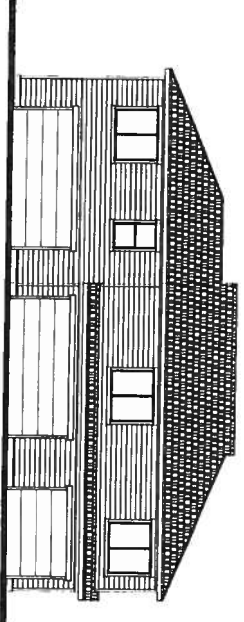
Garage Up
Side Elevation 'B'



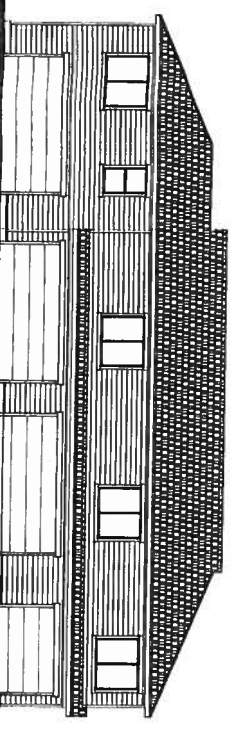
3-Plex - Garage Up
Rear - Elevation 'A'



4-Plex - Garage Up
Rear - Elevation 'A'

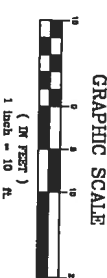


3-Plex - Garage Up
Rear Elevation 'B'

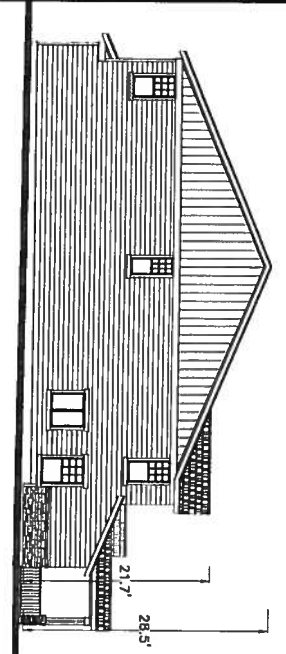


4-Plex - Garage Up
Rear Elevation 'B'

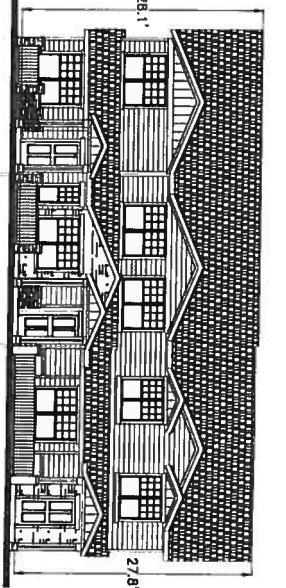
NOTES:
 1) NO VINYL SIDING WILL BE USED.
 2) BOTTOM HALF OF BUILDING FRONTS WILL BE COVERED WITH ROCK SIDING
 3) ROCK SIDING WILL BE REQUIRED WHERE ELECTRIC PANELS ARE WITHIN
 10'-FEET OF THE BUILDING AND THE ROCK SIDING WILL MEET CSJ
 STANDARDS FOR HEIGHT AND WIDTH ON BUILDING FACE.
 4) A HOMEOWNERS ASSOCIATION WILL BE ORGANIZED AND WILL BE
 RESPONSIBLE FOR MAINTENANCE OF EXTERIOR OF ALL BUILDINGS AS WELL AS
 MAINTENANCE OF COMMON AREAS.
 5) ONLY EXTERIOR WALLS CAN BE USED ALONG THE SINGLE FAMILY
 RESIDENTIAL BOUNDARY ON THE SOUTHERN PROPERTY LINE.



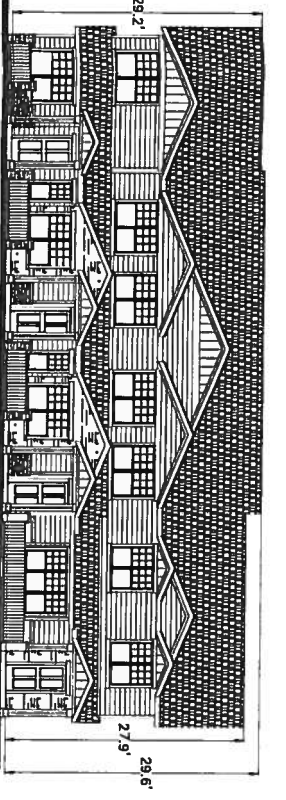
BUILDINGS D, E, & F



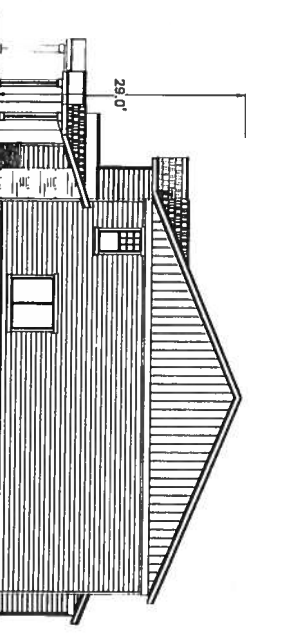
Flat Lot
Side Elevation 'A'



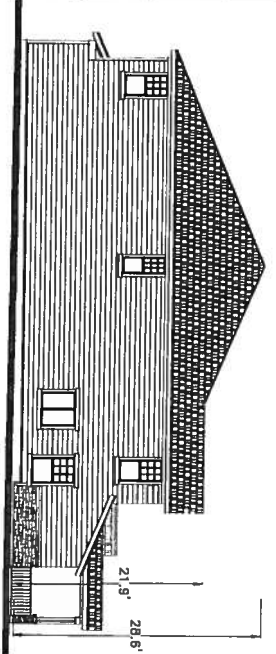
3-Plex - Flat Lot
Front - Elevation 'A'



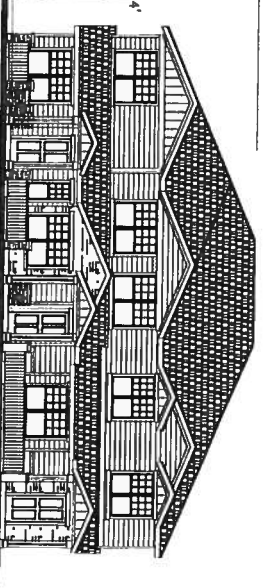
4-Plex - Flat Lot
Front - Elevation 'A'



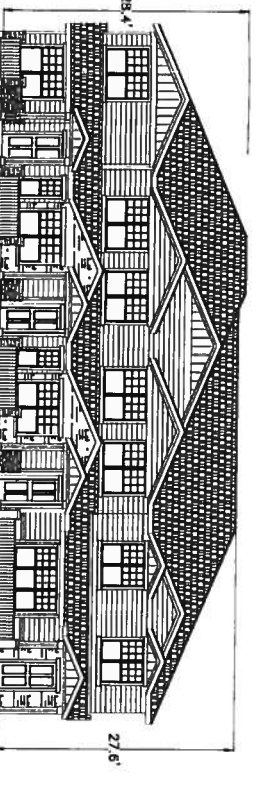
Flat Lot
Side Elevation 'A'



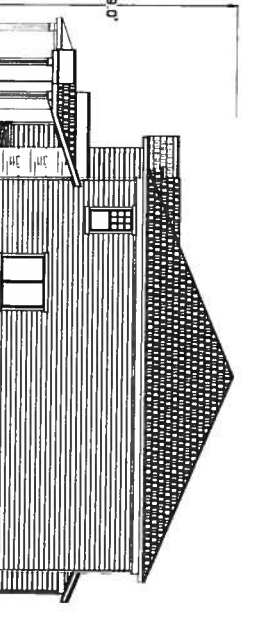
Flat Lot
Side Elevation 'B'



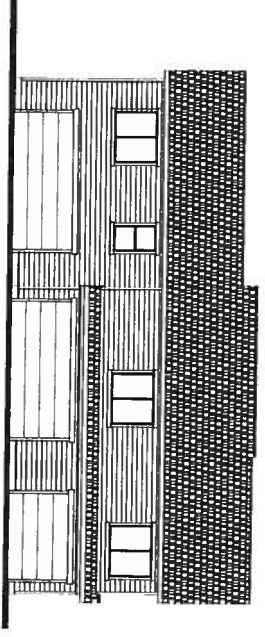
3-Plex - Flat Lot
Front Elevation 'B'



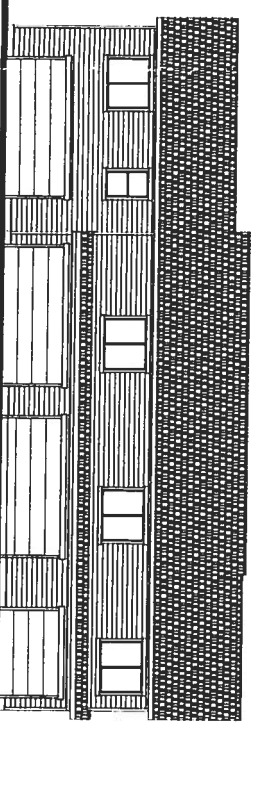
4-Plex - Flat Lot
Front Elevation 'B'



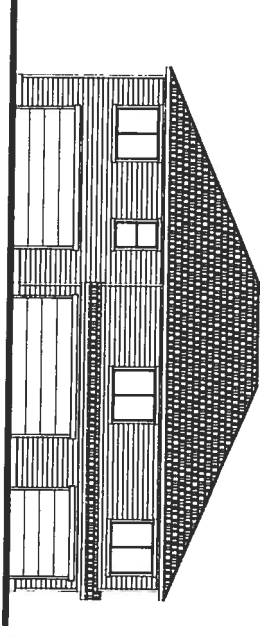
Flat Lot
Side Elevation 'B'



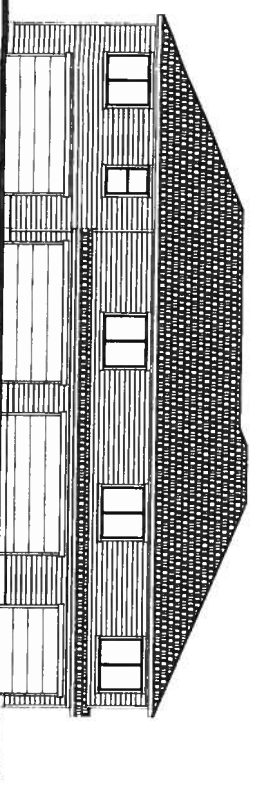
3-Plex - Flat Lot
Rear - Elevation 'A'



4-Plex - Flat Lot
Rear - Elevation 'A'



3-Plex - Flat Lot
Rear Elevation 'B'



4-Plex - Flat Lot
Rear Elevation 'B'

- NOTES:
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 - 3) ROCK SIDING WILL BE REQUIRED WHERE ELECTRIC PANELS ARE WITHIN 10- FEET OF THE BUILDING AND THE ROCK SIDING WILL LEET CSU STANDARDS FOR HEIGHT AND WIDTH ON BUILDING FACE.
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 - 5) ONLY ELEVATION 'B' CAN BE USED ALONG THE SINGLE FAMILY RESIDENTIAL BOUNDARY ON THE SOUTHERN PROPERTY LINE.



BUILDINGS G, H, & I

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DJA
/ JONES ARCHITECTURE, INC.

Dublin Terrace Townhomes
Colorado Springs Colorado

ISSUE DATE: 1.00
ISSUE DESCRIPTION:
REV'S: 001

PROJECT NUMBER: 05.900.001

SHEET: **SD3**
OF: 10 OF 10

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CITY OF COLORADO SPRINGS

INTEROFFICE MEMORANDUM

DATE: March 1, 2013

TO: Peter Wysocki, Director of Planning

FROM: Sarah Johnson, City Clerk

SUBJECT: Notice of Appeal

CPC PUD 05-00301-A2MJ12: ITEM NO. 6

An appeal has been filed by Matthew Werner of Alpern Myers Stuart LLC on behalf of MLP Receiverships, LLC, applicant, regarding the Planning Commission action of February 21, 2013 per attached copy.

I am scheduling the public hearing on this appeal for the City Council meeting of March 26, 2013. Will you please provide the necessary map?

CC: Alpern Myers Stuart LLC
14 N Sierra Madre St, Ste A
Colorado Springs, CO 80903

Alayna Koehn, Admin. Technician

ORIGINAL

ALPERN MYERS STUART LLC
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Kenneth P. Myers
Dan D. Stuart
Lisa Tormoen Hickey
Matthew J. Werner
Virginia V. Koulchitzka
John L. Cyboron
Gregory M. O'Boyle

14 NORTH SIERRA MADRE STREET, SUITE A
COLORADO SPRINGS, COLORADO 80903-3311

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Of Counsel
M. Allen Ziegler, Jr.
Stephen D. Harris
Senior Associate
Peggy A. Hayes

February 28, 2013

APPEAL OF PLANNING COMMISSION DENIAL OF AMENDMENT

BY HAND-DELIVERY

Members of the City Council
City of Colorado Springs
c/o City Clerk
30 South Nevada Avenue, Suite 101
Colorado Springs, Colorado 80903

Planning and Development Team
Land Use Review Division
Attn: Rick O'Connor
30 South Nevada Avenue, Suite 105
Colorado Springs, Colorado 80903

Re: **Appeal of Denial of Major Amendment**
Considered By the Planning Commission on February 21, 2013
Planning File No. CPC PUD 05-00301-A2MJ12
Ten Lots on Emerald Isle Heights: 6552, 6556, 6560, 6568, 6572, 6576, 6580, 6588,
6592 and 6596

Dear Members of the City Council:

Please accept this letter as the written notice of appeal for the Planning Commission's denial of our appeal seeking the above-referenced amendment on February 21, 2013. We represent MLP Receiverships, LLC, the court-appointed receiver for the properties referenced above. We incorporate the arguments stated in our letters to the Planning Commission dated on or about January 28, 2013, and February 7, 2013, by reference. The appropriate fee has been paid upon submittal of this letter.

Colorado law holds that where there was substantial reliance on a building permit, which had been erroneously issued for the construction of a building, which was prohibited by an existing zoning ordinance, the City is estopped from contesting the validity of the permit. Cline v. City of Boulder, 168 Colo. 112, 118-19, 450 P.2d 335, 338-39 (1969); P-W Investments, Inc. v. City of Westminster, 655 P.2d 1365, 1371 (Colo.1982)("A city permit can provide the foundation for a vested right, and thus be constitutionally protected from impairment by subsequent legislation, if the permit holder takes steps in reliance upon the permit"); Jordan-Arapahoe, LLP v. Bd. of County Com'rs of County of Arapahoe, Colo., 633 F.3d 1022, 1029 (10th Cir. 2011)("property rights vest in a particular land use after a building permit has been issued and the landowner acts in reliance on it"). Here, permits for the above-referenced properties were issued on November 14, 2011, December 23, 2011, and January 25, 2012. *These permits authorized the buildings that were*

RECEIVED
FEB 28 2013
Colorado Springs
Land Use Review

ALPERN MYERS STUART LLC

February 28, 2013

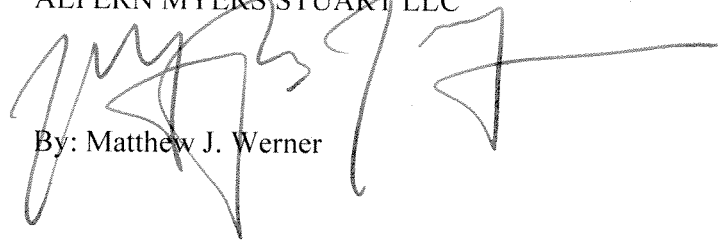
Page 2 of 2

actually built. The buildings were substantially built in reliance on the permits. This presents a case where the facts give rise to an unconstitutional taking of vested property rights.

We ask the City Council to authorize the amendment to allow the DP to comply with the vested permit rights. Please approve the amendment. Please let us know when this matter is scheduled for hearing. Thank you.

Sincerely yours,

ALPERN MYERS STUART LLC

A handwritten signature in black ink, appearing to read 'Matthew J. Werner', is written over the typed name. The signature is stylized and includes a long horizontal line extending to the right.

By: Matthew J. Werner

MJW/ms

Enclosures (permit summary)



Log On Back Permits Plans Links Home



Place: 6552-6596 EMERALD ISLE HTS ;

Details Plan Image View Map Export

Permits: 13

Address	City	Zipcode	Permit	Image	Code	Project Description	Issued	Fee	S	Owner	D
6552 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I02294	PDF	102	NEW TOWN HOUSE - MODEL 3	11/14/2011	544	L	TODAY'S HOMES	B
6556 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I02293	PDF	102	NEW TOWN HOUSE - MODEL 2	11/14/2011	474	L	TODAY'S HOMES	B
6560 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I02292	PDF	102	NEW TOWN HOUSE - MODEL 1	11/14/2011	456	L	TODAY'S HOMES	B
6568 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I05700	PDF	102	NEW TOWN HOUSE - MODEL 3	12/23/2011	544	L	SPRINGS CREEK CONSTRUCTION LLC	B
6572 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I05701		102	NEW TOWN HOUSE - MODEL 2A	12/23/2011	489	L	SPRINGS CREEK CONSTRUCTION LLC	B
6573 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I09582	PDF	102	NEW TOWN HOUSE - MODEL 1	2/13/2012	456	L	TODAY'S HOMES, INC.	B
6576 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I05702	PDF	102	NEW TOWN HOUSE - MODEL 2A	12/23/2011	489	L	SPRINGS CREEK CONSTRUCTION LLC	B
6577 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I09584	PDF	102	NEW TOWN HOUSE - MODEL 2A	2/13/2012	489	L	TODAY'S HOMES INC	B
6580 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I05703	PDF	102	NEW TOWN HOUSE - MODEL 1	12/23/2011	455.92	L	SPRINGS CREEK CONSTRUCTION LLC	B
6581 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I09587	PDF	102	NEW TOWN HOUSE - MODEL 3	2/13/2012	544	L	TODAY'S HOMES INC	B
		80918	I08095	PDF	102		1/25/2012	544	L		B

6588 EMERALD ISLE HTS	COLORADO SPRINGS					NEW TOWN HOUSE - MODEL 3				SPRINGS CREEK CONSTRUCTION LLC
6592 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I08096	PDF	102	NEW TOWN HOUSE - MODEL 2A	1/25/2012	489	L	SPRINGS CREEK CONSTRUCTION B LLC
6596 EMERALD ISLE HTS	COLORADO SPRINGS	80918	I08097	PDF	102	NEW TOWN HOUSE - MODEL 1	1/25/2012	456	L	SPRINGS CREEK CONSTRUCTION B LLC

**CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION**

NEW BUSINESS CALENDAR

DATE: February 21, 2013

ITEMS: 6

STAFF: Rick O'Connor

FILE NO.: CPC PUD 05-00301-A2MJ12

PROJECT: Dublin Terrace Townhomes Appeal

STAFF PRESENTATION

Mr. Rick O'Connor, City Senior Planner, presented PowerPoint slides (Exhibit A).

Commissioner Suthers inquired of the opinion of the townhome owners. Mr. O'Connor stated that the applicant, individual townhome owners and the receivership are all in favor of the development of the project; therefore, they would like to see the appeal upheld.

Mr. O'Connor stated a greater quantity of landscaping was required in the original development plan to mitigate the townhomes from adjacent single-family homes. Currently, the applicant has installed non-compliant trees and landscaping (height and amount).

Commissioner Gonzalez inquired if the Code provision that allows staff to grant a certain amount of latitude within the grading criteria versus that was approved versus what is the final grading. Mr. O'Connor replied no. The development plan was explicit dictating specific units allowed on specific lots.

Mr. Wysocki clarified that it is in the public's best interest to comply with the approval outlined by the Planning Commission and not just a relief of what was built.

APPELLANT / APPLICANT PRESENTATION

1. Mr. Matt Werner, attorney representing MLP Receivership, stated the difference between the calculations of building height between the applicant and City Staff was the starting point of measurements. The original developer, Today's Homes, thought they were getting an amendment to the plan when they submitted the construction drawings for building permits. He felt that a different building type was approved at the building permit stage. A lawsuit was filed against the property owner and the court appointed a receiver who reports to the court. He felt the non-compliant townhomes do not block the

CITY OF COLORADO SPRINGS PLANNING COMMISSION

RECORD-OF-DECISION

views of the single-family residential homes from Pikes Peak or cast a shadow onto their backyards.

2. Mr. Andrew Checkley, MLP Receivership, explained the receivership program. Mr. Checkley felt that the Planning Commission should use grade calculations outlined in the construction drawing sets approved by Regional Building Department and not the Planning Commission's approved development plan that provided "rough" grades. He felt the existing buildings are not that far off from the approved elevations. The stakeholders are different today compared with the stakeholder group at the development plan review stage, specifically the investors and the new owners within the Dublin Terrace Townhome community. He displayed a letter dated September 19, 2012, whereby the City Engineering Department found the new drainage construction to be in compliance after the subject townhomes were built (Exhibit B).
3. Mr. Bill Park, real estate appraiser and consultant, was asked to opine on two evaluation issues. First, he felt there was no diminution in value to adjacent property owners despite the additional height of the townhomes. Second, his research found 22 sales within Dublin Terrace Townhomes during 2011-2012. The marketability of those units have been negatively impacted by the uncertainty of the 10 units under discussion today.

Mr. Checkley returned to the podium and stated the townhomes are "mostly compatible." He referenced the valuation of recently sold and resale townhome units within the complex. He referenced five options listed on page 266 of the agenda. He felt tearing down the buildings is not an option. He displayed a landscape architect's rendering of very mature trees that could help buffer the townhomes from the single-family residences (height of townhomes obscured by height of mature trees). He felt that if this request for a development plan amendment were denied at the City Council level, it would ultimately sterilize the entire complex.

Commissioner Magill disagreed with the options presented by Mr. Checkley such as allowing an amendment or walk away and let the homes rot. Mr. Checkley stated he has not been provided many options that are economically compatible.

Commissioner Gonzalez inquired if roof pitches were reduced to at least 3:12 would that be close to the originally approved height. Mr. Checkley stated the drop of five (5) feet would be two (2) feet over what was originally approved. Commissioner Gonzalez suggested roofs fully hipped, going from a seven (7)-foot violation to about a four (4)-foot violation, but felt there is still a violation of bulk as well as height. The proposed tree screening won't make an impact for another 20 years (until the trees are fully mature). He felt a compromise of some sort is needed for the single-family residences. Mr. Checkley stated the single-family residences have opposed any of the compromises offered. He is hesitant to compromise because he is not aware of how the existing townhome owners would feel about a compromise possibly affecting the integrity and compatibility of the units and complex. Commissioner Gonzalez inquired if there is a middle ground or compromise. Mr. Checkley stated he would need to request a protected advance of funds and request the court's approval.

CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION

Commissioner Suthers inquired of the appellant's interaction with the homeowners. Mr. Checkley stated that there were obvious "old wounds reopened" when he spoke with the neighbors during the Fall of 2012. Mr. Checkley stated he would be amiable to an extension on the project to work out resolutions with staff.

Commissioner Henninger wanted to state for the record that he has a relative that works for PNC Bank, but has no vested interest or otherwise as to the decision today.

CITIZENS IN FAVOR

1. Ms. Jean Arnold, attorney representing ProBuild Company LLC, provided copy of the mechanic's liens filed against the project (Exhibit C). She would like the appeal approved so the lien holders can be paid once the project has been completed, or allow a postponement so that an amicable agreement can be reached.
2. Mr. Al Kobilan, representing ProBuild Company discussed the projects perceived as a "stale mate," and the deterioration of the project currently. He is in favor of reaching a solution to satisfy his company's liens. He felt lowering the rooflines wouldn't make a difference as the building itself is bulky.
3. Mr. Bob Croft, Deputy Building Official with the Regional Building Department (RBD), addressed the accusations made in testimony earlier faulting RBD for the applicant's non-compliance with the development plan.

Commissioner Magill stated that he understands the convoluted project, and the 600-plus page building set was overwhelming to review.

Commissioner Shonkwiler inquired if Mr. Croft was in agreement with Mr. O'Connor's building elevation calculations. Mr. Croft stated there are different standards for calculations between RBD and City Staff.

CITIZENS IN OPPOSITION

1. Refer to Exhibit D for additional correspondence after the printing of the agenda.
2. Mr. Bill Sheridan, adjacent single-family resident, displayed pictures of the project from various angles of his property and surrounding properties. He stated the Mayor has visited the site and felt the units were in clear violation of City Code. Mr. Sheridan displayed a sign-in sheet for a neighborhood meeting held with the appellants on September 18, 2012. Few options were suggested, but there was no resolution. There has been no contact with Mr. Checkley since that meeting. He displayed a petition signed by surrounding homeowners opposing the amendment (Exhibit E). He requested denial of the appeal. He referenced the forfeiture ordinance that has already been postponed four times at City Council to allow the appellant the opportunity to reach a solution.

CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION

Commissioner Shonkwiler inquired of the suggestions made by the neighborhood during the meeting. Mr. Sheridan stated the neighbors suggested donating the buildings to Habitat for Humanity, Colorado Springs Fire Department or Fort Carson Army Base. Commissioner Shonkwiler wanted clarification that all of the suggestions made by the homeowners were to remove the homes. Mr. Sheridan stated yes.

Commissioner Magill requested the homeowners realize that no matter the solution today, there will still be a building there. Mr. Sheridan stated he would like to see the approved homes built, but would consider Commissioner Magill's suggestion.

3. Mr. Russell Smith, adjacent single-family resident, stated the constructed townhomes were not the models that were approved per the development plan. He has been involved with this process since the beginning. He was told by the developer that the non-compliant model was built because that was the model that was selling. He would like to see the homes that were approved built in that location.

Commissioner Gonzalez inquired if the solution of dropping the roof pitch is acceptable. Mr. Smith stated no, the buildings are huge and the sidewalks are caving in. He was still willing to make some compromise.

Commissioner Markewich inquired who he contacted at the City once the violation was noticed. Mr. Smith stated his neighbor, Ms. Jeanne English reported the violation. She originally received no response; however, once the inspection was completed, the violation was obvious.

4. Mr. Matt Plumber, adjacent single-family resident, was involved in the original development plan process and was satisfied with the outcome. Mr. Plumber requested that the Planning Commission uphold Staff's decision. He felt it would be unfair to the single-family homeowners to be forced to live with the developer's clear violation. He felt staff's solution of moving the homes to other sites within the project has merit.

APPELLANT REBUTTAL

Mr. Checkley reiterated the solutions suggested by the adjacent single-family homeowners are not viable, and he suggested possible improvements to the site. He stated the financial assurances provided to the City at the beginning of the development could possibly fund some sort of solution. He is willing to work with the homeowners and lien holders to reach an equitable solution.

Commissioner Markewich felt that there has been ample time to work with the interested parties.

CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION

Commissioner Magill stated that the homeowners have had the biggest burden placed on them, and the Commission isn't in the business of providing solutions. He requested that the appellant try and reach a viable solution with the affected single-family homeowners.

DECISION OF THE COMMISSION

Commissioner Shonkwiler stated that he would like to see a decision made, not another postponement. He supported denying the appeal. He felt the receiver has been derelict in his duties.

Commissioner Walkowski also supported upholding Staff's decision and supported denying the appeal.

Commissioner Gonzalez stated that he too would support staff as he felt there has been no compromise on either side of the issue. He felt this is a clear case of seeking forgiveness before asking permission.

Commissioner Magill stated that he looks at this as a situation where two wrongs don't make a right; however, the error has already occurred and although Today's Homes didn't comply with the approved Development Plan, a solution needs to be reached as soon as possible between the parties. He too supported denying the appeal.

Commissioner Markewich also supported denying the appeal. He encouraged the parties to reach an amicable agreement.

Commissioner Henninger stated that he has walked the site multiple times and was taken aback at the development. He felt the single-family neighbors have been significantly wronged. He felt the project has floundered far too long and felt staff should have provided more options for the receivership.

Commissioner Suthers stated that she was very disappointed with the lack of cooperation by the parties to reach a solution. She would like to see a mediator brought in to assist in the process and would like to see the project move forward as soon as possible with a solution that all parties can live with. She would be voting to deny the appeal as well.

Moved by Commissioner Gonzalez, seconded by Commissioner Magill, to deny **Item 6 – File No. CPC PUD 05-00301-A1MJ12**, the appeal of the amendment to the Dublin Terrace Development Plan, based upon the finding that the amendment does not comply with the review criteria in City Code Sections 7.5.502.E and 7.3.606.C. Motion carried 6-1 (Commissioner Henninger in opposition and Commissioners Ham and Phillips absent).

February 21, 2013
DATE OF DECISION

PLANNING COMMISSION CHAIR

CITY PLANNING COMMISSION

FEBRUARY 21, 2013

DUBLIN TERRACE TOWNHOMES DEVELOPMENT PLAN AMENDMENT

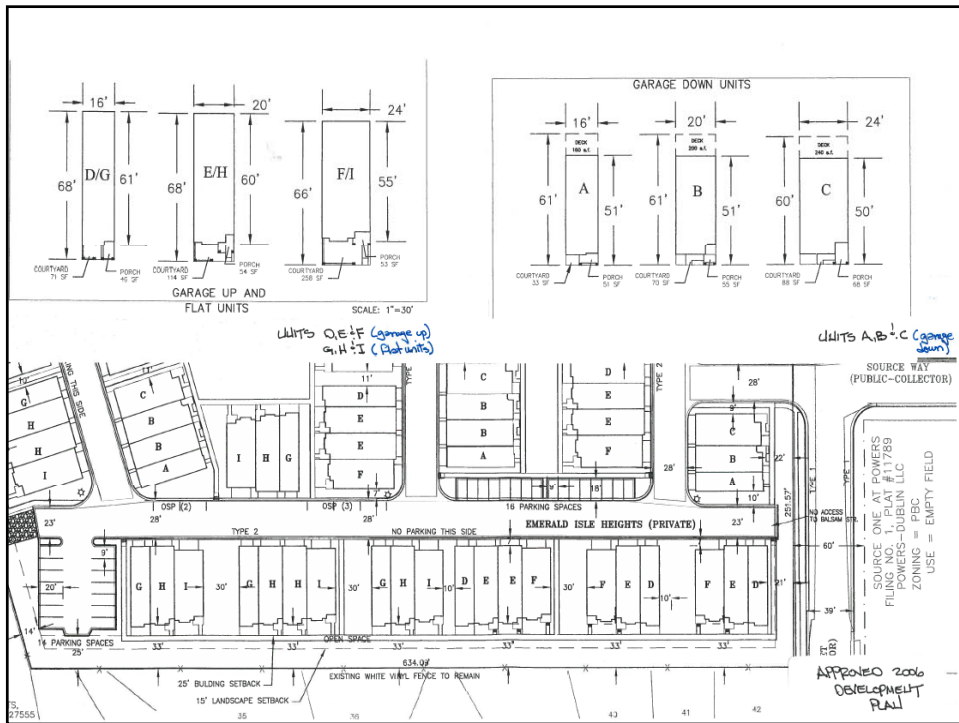
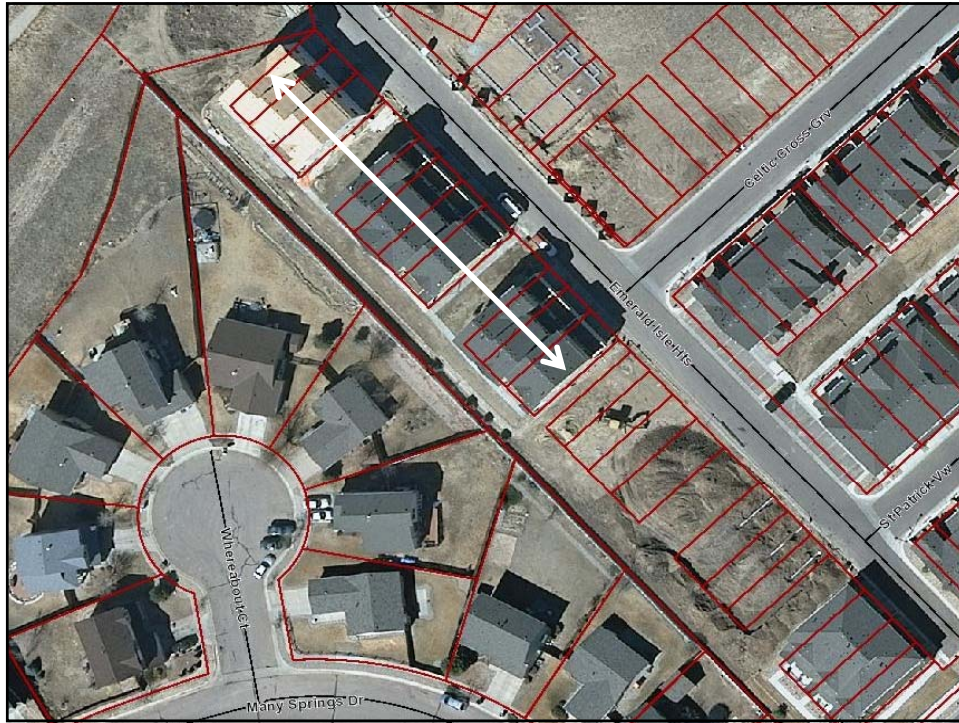
CPC PUD 05-00301-A2MJ12

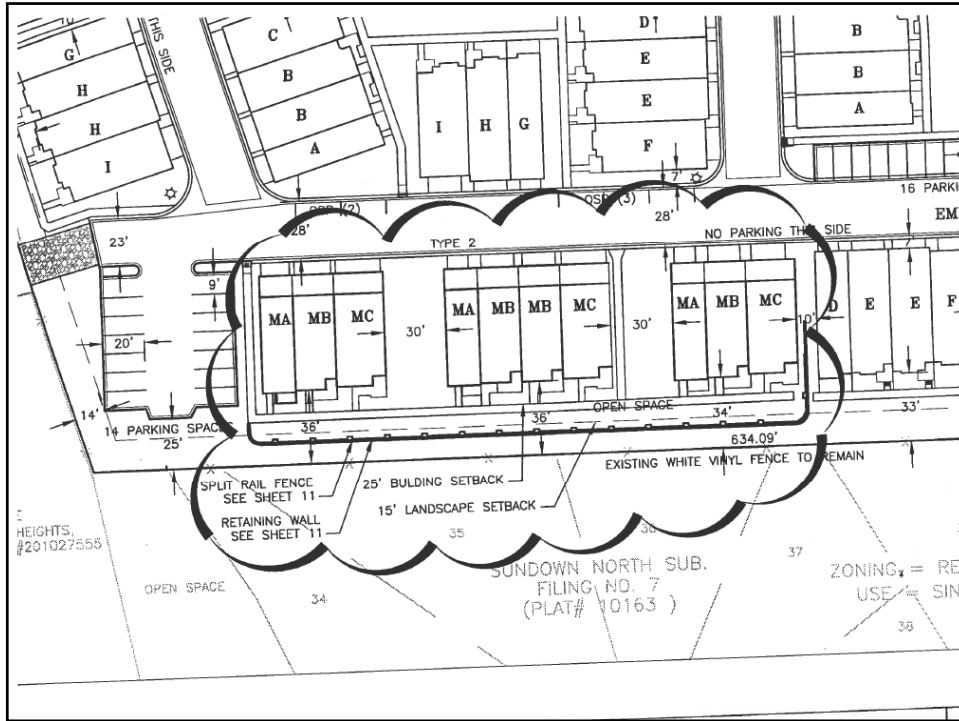
- Appeal of the administrative denial of an amended Development Plan
- Land Use issue, not an economic issue
- Does this amendment comply with the Development Plan Review criteria?

**The 2006 Development Plan
is the baseline; the
Development Plan is what is
under consideration for an
amendment**

ISSUES

- **Grading**
- **Building types/elevations**
- **Height**
- **Building compatibility with
neighboring properties**





















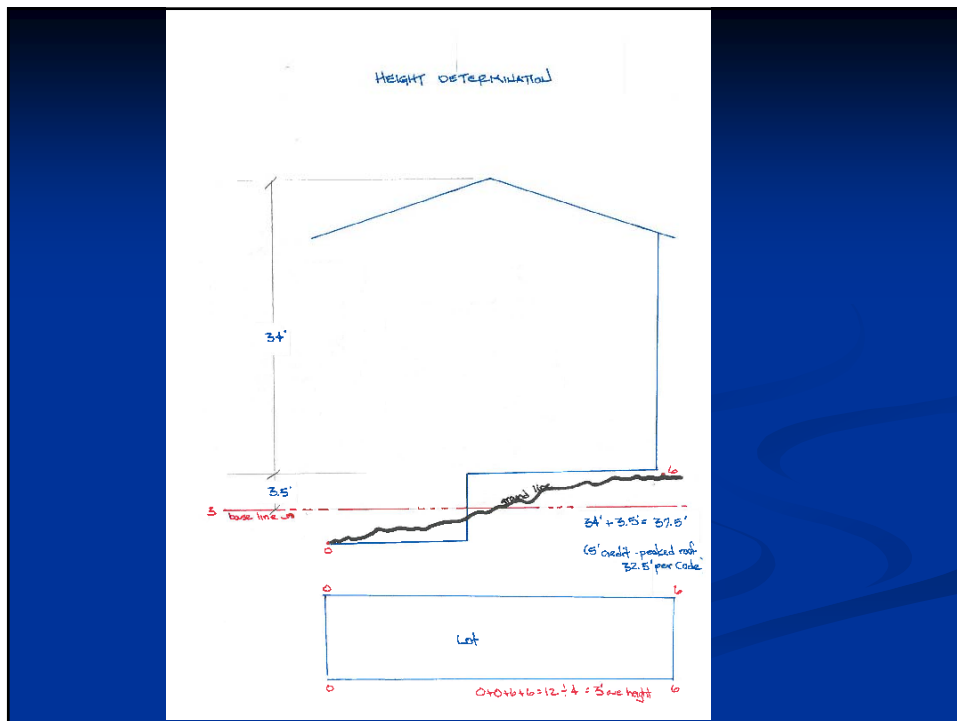
- ONLY ELEVATION “B” CAN BE USED ALONG THE SINGLE FAMILY RESIDENTIAL BOUNDARY ON THE SOUTH PROPERTY LINE





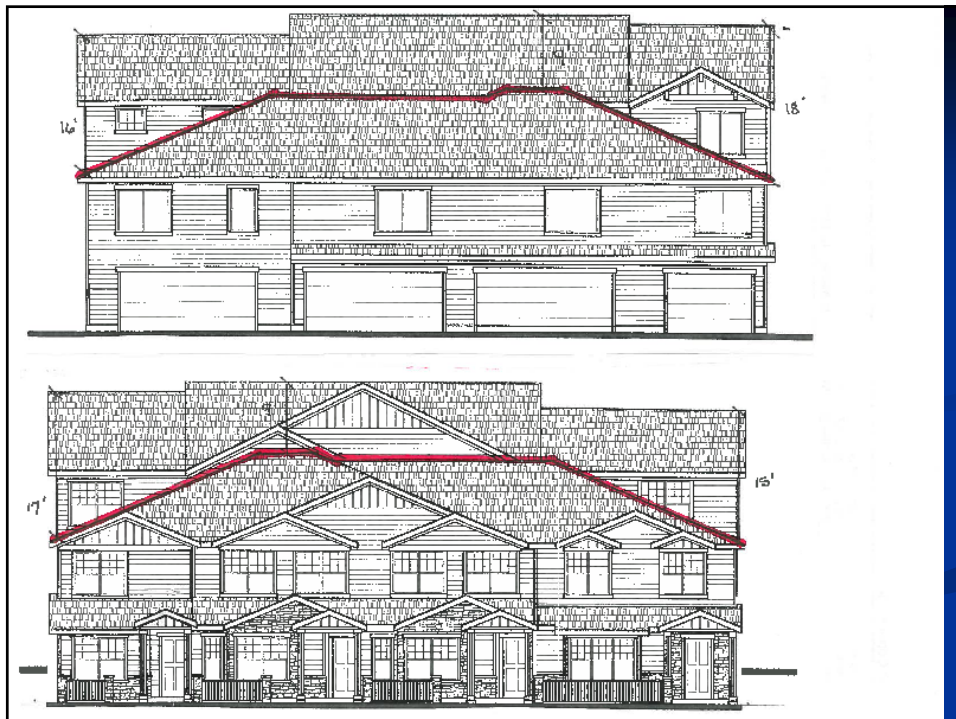
7.2.201 Building Height:

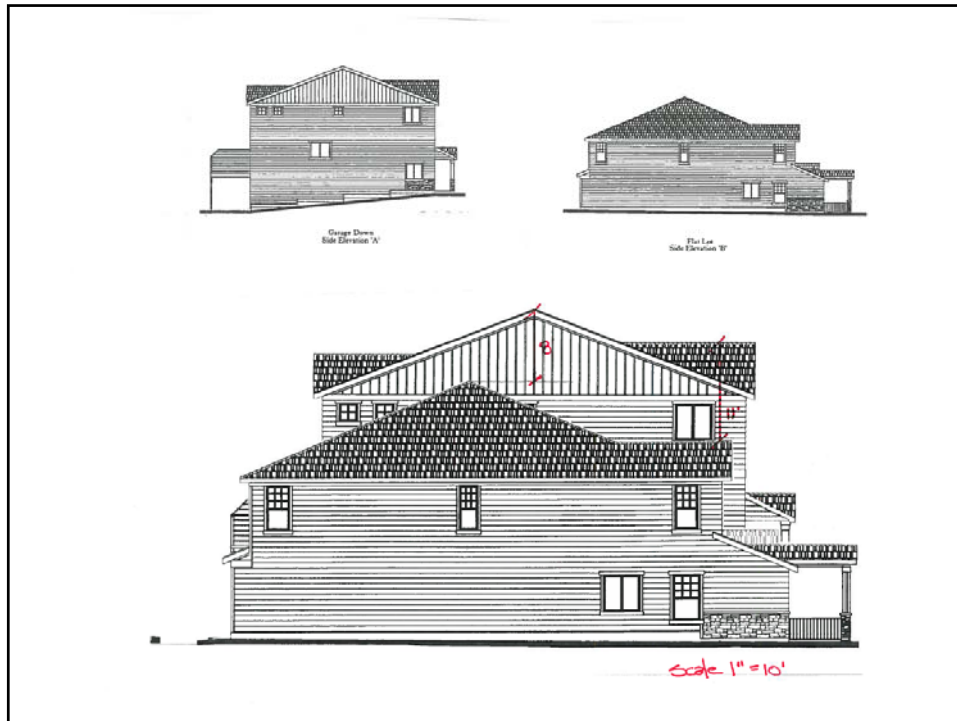
- The vertical distance measured from the average elevation of the finished grade adjoining the building to the highest point of the roof surface ...to a point five feet (5') below the highest ridge of a gable, hipped, or gambrel roof..... The average elevation of the finished grade adjoining the building shall be the average of the exposed exterior elevations of all major corners of the building



Elevation Comparisons

- As built
- As approved





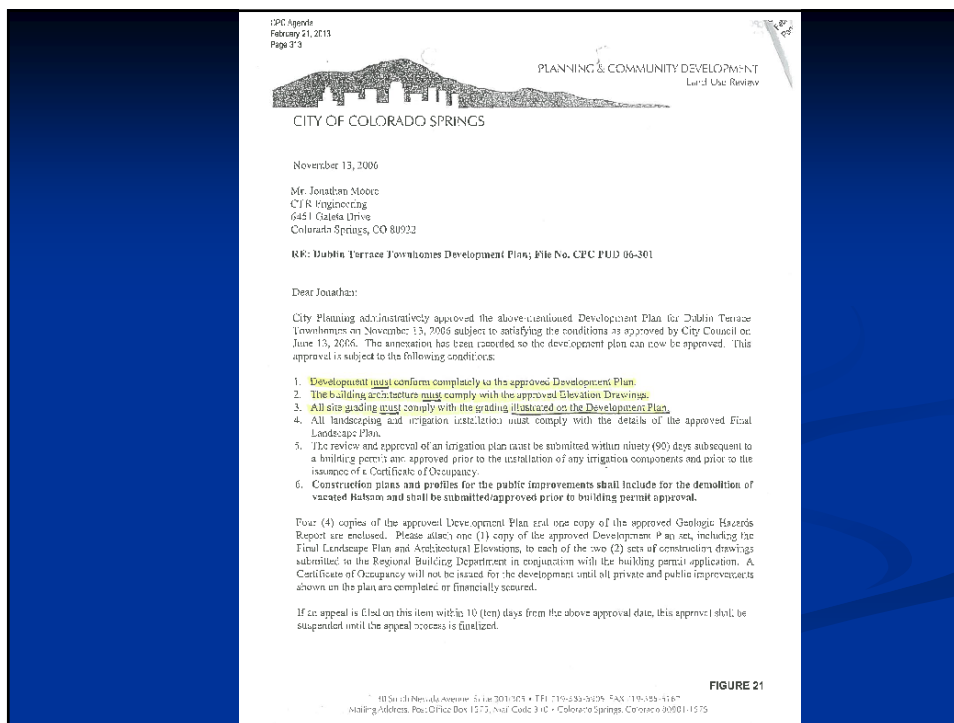
PUD Review Criteria 7.3.606.C

- Do the project elements reduce the impact of the projects density/intensity?
- Is placement of buildings compatible with the surrounding area?

Development Plan Review

Criteria 7.5.502. E

- Will the project design be harmonious with the surrounding land uses and neighborhood?
- Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden...
- Will the structures be located to minimize the impact of their bulk on the adjoining properties?
- Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, or other off site negative influences that may be created by the proposed development?



Staff Recommendation

Deny the appeal; uphold the denial of the development plan amendment

September 19, 2012

Unity Builders Group
808-55 Ave NE
Calgary, AB T2E 6Y4

Reference: Dublin Terrace Townhomes

The City of Colorado Springs is required under its Municipal Stormwater Discharge Permit to protect the quality of stormwater discharges associated with construction activities. These requirements are to ensure compliance with the federally-mandated Clean Water Act, the Colorado Water Quality Control Act, and City of Colorado Springs ordinances. At this time, Dublin Terrace Townhomes is back in compliance with Colorado Springs ordinances regarding such discharges.

Inspection by City staff indicates that construction activities at the referenced site are in compliance. The items that were referenced in the Non Compliance letter dated June 18, 2012 have been addressed and work may resume at this time. The following non compliance items have been corrected:

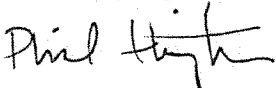
1. Sediment that has transferred into Cottonwood Creek requires removal and cleanup.
2. Adequate BMP's are required to control transfer of sediment into southerly swale.
3. Erosion logs throughout the site require maintenance and installation per City specifications.
4. BMP's need to be implemented at all disturbed areas.
5. Silt fence along Cottonwood Creek requires maintenance/ repairs.
6. Streets need to be cleaned to include the flow line of the curb and gutter.
7. Unused BMP's need to be managed according to the approved SWMP.
8. Up to date erosion control inspection reports and site map need to be provided to the City inspector.

As a reminder, if you fail to remain in compliance with the approved grading/erosion control plan for this site, the City of Colorado Springs will take appropriate action, which could include any of the following, pursuant to the enforcement authority set forth in Section 7-7-15 of Colorado Springs City Code:

- ❖ Stop Work Order
- ❖ Permit Revocation
- ❖ Notice and Order
- ❖ Municipal Summons

Please contact me at **(719) 385-5039** if you have any questions.

For the City Engineer,



Phil Herington
Engineering Inspector II

- c. Mike Chaves, Senior Civil Engineer
Steve Bodette, City Engineering Inspector Supervisor
Steve Kuehster, Senior Civil Engineer
Mike Kelso, Sr. Engineering Inspector
Andrew Checkley, M.L.P. Management LLC
Barry Johnson, Sr. Engineering Inspector

Exhibit: B Item: 6
CPC Meeting: February 21, 2013

Item 6

DISTRICT COURT, COUNTY OF EL PASO
STATE OF COLORADO
Judicial Complex
1270 S. Tejon
Colorado Springs, CO 80903
Phone: 719-448-7700

**Plaintiffs: PROBUILD COMPANY LLC and
BMC WEST CORPORATION**

v.

**Defendants: HERITAGE HOMES, INC. d/b/a
TODAY'S HOMES, INC. a/k/a TODAYS
HOMES, INC. a/k/a TODAYS HOMES a/k/a
TODAY'S HOMES; SPRING CREEK
CONSTRUCTION, LLC a/d/b/a SPRINGS
CREEK CONSTRUCTION, LLC; RBC BANK
(USA) f/k/a RBC CENTURA BANK,;
AMERICAN BUILDERS CAPITAL (US) INC.;;
VALIANT TRUST COMPANY, et al.**

Attorneys for Plaintiffs ProBuild Company LLC and
BMC West Corporation
Jean C. Arnold, #13126
Terry Ehrlich, #13213
Arnold & Arnold, LLP
7691 Shaffer Parkway, Suite A
Littleton, CO 80127
Phone: 720-962-6010 Fax: 720-962-6011

▲ COURT USE ONLY ▲

Case No.: 2012CV4089

Courtroom: 5

SUMMARY OF FORECLOSED MECHANIC'S LIENS ON DUBLIN TERRACE


The following summary is submitted to the City of Colorado Springs, City Planning Commission, in support of the Appeal by MLP Receiverships LLC, Item No. 6 on New Business Calendar dated February 21, 2013. The following is a summary of the businesses that are actively foreclosing their mechanic's liens on the Dublin Terrace town homes in the above-captioned case:

Business and address	Amount of Liens
BMC West Corp 870 Paonia St. Colorado Springs, CO 80915	\$5,018.70
Chiddix Brothers, Inc. 18160 Old Paint Ct. Peyton, CO 80831	29,432.50
C&T Plumbing, LLC 1972W. Iliff Ave. Englewood, CO 80110	37,940.00
Environmental Materials, LLC d/b/a Environmental StoneWorks 6300 E. Stapleton Dr. S Denver, CO 80216	16,321.88
Horizon Drywall, Inc. 5475 Peoria St. Bldg. 3 Unit 108 Denver, CO 80239	51,608.75
Metco Landscapes, Inc. 2200 Rifle St. Aurora, CO 80011	25,034.53
Positive Electric, LLC 685 Popes Valley Drive Colorado Springs, CO 80918	34,990.60
ProBuild Company LLC 2810 Capital Drive Colorado Springs, CO 80939	145,420.55
PTL Concrete, Inc. 11550 Parallax Heights Colorado Springs, CO 80908	27,986.00
Steel-T Heating, Inc. 2750 S. Shoshone St., Suite 240 Englewood, CO 80110	<u>18,540.00</u>
Total of Mechanic's Liens in foreclosure:	\$394,548.95

DATED this 21st day of February, 2013.

Respectfully Submitted to the City Planning
Commission,

ARNOLD & ARNOLD, LLP
Attorneys at Law

By 
JEAN C. ARNOLD #13126
Attorneys for Plaintiffs ProBuild Company
LLC and BMC West Corporation

From: Amy Phillips <amy_p@mac.com>
Date: February 10, 2013 9:52:15 AM MST
To: <allCouncil@springsgov.com>
Cc: Amy Phillips <amy_p@mac.com>
Subject: Dublin Terrance townhomes

Dear City Council Members,

I am writing in response to an article in the Gazette:

<http://www.gazette.com/news/vogrin-150715-dublin-terrace.html>
(SIDE STREETS: Bankrupt townhomes could be abandoned by bank)

Having served for 10 years chairman of the Black Forest Land Use Committee (1998 - 2008) and having worked on the revision of El Paso County's Land Development Code, I have a deep understanding of what the codes are trying to achieve, and how building heights are to be measured. Here are my thoughts on the subject of the Dublin Terrace townhouses being built feet higher than what was approved.

Let them walk away from the project. They knew they were violating the rules when they brought in the 7 feet of fill dirt - a typical trick to "game" the height rule. (<http://www.gazette.com/articles/vogrin-136364-developer-neighbors.html>) And even at that they still admit they are at least 4 feet above what they agreed to build. This isn't an accident or a math error, it's an intentional violation. They are no doubt hoping that they'll get away

setting the precedent for all other builders to violate the terms and conditions of all future approvals.

Let them walk away from the project. Then have a big weekend event (or 4 weekends in a row) where people can come and disassemble the buildings and take the timbers, and other materials home with them. Perhaps invite Habitat for Humanity as the main beneficiary. The city can provide for hot dogs and sodas for all participants, and be done with it. That type of action will serve the community better in many ways. The violating property is dismantled at low cost to the city, and developers near and far learn the lesson that they cannot get away with cheating the City of Colorado Springs, you turn a quagmire into a charitable event, and the neighbors get the in-kind value of their neighborhood restored.

My two cents' worth.

Respectfully yours,

Amy Phillips
amy_p@mac.com
80908

"A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty."
Winston Churchill

Exhibit: D **Item: 6**
CPC Meeting: February 21, 2013

Dear Planning Commission
And City Council Members

My name is Russell Smith, I am writing in regard to CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE "DO NOT SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE FORFEITURE ORDINANCE".

I we/reside at 6630 whereabouts ct, in Colorado Springs, Colorado. I/we are in the impact area as defined by the City of Colorado Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT Allowing " the town homes to be completed as they are currently framed #3 story vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be occupied at any time. In addition, they are ~ 6' higher than the surrounding grade and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

Russell Smith

Date: 2/19/13

Dear Planning Commission
And City Council Members

My name is Michael & Melissa Garcia I am writing in regard to CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE "DO NOT SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE FORFEITURE ORDINANCE".

I we/reside at 5588 Marly Springs dr, in Colorado Springs, Colorado. I/we are in the impact area as defined by the City of Colorado Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT Allowing " the town homes to be completed as they are currently framed #3 story vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be occupied at any time. In addition, they are ~ 6' higher than the surrounding grade and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The amendment and "FOR" the approval of the forfeiture ordinance.

Flooding issues need to be resolved. Add "higher" fence since ground level was raised. & trees around adal. trees for security. Thank You Since our property value is impacted this needs to be awarded.

Melissa Garcia
for Michael H. Garcia

Date: 2/20/13

Dear Planning Commission
And City Council Members

My name is Julie McClure, I am writing in regard to CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE "DO NOT SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE FORFEITURE ORDINANCE".

I we/reside at 6625 Whereabout Ct, in Colorado Springs, Colorado. I/we are in the impact area as defined by the City of Colorado Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT Allowing" the town homes to be completed as they are currently framed #3 story vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be occupied at any time. In addition, they are ~6' higher than the surrounding grade and ~2' higher than the fence line in some places. Please vote "AGAINST" The amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

Julie McClure

Date: 2-18-13

Dear Planning Commission
And City Council Members

My name is LeRoy Krang, I am writing in regard to CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE "DO NOT SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE FORFEITURE ORDINANCE".

I we/reside at 5580 Many Springs Dr., in Colorado Springs, Colorado. I/we are in the impact area as defined by the City of Colorado Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT Allowing" the town homes to be completed as they are currently framed #3 story vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be occupied at any time. In addition, they are ~6' higher than the surrounding grade and ~2' higher than the fence line in some places. Please vote "AGAINST" The amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

LeRoy J. Krang

Date: 2-19-13

Dear Planning Commission
And City Council Members

My name is Stephanie Inujillo, I am writing in regard to CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE " DO NOT SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE FORFEITURE ORDINANCE".

I we/reside at 6620 Whereabout Ct, in Colorado Springs, Colorado. I/we are in the impact area as defined by the City of Colorado Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT Allowing" the town homes to be completed as they are currently framed #3 story vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be occupied at any time. In addition, they are ~ 6' higher than the surrounding grade and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

Stephanie Inujillo

Date: 2-20-13

Dear Planning Commission
And City Council Members

My name is Matt & Maria Plummer, I am writing in regard to CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE " DO NOT SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE FORFEITURE ORDINANCE".

I we/reside at 6615 Whereabout Court, in Colorado Springs, Colorado. I/we are in the impact area as defined by the City of Colorado Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT Allowing" the town homes to be completed as they are currently framed #3 story vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be occupied at any time. In addition, they are ~ 6' higher than the surrounding grade and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

Matt & Maria Plummer

Date: Feb 19, 2013

Dear Planning Commission
And City Council Members

My name is Susann Fox, I am writing in regard to
CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE " DO NOT
SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE
FORFEITURE ORDINANCE".

I we/reside at 6610 Whereabout Ct, in Colorado
Springs, Colorado. I/we are in the impact area as defined by the City of Colorado
Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle
Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT
Allowing " the town homes to be completed as they are currently framed #3 story
vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be
occupied at any time. In addition, they are ~ 6' higher than the surrounding grade
and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The
amendment and "FOR" the approval of the forfeiture ordinance.

Thank You



2/20/13

Dear Planning Commission
And City Council Members

My name is Ben Stewart / Kathy Stewart, I am writing in regard to
CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE " DO NOT
SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE
FORFEITURE ORDINANCE".

I we/reside at 6640 whereabout ct, in Colorado
Springs, Colorado. I/we are in the impact area as defined by the City of Colorado
Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle
Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT
Allowing " the town homes to be completed as they are currently framed #3 story
vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be
occupied at any time. In addition, they are ~ 6' higher than the surrounding grade
and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The
amendment and "FOR" the approval of the forfeiture ordinance.

Thank You



Date: 2/16/13

Dear Planning Commission
And City Council Members

My name is Jeanne English, I am writing in regard to
CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE "DO NOT
SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE
FORFEITURE ORDINANCE".

I we/reside at 6645 Wheeler Blvd CT CS, in Colorado
Springs, Colorado. I/we are in the impact area as defined by the City of Colorado
Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle
Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT
Allowing " the town homes to be completed as they are currently framed #3 story
vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be
occupied at any time. In addition, they are ~ 6' higher than the surrounding grade
and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The
amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

Jeanne English

Date: 18 Feb 13

Dear Planning Commission
And City Council Members

My name is William Sheridan, I am writing in regard to
CPC PUD500301-A2MJ12 and the proposed forfeiture ordinance. I /WE "DO NOT
SUPPORT" THE AMMENDMENT AND "DO AGREE" WITH THE
FORFEITURE ORDINANCE".

I we/reside at 6625 Wheeler Blvd CT, in Colorado
Springs, Colorado. I/we are in the impact area as defined by the City of Colorado
Springs relative to the Illegal (10) town homes built at 6552-6596 Emerald Isle
Heights (Dublin Terrace Town Home Development). We "DO NOT SUPPORT
Allowing " the town homes to be completed as they are currently framed #3 story
vs. 2 story as required by the approved 2006 Plan. Nor should they allowed to be
occupied at any time. In addition, they are ~ 6' higher than the surrounding grade
and ~ 2' higher than the fence line in some places. Please vote "AGAINST" The
amendment and "FOR" the approval of the forfeiture ordinance.

Thank You

William Sheridan

Date: 19 Feb 2013

NEW BUSINESS CALENDAR

ITEM NO: 6

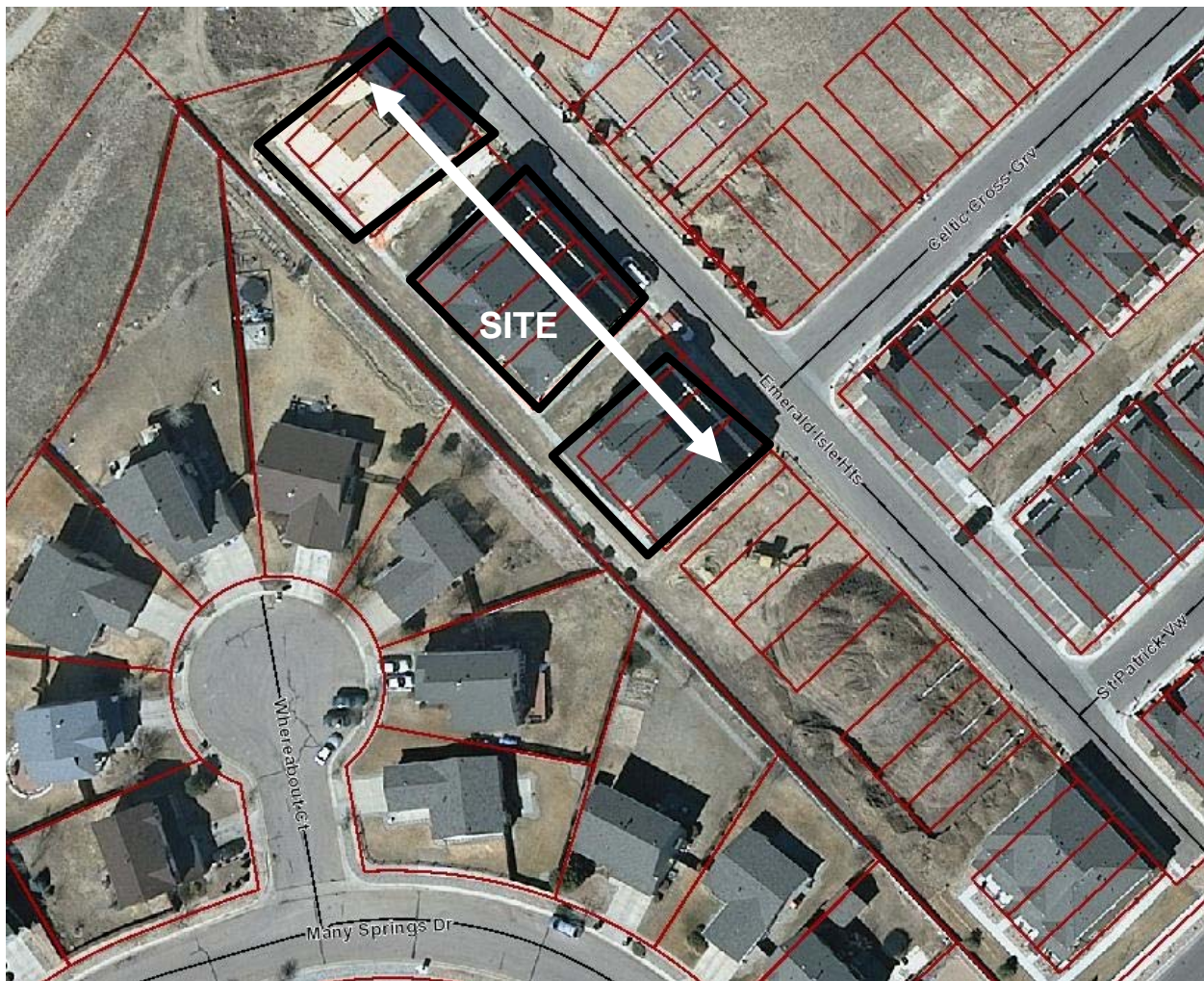
STAFF: RICK O'CONNOR

FILE NO:
CPC PUD 05-00301-A2MJ12 – QUASI-JUDICIAL

PROJECT: DUBLIN TERRACE TOWNHOMES

APPELLANT: MLP RECEIVERSHIPS LLC

OWNER: TODAY'S HOMES



PROJECT SUMMARY:

1. **Project Description:** This is an appeal from MLP Receiverships LLC, as receiver for Today's Homes, of an administrative denial of an amended development plan. The amended plan would make the following changes to the southern portion of the previously approved development plan:
 1. To allow a different building elevation than what was approved;
 2. To allow a different roofline from what was approved;
 3. To modify the grading plan to raise the grade (additional fill) approximately seven feet (at the highest point) along the south portion of the property; and
 4. To increase the amount of landscaping along the south side of the southerly most townhomes, including a four-foot retaining wall.The overall project was approved with 142 townhomes; this request represents 10 units (three buildings) that do not comply with the previously approved development plan.
2. **Applicant's Project Statement:** (with the original development plan amendment request--**FIGURE 1**); Appellant's statement/justification—**FIGURE 2**)
3. **Planning and Development Department's Recommendation:** **Denial of the appeal.** The denial is based on the fact that **this amendment does not comply with several of the development plan review criteria.**

BACKGROUND:

1. **Site Address:** Three buildings, (6596-92-88 Emerald Isle Hts.); (6580-76-72-68 Emerald Isle Hts.); (6560-56-52 Emerald Isle Hts.)
2. **Existing Zoning/Land Use:** PUD (Planned Unit Development)/Townhome Development.
3. **Surrounding Zoning/Land Use:** North: PUD (Planned Unit Development) AO (Airport Overlay) /Townhomes and vacant (proposed townhomes)
South: R1-6 DFOZ (Single Family with Design Flexibility Overlay District) AO (Airport Overlay)/single family
East: PUD AO/proposed townhomes
West: PUD AO/overflow parking area (townhome visitor use)
4. **Comprehensive Plan/Designated 2020 Land Use:** General Residential.
5. **Annexation:** Annexed as part of the Dublin Terrace Annexation in 2006.
6. **Master Plan/Designated Master Plan Land Use:** Not applicable.
7. **Subdivision:** Platted as Dublin Terrace Townhomes in 2006.
8. **Zoning Enforcement Action:** Code Enforcement issued violation notices (Notice and Orders) on these properties on May 11, 2012.
9. **Physical Characteristics:** Three existing buildings (containing 10 townhome units) are non-compliant with the existing development plan. Two of the buildings are ready for occupancy; construction on the third building was started but not complete. The grade rises from north to south (artificial fill). A retaining wall has been installed along the south side of the buildings to hold up the imported fill.

STAKEHOLDER PROCESS AND INVOLVEMENT:

A notification to 111 property owners within 500 feet was provided during the internal review period and the property was posted. An additional mailing and posting will be completed prior to the Planning Commission meeting.

The previous owner, Today's Homes, met with the most affected property owners to the south in May 2012 and hosted a meeting to discuss the relocation of the buildings, prior to the company shutting down their operations in June, 2012. Subsequently, a Receiver was

appointed by the court and met with the most affected homeowners once in September. The Receiver has also met with the Dublin Terrace Homeowner Association (HOA) Board.

Staff received three (3) written comments and one phone message from neighbors located to the south of this request; all comments were against the proposed changes. The opposition noted the following: the developer built the wrong units, they raised the grade extensively and caused flooding on an adjoining property (**FIGURE 3**). Additionally, a letter has been received in favor of the amended applications from the Dublin Terrace Townhome Association, representing their 56 members, and a letter in support from one of the investors owning vacant lots within the undeveloped portion of the project (**FIGURE 4**).

PROJECT SUMMARY/HISTORY:

The Dublin Terrace Townhome project was approved by City Council in 2006 which included an annexation, a zoning, a development plan and a final plat. This infill project was controversial with several issues of concern (traffic, density, drainage, design, schools, etc).

During the initial review in 2005, staff was concerned with the potential impact to the existing single family residences located to the south of the request. The following comments from the 2005 staff report were made at that time: *"It is important to provide a compatible transition between this development and the single family to the south. As previously indicated, the fronts of these units will face the rear yards of the single family. All buildings are a minimum of 33' from the property line. Wider gaps between buildings are utilized. Only the "B" elevations which have hipped roofs are allowed along this property line, which will have a slimmer profile at the ends and make the building look less massive. A greater number of evergreen trees is required along this property line and the size has been increased from the minimum 6' in height to 10-12' in height for those areas where the adjoining house is closest to the rear property line."*

In March, 2012 Today's Homes submitted an amended development plan for approval of the existing townhomes that were built. That request was postponed at the April 2012 Planning Commission meeting and Today's Homes subsequently withdrew their application after they determined that they would relocate (move) the units to other lots within the development (**FIGURE 5**).

In May 2012, Today's Homes (aka Heritage Homes) closed their Colorado Springs operation and the parent company in Canada filed for Credit Protection. PNC Bank, the lender who provided a construction loan on the buildings, requested that the court appoint a receiver for their defaulted loan. The property covered by the construction loan was placed into a receivership estate and a receiver was appointed in June, 2012.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES

This request is an amendment to the development plan, not an amendment the construction drawings that were submitted to Regional Building Department (RBD) to obtain a building permit (more discussion on this later within the staff report). The previously approved development plan is the **base line** to compare what was initially approved to what was built (amended development plan represents primarily an "as built" request).

The originally approved development plan was very clear and very explicit. Specific buildings were only allowed on specific lots (**FIGURE 6**). Additionally, specific elevations were required along the southerly boundary (this requirement/limitation is clearly noted upon three sheets of the approved development plan (two of the elevation sheets and on the site plan note sheet)).

Appeal Review Criteria

Section 7.5.906 A.4 specifies the following criteria for review of an administrative decision. The appellant must substantiate the following:

- a. Identify the explicit ordinance provisions which are in dispute.
- b. Show that the administrative decision is incorrect because of one or more of the following:
 - (1) It was against the express language of this zoning ordinance, or
 - (2) It was against the express intent of this zoning ordinance, or
 - (3) It is unreasonable, or
 - (4) It is erroneous, or
 - (5) It is clearly contrary to law.
- c. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

The appellant's justification, including the staff denial letter, is found within **FIGURE 2**.

Review Criteria / Design & Development Issues:

There are two sets of development review criteria that are applicable within a PUD, consisting of the PUD review criteria (7.3.606) and the development plan review criteria (7.5.501.D). All of the PUD and Development Plan review criteria in their entirety are found within the Planning Commission report appendix. The criteria most applicable to this proposed amendment are:

(PUD Review Criteria 7.3.606.C)

- 2. Do the design elements reduce the impact of the projects density/intensity?**
- 3. Is placement of buildings compatible with the surrounding area?**

(Development Plan Review Criteria 7.5.502.E)

- 1. Will the project design be harmonious with the surrounding land uses and neighborhood?**
- 2. Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden....**
- 3. Will the structures be located to minimize the impact of their use and bulk on adjoining properties?**
- 4. Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, or other off-site negative influences and to buffer adjacent properties from negative influences that may be created by the proposed development?**

GRADING ISSUES

The preliminary grading plan for the townhomes adjacent to the neighboring single family indicated a flat grade from the street to the front of the townhome units. While flat from back to front, the approved development plan grading plan represented a cut of approximately two (2) feet on the west end of the property, which would make the resulting units actually lower (see grading plan, **FIGURE 7**) on the property.

The appellant has provided spot elevations for all of these units. A 6768 contour is shown along the east side of the most westerly townhome unit within the westerly triplex on the approved grading plan. The surveyed spot elevation shows a 6775.1 elevation in front of the unit. The difference is 7.1 feet higher than what was approved (**FIGURE 8**) in the grading, independent of the changes to the building itself. This 7.1 height difference has been confirmed by Tim Mitros

of the City Engineering Development Review Division (EDRD) (**FIGURE 9**). The existing grading along this row of townhomes ranges from five to seven feet higher than what was approved on the development plan grading plan. The actual difference for each of the buildings is noted below:

DIFFERENCE—GRADING PLANS WEST TO EAST			
Grading	Building 1	Building 2	Building 3
Approved Dev't Plan	Elev 68-70	Elev 71-74	Elev 74-75
As Built*	74.5-76.9	77.6-79	80.1-79.8
Difference approved DP/as built	6.5'-6.9'	6.6'-5'	6.1'-4.8'

*The "as built" information is based on surveyed spot elevations; actual elevation information provided by the applicant

The appellant, on page 3 of their justification letter notes, "The grading done to build these particular elevations of buildings appears to have the benefit of channeling runoff away from the neighbors' homes".

ELEVATIONS

When the project was initially reviewed in 2005, staff determined that it would meet the applicable review criteria, provided the plans (grading and landscaping) were followed and the restricted elevations were utilized (lower profile townhome unit with fully hipped roofs). Only one building type was allowed for these three buildings, a flat unit with the garage at the same level as the living space in front of it (elevations G, H and I) (**FIGURE 10**). This elevation denotes a height at the peak of 29 feet; the height at the ends of the hipped roof is at 19 feet.

As noted previously, the development plan specifically identified which elevations were approved for the individual lots. The approved development plan also included the following note, "only elevation "B" can be used along the single family residential boundary on the southerly property line". Elevation "B" was an elevation that had hipped roofs at the end of the units. Staff consciously specified this elevation to reduce the mass and scale of the buildings.

The elevation that has been built is an elevation where the garage is lower than the front; the front of the unit is actually raised and higher than the garage (**FIGURE 11**). These units were not approved for the area adjacent to the existing single family.

In order to accommodate this elevation, the front grade was raised, with approximately six to seven feet of fill placed on these lots. A four-foot retaining wall was also constructed approximately 10 feet north of the south property line. The grade from the top of the retaining wall also rises in height to the front of the building. The units that were approved on the 2006 development plan have a maximum height of 29 feet, whereas the units constructed have a height of 32.9 feet.

The applicant is seeking approval of an amended development plan to include the units that were constructed (elevations A, B and C) and an amended grading plan to reflect the changes to the site grading (**FIGURE 12**).

When comparing the two elevations to each other (approved vs what was built) there are significant differences in bulk and scale. At the ends of the units there is up to a 17-foot frontal height difference (**FIGURE 13**). These comparisons are based on the scaled elevations provided by the applicant as part of the submittal.

HEIGHT ISSUES/DETERMINATION

Height is a combination of establishing a grade baseline and the building elevation height. The Code is clear on how to calculate heights. The base line to determine height is the “average elevation of the finished grade adjoining the building...” The average grade for the three buildings are 73.5, 76.1 and 78.8 respectively, from west to east (**FIGURE 14**). The “average grade” becomes the basis or floor for the determination of height.

For the middle building, the average grade which establishes the beginning point for height is 76.1. The distance from this average grade to first floor elevation is between 3.1 and 4.2 feet (west to east). The elevation from the first floor to the top of the building is 32.9. Therefore the total calculated height (4.2 from average base to first floor elevation; 32.9 building from first floor elevation) is 37.1 feet. The applicant has provided first floor elevations (**FIGURE 15**) so the actual elevation heights can be computed as specified within the Code.

The applicant provided supplemental information to staff on February 7 (**FIGURE 16**). One item noted within this data—the roof trusses are higher for the units that were originally approved compared with the units that were built.

The Code gives a 5-foot allowance (reduction) for a peaked roof beyond the height limit. Therefore, a 35-foot height limit would allow for the building to actually be 40 feet high; therefore, what is actually viewed is higher than the height defined as the limit in the Code.

The front face of the buildings that were built in violation are higher from the first floor to the top of the second story compared to the buildings that were approved by over four feet (**FIGURE 17**). This difference is in addition to the fact that the constructed building sits on additional fill which raises the front height further.

LANDSCAPING

To mitigate the changes, the applicant is proposing to add 50 additional trees along this south side (**FIGURE 18**). The applicant states within their project statement letter that 50 additional trees are proposed “between the existing homes to the south and the proposed modified units along the south boundary...” This is not a correct statement. While 50 additional trees are proposed, only 20 are adjacent to these “modified units”. The remaining 60% of the trees are located to the east along the south boundary, not in front of these units.

The additional trees are primarily ineffective. As part of the original approval, staff required enhanced landscaping to mitigate the impact, requiring a greater quantity, specific tree type and increased tree size. The minimum size for the conifers was 10-12 feet in height, whereas the normal standard is a 6-foot height. The number of trees (based on the initial approval) would provide a dense massing (considering the size at maturity); therefore, the additional trees that are proposed are basically being hidden behind the trees that were previously required, with little actual benefit. Staff notes that the few trees that have been installed along this boundary do not meet the minimum height requirements that have been specified.

ECONOMIC ISSUES

The appellant’s entire justification is economic, a financial loss to the bank and other creditors. Economic impacts are NOT development plan review criteria. This application is a land use application and reviewed against the land use review criteria previously addressed.

The existing townhome residents have indicated that their property values have been adversely affected. Additionally, the Receiver, at the January 8th City Council meeting, indicated that

“there are also 50 some homeowners out there that have zero value in their homes because of this issue” (if the forfeiture ordinance is approved-discussed latter). These statements are not supported by the data. In November 2012, this Receiver conveyed a 16-foot wide unit (the south end unit of the model complex) for \$169,900 (see deed from the Receiver and the County Assessor’s information) **(FIGURE 19)**. Based on the Assessor’s records, this sale amount is more than what any other 16-foot wide unit has sold for within the past four years. Additionally, the north end unit, also under the Receivers control, is currently under contract to be sold.

OTHER

Today’s Homes (the builder and applicant) did receive a building permit for the structures from the Regional Building Department (RBD). RBD relied on compliance with the pre-approved development plan, which was approved for the entire 142-unit development from the onset. The building permit was issued for the structures (actual buildings) that were part of a 600-page set of construction drawings.

The construction drawings (CD) set approved by RBD included all 12 sheets of the approved development plan, date stamped November 13, 2006. Additionally, the architect’s CD set included a drawing key as to the specific units on specific lots. That key clearly notes that the lots in question are identified with a “F”. The key narrative further notes, “Buildings marker with “F” are flat units and they contain no foundation elevation changes from front to rear.” **(FIGURE 20)**

The units that were constructed are not as wide (front to back) as the approved units so they are approximately five-to-six feet further from the south property line than the approved units. However, the approved units have a stepped profile from the first story to the second story and the second story is stepped back, reducing the visual appearance of bulk and scale. The units that currently exist, aside from the porch, have a taller two-story face and are not stepped.

Section 7.5.505 **COMPLIANCE** states, “**All properties subject to an approved development plan shall be developed and maintained in accord with said plan. All new construction, alteration, enlargement or modification of existing structures and changes of land uses must conform to the approved development plan or as amended.**” The approval letter of November 13, 2006 **(FIGURE 21)** states, “Development must conform with the approved Development Plan; the building architecture must conform with the Elevation Drawings; the site grading must comply with the grading illustrated on the Development Plan”. Changes to the site or building design will require an amended plan.

SUMMARY

While it is recognized that there are differences with the construction drawings which typically represent more detail and refinement, the grading that was approved with the CD set is within two feet of difference on the west end and almost totally consistent with the approved development plan grading on the east side.

Reference has been made previously by the applicant relative to the construction drawings and the first floor elevations within the CD’s. While this information is helpful in determining heights, this request is not a request to amend the CD’s; the CD’s are not the baseline. This is an amendment to the previously approved development plan. The development plan is the base line for any change/amendment.

The development plan review criteria are the measurements for the approval of a project (in this case the bases for denial). Within the six pages of justification provided by the appellant, the review criteria are mentioned only once with no attempt to address their non-compliance.

The “as built” units are considerably different than the approved units (**FIGURE 13**), not only in grading and height, but in bulk and scale when comparing the roof lines, the approved buildings being stepped between the first and second stories, and the roofs are hipped at the end of the units.

Independent from this development plan amendment, staff has forwarded to Council an ordinance for the forfeiture of vested rights for failure to comply with the approved development plan (this would invalidate the previous development plan approval for the remainder of the undeveloped property). The Receiver has requested and received four postponements concerning the forfeiture ordinance since July 2012.

The applicant’s requested amendment and appeal:

- **Does not satisfy the applicable review criteria.**
- **The request represents the largest units possible creating the greatest negative impact to the adjoining properties in bulk and scale.**
- **Does not address the fundamental problem/issue.**
- **Height/grading differences are greater than the seven (7) noted within their appeal.**

STAFF RECOMMENDATION:

Item No: 6 CPC PUD 05-00301-A1MJ12 – Development Plan

Deny the appeal of the amendment to the Dublin Terrace Development Plan, based upon the finding that the amendment does not comply with the review criteria in City Code Section 7.5.502.E and 7.3.606.C

CTR Engineering, Inc.

13530 Northgate Estates Drive, Suite 200
Colorado Springs, Colorado 80921
(719) 964-6654

November 21, 2012

City of Colorado Springs Planning Department
C/o Rick O'Connor
30 S. Nevada Ave., Suite 105
Colorado Springs, CO 80903

Re: Project Statement – Dublin Terrace Amended DP

Dear Rick:

MLP Receivership, LLC for Heritage Homes Inc. d/b/a Today's Homes wishes to amend the approved development plan along the southern area of the project. They wish to change the building types for 13 units along Emerald Isle Heights from flat lots (G, H & I) to A, B & C lots with the accompanying building elevations. With the building type changes, finish floors will be raised approximately 4-feet higher from previous finish floor elevations.

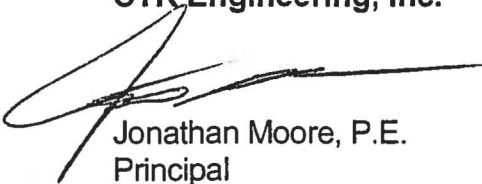
In addition to changing the finish floor elevations, MLP Receivership, LLC is proposing fifty (50) additional trees between the existing homes to the south and the proposed modified units along the southern boundary, creating a dense landscaped buffer zone that will provide additional privacy for the neighbors and screen a 4-foot retaining wall that was added with the grade changes. No drainageways or facilities will be affected by these changes.

All roadways and utilities are existing and will not be modified.

No other changes are being requested at this time.

Sincerely,

CTR Engineering, Inc.



Jonathan Moore, P.E.
Principal

**CPC PUD 05-00301-A2MJ12
PLANNER: OCONNER**

ALPERN MYERS STUART LLC
ATTORNEYS AT LAW

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*Of Counsel
M. Allen Ziegler, Jr.
Stephen D. Harris
Senior Associate
Peggy A. Hayes*

January 28, 2013

BY HAND-DELIVERY

Members of the Planning Commission
City of Colorado Springs
c/o City Clerk
30 South Nevada Avenue, Suite 101
Colorado Springs, Colorado 80903

Planning and Development Team
Land Use Review Division
Attn: Rick O'Connor
30 South Nevada Avenue, Suite 105
Colorado Springs, Colorado 80903

Re: **Appeal of Denial of Major Amendment**
Planning File No. CPC PUD 05-00301-A2MJ12
Ten Lots on Emerald Isle Heights: 6552, 6556, 6560, 6568, 6572, 6576, 6580,
6588, 6592 and 6596

Dear Members of the Planning Commission:

We are seeking administrative relief from the denial by the Planning and Development Team of the above-referenced amendment to the development plan at the Dublin Terrace Townhomes. A copy of the letter from Rick O'Connor dated January 18, 2013, denying the amendment, is attached to this letter at **Exhibit 1**. We were not allowed sufficient time to investigate and respond to the comments Mr. O'Connor had previously given by letter dated December 18, 2012, and believe this alone qualifies this review for relief on appeal. Without waiving the issues raised by the premature denial of the amendment we seek, we would like this matter considered by the Planning Commission on **February 21, 2013**, at the normal meeting.

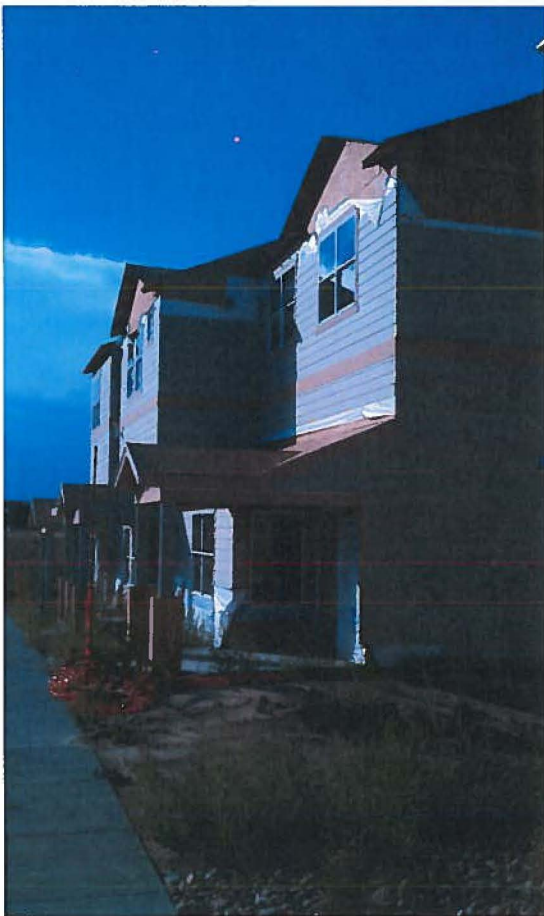
Our client, MLP Receiverships, LLC, is the Receiver appointed by the District Court of El Paso County, Colorado to oversee a subset of nineteen (19) lots in the Dublin Terrace Townhome PUD (the "Receivership estate"). A map showing the Receivership estate is attached to this letter as **Exhibit 2**. This appeal concerns the ten (10) lots listed above that were partially built with the wrong grading and elevation (the "non-compliant lots") by Heritage Homes, Inc. d/b/a Today's Homes before it sought bankruptcy protection. We understand from Mr. O'Connor's letter dated January 18, 2013, that the amendment at the three lots at 6573, 6577 and 6581 Emerald Isle Heights has been approved and do not seek review of that approval.

A receiver is a neutral person appointed by a court to run and maintain a business or property with the express requirement that he attempt to preserve its value for all who may claim an interest in the property or business. Our local court has deemed a receiver to be necessary and found this Receiver to have the proper qualifications and oath to serve on this matter.

ALPERN MYERS STUART LLC

January 28, 2013
Page 2 of 5

In this case the largest creditor of non-compliant lots, PNC Bank, NA (the “Bank”), filed a lawsuit to have the Receiver appointed. The Receiver’s mandate is to weigh the costs and benefits of the various options available to preserve the value of the Receivership estate. The Receivership estate has no revenue or capital with which to invest in these non-compliant lots. The Receiver is dependent on the creditors of the Receivership estate to fund any of the options. The only creditor with an incentive to invest additional funds in the Receivership estate is the Bank, which to date has not foreclosed on the lots and is not required to do so. The options include making the case for investing additional funds to complete the structures already started on these lots or writing off the bad investment and walking away from further responsibility. The Receiver has investigated the options available and reported on them extensively in **Exhibit 3**. The options do not include donating the property for a park or to a non-profit agency because such options are not part of what has the court has ordered it to do. It appears likely that no one will have a financial incentive to invest further funds to complete the structures on the non-complaint lots (or some variation of these structures) without the amendment you are reviewing under this appeal.



The Planning Commission is faced with a decision between two bad choices. Denying the amendment is certainly the worst financial choice for those with a direct financial investment in the non-compliant lots. Those persons include 178 different local material providers, carpenters, framers, electricians, HVAC technicians, roofers, plumbers, local businesses and laborers, who have made approximately \$678,000.00 in claims against the Receivership estate for services and materials provided to Today’s Homes to build on the non-compliant lots. They will remain unpaid if the lots’ fate is determined by tax sale and will likely remain unpaid if claims are resolved in bankruptcy.

It also seems short-sighted for a small group of vocal neighbors to advocate for leaving a derelict structure in their midst for the foreseeable future. There is no plan for dealing with these structures if they are left in their derelict state. That means the neighbors in the PUD have a lesser chance of getting facades that match or an HOA that covers the whole neighborhood. A new owner may seek to approve structures other than the townhomes approved to date.

ALPERN MYERS STUART LLC

January 28, 2013
Page 3 of 5

Denying this amendment may mean lesser property values in the area for years to come. It may mean having to devote individual and public resources to abate a nuisance. There is no pound of flesh to be had from the people who made the mistake that resulted in these structures being built too tall. The City should not miss this opportunity to get to a solution for this troubled property while the Bank remains engaged and willing to complete what has been started. Paramount in the goals of the Zoning Code is to ensure logical growth and protect property values. Code § 7.2.102.

Seven Feet Too High But Less Than 35 Feet High

We disagree with Mr. O'Connor's assertions about the height of the buildings. It appears Mr. O'Connor's determination of his height numbers are not supported by the evidence or any reasonable computation. See Zoning Code §§ 7.2.201 and 7.5.906(A)(4)(b)(4). Based on the grading information provided by the engineer, the buildings, as built are approximately *seven feet higher* than they would have been had Today's Homes used the right grading and elevation. The buildings are under the 35 feet in height required by the DP. City code describes how to determine the height of a structure, which Mr. O'Connor is not following.

This is not a case where the builder built something completely unexpected, but rather appears to have built the wrong building elevation at the wrong locations. The buildings that were built were elevations approved in the original DP. The amendment proposes leaving the lots as built, which were built using elevations approved by the City in the DP for a different location in the DP. The technical question presented by the Receiver's proposed amendment the DP is whether the grading and building type used on the non-compliant lots, which resulted in the buildings being approximately *seven feet higher* than what was approved, is a reason to deny the amendment. Seven feet is not a reason to deny the amendment.

The offending *seven foot* height difference is situated to the north and slightly west of the neighboring single family homes. The DP land slopes upward to the north. The buildings do not block the sun. The buildings do not block a view. The neighbors to the south would have seen roughly the same eyeful of townhomes because the land slopes upwards away from them. The grading done to build these particular elevations of buildings appears to have the benefit of channeling runoff away from the neighbors' homes.

These same buildings were originally approved for this DP by the City with the express support of Mr. O'Connor and the Planning and Development Team. That means the City previously determined that these buildings were consistent with the Comprehensive Plan; were consistent with the intent and purposes of the Zoning Code; were compatible with the surrounding neighborhood; were harmonious and compatible with the surrounding land uses; stabilized and preserved the uses in adjacent areas; provided an appropriate buffer for intensities on and off site; and had



FIGURE 2

ALPERN MYERS STUART LLC

January 28, 2013
Page 4 of 5

landscaping to buffer the site from undesirable views. See Zoning Code §§ 7.3.606 and 7.5.502. The seven foot height difference does not significantly alter the factors that allowed the planning department to originally approve and advocate for this PUD.

It Is Unreasonable to Deny the Financially Viable Option

The Receiver spent considerable time and resources evaluating other options than the proposed amendment. Simply stated, there are no other reasonable options for the non-compliant lots at this time. Under Zoning Code § 7.5.906(A)(4)(b)(3), the Planning Commission may review whether the administrative decision here is unreasonable. Attached to this letter as **Exhibit 3** is a copy of the Receiver’s *Supplemental Report* dated September 25, 2012. In it, the Receiver describes the evaluation of several options to resolve the violations of the development plan at the non-compliant lots. Those options included:

- Option #1 – Tear Down, Re-Grade & Re-Build;
- Option #2 – Move the Structures & Re-Grade and Finish Construction;
- Option #3 – Lower the Roof Pitches;
- Option #4 – Amend the Development Plan & Leave Buildings “As-Is;” and
- Option #5 – Abandon the Property & Withdraw the Receiver.

Only the last three options provide for a potential return on the Receivership estate, which might be able to entice a creditor to invest more money in this project. Option 3 has some significant drawbacks because of cost and because it would require such significant additional expense while only lowering the height of the buildings by a couple of feet.

Option #4 is the best option to protect the value of the Receivership estate. The Receiver contemplates a significant expense to finish the remaining construction necessary to complete the townhomes on the non-compliant lots and ready them for sale. The neighbors have not been willing to discuss what landscape buffer along the subject property line might be acceptable. Note that the required landscaping has not been installed yet. Today’s Homes installed some temporary landscaping as a construction buffer or demonstration, but the Receiver intends to install landscaping as approved or as required. The Receiver is willing to negotiate or comply with reasonable additional conditions to improve the boundary next to the neighboring single-family homes on Whereabouts Court. Mr. O’Connor is in error to point to incomplete and temporary landscaping as “ineffective” or as a reason for his denial. We can address the neighbors’ privacy concerns with landscaping.

Denying the Amendment Places All the Burdens on the 178 Material Suppliers and Laborers Without Any Real Benefit to the Neighbors or the City

Selecting among poor choices is not easy. The problem with denying the amendment sought here is that it places huge financial burdens on innocent parties. Local material suppliers, contractors and laborers did not expect that this project would be halted by building these

ALPERN MYERS STUART LLC

January 28, 2013
Page 5 of 5

townhomes a few feet higher than approved. All the investors in this project had some expectation that government agencies would protect them from this situation in the permitting and inspection process. There was no process in place to catch this error and protect all the persons who contributed materials, capital and labor to this project. Approving these buildings as built promotes finishing the townhomes sooner rather than later (or ever), promotes economic development, and reduces the financial losses of those who invested money, time and materials into this project.


The neighbors to the south are also victims of this mistake. Their burden is not, however, diminished property values. They do not have economic losses by leaving the buildings as built: the project as approved would have resulted in townhomes in their backyards. Townhomes that are seven feet taller do not materially affect land values.

Indeed, there is a value in completing the project. Derelict homes without a PUD or DP – as the City Council ordinance may do – will certainly diminish property values in the neighborhood. The neighbors who bought in the PUD are also impacted by these derelict homes. Allowing the properties' fate to be decided in bankruptcy or tax sale makes it less likely the properties will be subject to the HOA. HOA governance is an important mechanism in protecting property values and providing neighborhood services. The diminution of neighboring property values affects more than just the small group of single family homeowners to the south. The Planning Commission can protect all the homeowners' property values by approving the amendment to leave the buildings as built.

No one can blame the single family homeowners to the south of this PUD for not wanting development in an area that was previously open. These townhomes do not block sunlight. They do not obstruct any views of the mountains. They are not substantially different than what was already approved and found to be harmonious in the neighborhood. No one has a better answer for these lots than leaving them as built. Approving the amendment makes it probable that these buildings get completed and the creditors get made whole. That makes it more likely the other lots get completed as well. Approving the amendment is the best choice for the neighborhood and the City.

Sincerely yours,

ALPERN MYERS STUART LLC



By: Matthew J. Werner

MJW/ms
Enclosures
copy: Andrew Checkley, MLP Receivership, LLC



January 18, 2013

Mr. Jonathan Moore
CTR Engineering
13530 Northgate Estates Drive, Suite 200
Colorado Springs, CO 80921

RE: Dublin Terrace Townhomes Major Amendment: File No. CPC PUD 05-00301-A2MJ12

Dear Jonathan:

The aforementioned amendment was submitted on November 20 and reviewed. Additional information was requested one month ago; nothing has been received from your office to address the items that were indicated.

As I believe you know, City Council has indicated a desire to proceed forward with this overall project. The forfeiture ordinance, after four postponements, is scheduled for early March Council consideration.

The review of your application consisted of the consideration of comments received from review agencies, comments from neighbors, review of the previously approved development plan and compliance with the development plan review criteria.

Your request consists of two parts; part one is for the change in unit type for three lots (one building) along the north side of Emerald Isle Heights. The second is for the ten existing units (three buildings) along the south side of Emerald Isle Heights which are in violation of the previously approved development plan.

The three units along the north side of Emerald Isle Heights can be approved. However, the development plan amendment for the ten units along the south side of Emerald Isle Heights is hereby denied.

The denial is made due to the following:

- o The originally approved development plan explicitly established which buildings were allowed on specific lots, and further specified explicit elevations that were required. This amendment is inconsistent with the previously approved requirements.
- o The heights that are shown on the plan (elevation sheets) are only the height of the structure itself, indicated to be from the top of the first floor. Height pursuant to the Code is determined from the average of the surrounding grade (4 corners); this establishes the baseline for determining the overall height, not from the first floor. For the middle fourplex unit, the average surrounding grade (based on actual spot elevations previously provided) is 4.2 feet below the first floor elevation. The elevation noted on the drawing is 32.9'. Therefore, the actual computed height is 37.1' which is not consistent with the 35' noted within the plan

notes. However, the construction drawing set appears to indicate the building may actually be higher than that the scaled drawings contained as part of the submitted dp set. The cd drawings apparently indicate the height is an additional 1'-6" higher. This would make the computed height approximately 38 ½ feet in height.

- o The landscaping that is proposed provides minimal additional relief to address the issues or mitigate the impacts. The initially approved development plan required extensive landscaping to address mitigation which was in addition to the basic landscape standards. Additionally, the required conifers within the original approval were to be a minimum 10-12 in height as part of the mitigation package and provide a larger size tree from the onset. What was actually installed does not comply with this minimum requirement.

- o The amendment does not mitigate the adverse impact to the adjoining residents. The amendment does not comply with the following review criteria of sections 7.3.606 and 7.5.502:
 - The project design (in this instance the existing conditions reflected within the amendment) is not harmonious with the surrounding land uses and neighborhood; is not compatible with the surrounding neighborhood to the south; the structures adversely impact adjacent properties due to their use, bulk and scale;
 - Landscaping does not provided adequate buffering of the site from undesirable views and other off site negative influences created by the proposed development.
 - Compatibility Of The Site Design With The Surrounding Area-- the design elements do not reduce the impact of the project's density/intensity; the placement of buildings is incompatible with the surrounding area.

The submittal offers nothing more than an "as built" scenario, with the exception of the proposed landscaping which is relatively ineffective.

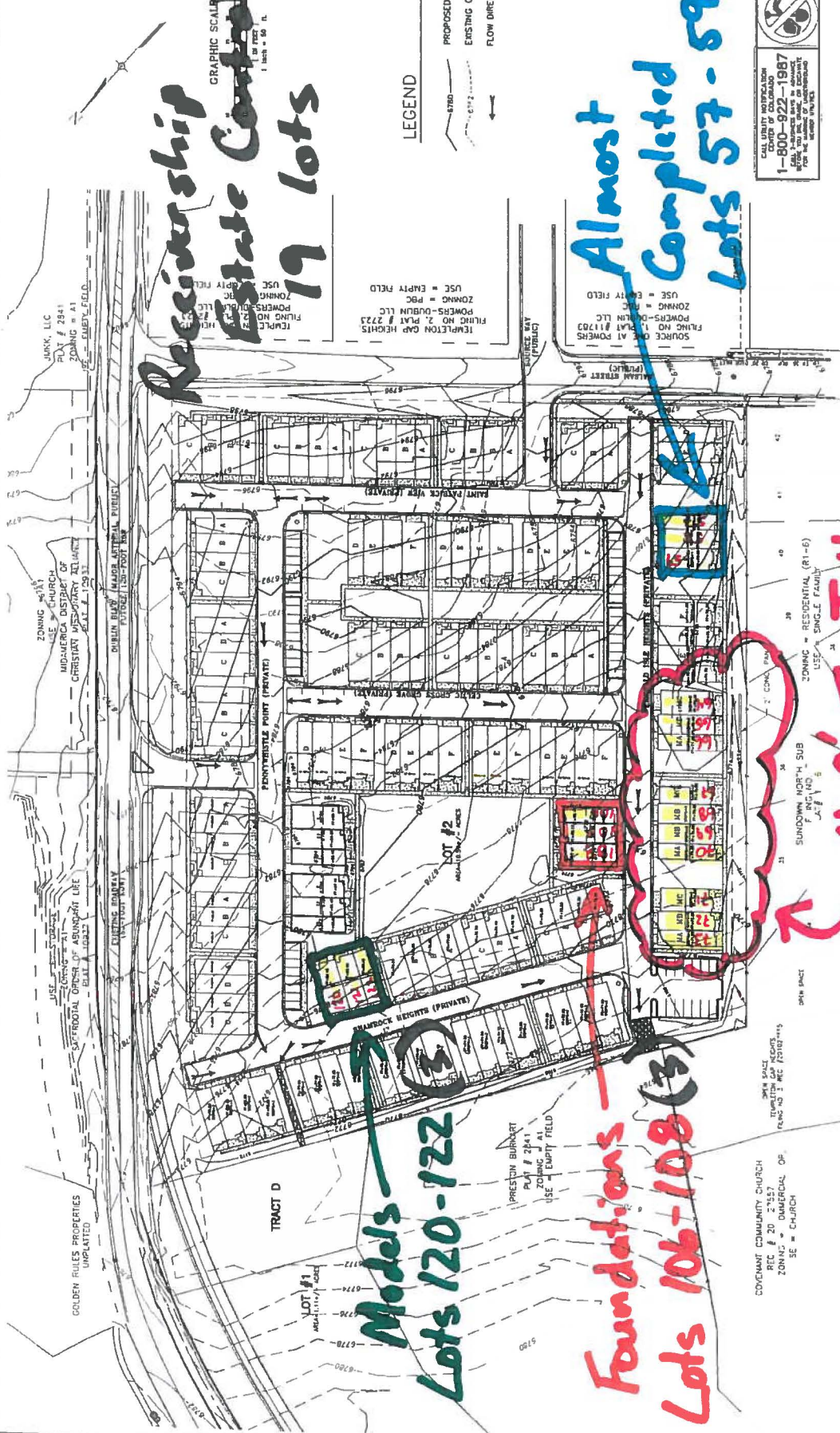
Please be advised that any appeal of this decision must be received no later than ten (10) days following the date of this letter (by 5:00 pm. January 28, 2013).

Sincerely,


Rick O'Connor, AICP
Interim Land Use Review Lead

C: Peter Wysocki, Planning and Community Development Director
Wynetta Massey, City Attorney's Office
Andrew Checkley, Receiver for Today's Homes
Bill Sheridan, Adjacent Homeowner Representative
Tom Fendon, HOA President Dublin Terrace Townhomes

SHEET NO. 3



CALL LIBRITY NOTIFICATION
1-800-922-1987
FOR THE MOST UP TO DATE
FLOOD HAZARD INFORMATION
PLEASE VISIT
www.floodmaps.gov

LEGEND

- PROPOSED CONTOUR
- - - - - EXISTING CONTOUR
- FLOW DIRECTION

DUBLIN TERRACE TOWNHOMES
DEVELOPMENT PLAN
GRADING PLAN

DESIGNED BY: [NAME]
DATE: 11/20/12
SHEET NO. 3 OF 10 SHEETS

GP01

FOR INFO ON QUALITY OF CITY ENGINEERING, INC.

OWNER: [NAME]
1655 SANDWICH HEIGHTS
COVINGTON SPRINGS, GA 30023
(770) 379-5100

CITY ENGINEERING, INC.
11335 WINDHURST PLAZA, SUITE 270
COLUMBUS SPRINGS, GA 30525
(770) 764-1224

NO.	DATE	REVISIONS

BENCHMARK DATA (ELEV.)
(DATUM)
(DESCRIPTION/LOCATION)

FIGURE 2

Dublin Terrace Townhomes -Supplemental Report

Prepared by

Court Appointed Receiver for Heritage Homes, Inc. d/b/a Today's Homes

Prepared for

City of Colorado Springs - City Council

September 25, 2012

The Receiver has prepared this supplemental report for the City of Colorado Springs' City Council for the purpose further explaining the Receiver's role and duty, defining the Receivership Estate, outlining the critical action steps that have been taken by the Receiver, describing the outcome of each action step and presenting the Receiver's alternative options. We hope that this report will provide clarity for the City Council and clear up any misconceptions as to the nature of this Receivership. This supplemental report will be recorded with Colorado El Paso County District Court 4th JD.

Role & Duty

The Receiver is the neutral person – we are not the lender and not the builder – charged by the local District Court to preserve a subset of 19 lots in various stages of construction at the Dublin Terrace Townhomes and report back to the court as to what options may be viable to do so for the benefit of all the interested parties. The Receiver is charged with taking into account the views of all the interested parties, including the City, the neighbors, the local material providers and laborers who built the structures, the lender, and the owner.

PNC Bank, NA successor by merger to RBD Centura Bank ("Lender") is the Plaintiff in the court case in which we are appointed Receiver and Heritage Homes, Inc. d/b/a Today's Homes ("Today's Homes") is the Defendant in an open case filed in District Court, El Paso County 4th Judicial District, State of Colorado. In short, Today's defaulted on a construction loan made by the Lender for certain assets

located in and around Colorado Springs. Those assets include nineteen (19) addressed townhome units at the Dublin Terrace Townhome development ("Property"). The assets do not include the vacant lots in the development or the common areas. The Lender petitioned the Court and the Court appointed MLP Receivership, LLC as the Receiver for the Property thereby creating a Receivership Estate. The Receiver acts and is empowered as an officer of the court to perform its duties.

The Receiver's primary duty is to protect the Property and the underlying Property rights of the parties, among many other duties outlined in Item 2 of the attached Receiver Order.

With respect to agenda item before the City Council and to simply explain the Receiver's duty as it pertains to this agenda item, we defer to **Section 2(y) (z) (kk)** of the attached Receiver Order which states:

"To apply for, obtain, renew and as necessary, to prevent the loss of all trademarks, copyrights, patents, licenses, permits, development plans, governmental approvals and entitlements required for the preservation or operation of the Property or issued in connection with therewith;"

"With respect to any operation or activity that is now conducted on the Property or is customarily conducted on similar properties and that may lawfully be conducted only under governmental license or permit, to continue such operation or activity under the license or permits issued to the entity subject to compliance with the terms thereof"

"To deal with any and all governmental authorities concerning the Property and any governmental regulations and/or requirements concerning construction and/or development of the Property;"

Given the fact that the Receiver was only appointed on June 29, 2012 and has been expeditiously working to understand, verify and remedy many of the substantial problems left in the wake of Today's Homes' default and close of business, the Receiver asks the City Council to grant a sixty (60) day continuance on the Dublin Terrace/Today's Homes agenda item. We understand that Dublin

Terrace issues are not popular, however we appeal to the reasonable nature of the City Council to allow more than just the ninety (90) days that have elapsed so far to work towards an equitable solution for all the interested parties. As Receiver, we are neither acting for personal gain nor as a stand-in for the Lender or Today's Homes. Our goal is simply to uphold the Court's Order. To do this effectively we are requesting an additional, reasonable continuance.

Receivership Estate

Lender has not foreclosed on any of the Property and has not elected to do so at this time. Lender does not own any of the properties in the Dublin Terrace Townhome PUD. Today's Homes remains the owner of record of the Property in the Receivership Estate. The court controls the Property through the appointment and direction of the Receiver.

The Property included as part of the Today's Homes' Receivership Estate are listed in the chart on the following page. Please note that the Receiver (1) does not control any of the vacant lots on which no structure has been built and (2) does not control any of the common areas.

Ten townhomes at the following addresses appear to have been built by Today's Homes using the incorrect elevation plan and an incorrect first floor elevation: 6552, 6556, 6560, 6568, 6572, 6576, 6580, 6588, 6592, and 6596 Emerald Isle Hts. (the "Tall Townhomes"). Significantly, the Planning Department's allegation that the Tall Townhomes are in excess of 11 feet too tall appears to be overstated. One reason the Receiver seeks a continuance is to parse out the reasons for this discrepancy in the final height and see if the correct numbers make a difference in to the neighbors and the Planning Department review.

Three townhomes at the following addresses appear to have been built as approved and are almost completed: 6520, 6524 and 6528 Emerald Isle Hts. (the "Substantially Completed Townhomes").

The three townhomes at 6573, 6577, and 6581 Emerald Isle Hts. (the "Foundation Only Townhomes") are only poured foundations, but appear to have been started

with the incorrect elevation plan, but could likely be completed to comply with the material terms of the approved development plan with a minor variance.

Three townhomes, 5649, 5653 and 5657 Shamrock Hts., are completed and were serving as model townhomes (the "Model Townhomes").

Subdivision	Unit	Street Address
Banning Lewis Ranch	10/16	8412 CYPRESS WOOD DR
Banning Lewis Ranch	11/16	8404 CYPRESS WOOD DR
Banning Lewis Ranch	13/16	6913 HIDDEN HICKORY CIR
Banning Lewis Ranch	30/16	6658 COTTONWOOD TREE DR
Banning Lewis Ranch	6/17	8657 COTTONWOOD TREE DR
Countryside North	62	10833 DARNEAL DR
Countryside North	81	10605 DARNEAL DR
Countryside North	96	10820 DARNEAL DR
Countryside North	98	10844 DARNEAL DR
Countryside North	115	11140 FALLING STAR RD
Dublin Terrace	57	6520 EMERALD ISLE HTS
Dublin Terrace	58	6524 EMERALD ISLE HTS
Dublin Terrace	59	6528 EMERALD ISLE HTS
Dublin Terrace	64	6552 EMERALD ISLE HTS
Dublin Terrace	65	6556 EMERALD ISLE HTS
Dublin Terrace	66	6560 EMERALD ISLE HTS
Dublin Terrace	67	6568 EMERALD ISLE HTS
Dublin Terrace	68	6572 EMERALD ISLE HTS
Dublin Terrace	69	6576 EMERALD ISLE HTS
Dublin Terrace	70	6580 EMERALD ISLE HTS
Dublin Terrace	71	6588 EMERALD ISLE HTS
Dublin Terrace	72	6592 EMERALD ISLE HTS
Dublin Terrace	73	6596 EMERALD ISLE HTS
Dublin Terrace	106	6573 EMERALD ISLE HTS
Dublin Terrace	107	6577 EMERALD ISLE HTS
Dublin Terrace	108	6581 EMERALD ISLE HTS
Dublin Terrace	120	5649 SHAMROCK HTS
Dublin Terrace	121	5653 SHAMROCK HTS
Dublin Terrace	122	5657 SHAMROCK HTS

Critical Action Steps

Since the July 24, 2012 City Council meeting, the Receiver has taken many action steps pursuant to the Receiver Order. To keep this supplemental report brief we have taken the liberty of outlining some critical action steps specific to Dublin Terrace and also specific to the betterment of those affected by the default of Today's Homes. Due to the pending lawsuit between the Lender and Today's Homes the factual and accurate information made available to the Receiver by Today's was minimal at best. Furthermore since it is the Receiver's duty to discover the unbiased facts and report those directly to the court, a lot of steps that may have already been taken by Today's Homes and the City of Colorado Springs had to be repeated before critical decisions could be made.

- The Receiver paid **\$9,798** for the 2011 **delinquent real estate taxes** and interest penalties associated with the Receivership Estate to El Paso County. And **\$2,598** for 2012 real estate taxes to El Paso County.
- The Receiver physically secured by changing locks and adding deadbolts to the Property and bound PC & General Liability Insurance for the Property which had lapsed under Today's Homes existing policies.
- Per Colorado State statute the Receiver is responsible for notifying all known vendors of their opportunity to file a claim against the Receivership Estate, in order to quantify the secured claim exposure of the Receivership Estate. The Receiver sent out Notices and Claim Forms to approximately One Hundred Eighty (180) vendors in the Colorado Springs and surrounding areas who had financial exposure to Today's Homes. The attached was created from the Today's Homes Accounts Payable ledger and other known claimants. **Between Today's Homes and Spring Creek Construction ledger balances there is approximately \$1.25 Million Dollars owed to local vendors.** One of many local vendors, Pro Build Company, LLC, has already filed a **\$206,729** claim against Today's Homes, of which **\$145,421** relates to the Dublin Terrace Property.
- Transferred all utility accounts to the Receiver, reconnected services to preserve the Property and paid approximately **\$2,076** in current balances to Colorado Springs Utility Company and other local utility providers.

- Met with the City of Colorado Springs – Department of Community, Infrastructure & Development Engineering to inspect the Dublin Terrace Property and immediately responded to the Letter of Non-Compliance related to Today's Homes' underlying Municipal Stormwater Discharge Permit. **The Receiver proactively agreed to make the necessary improvements, get the Property into compliance and maintain the integrity of the underlying Today's Homes Permit.** The Receiver engaged Seedmasters, Inc. to complete the scope of work for an amount of **\$4,455**. That work was completed. A "Resume Work" letter re-issued by the City of Colorado Springs is attached as evidence of compliance.
- Met with the Dublin Terrace Home Owners Association ("HOA") board of directors its management company to explain the nature of the Receivership appointment, listen to their concerns and point of view with regard to the Property and calculate the delinquent balances owed to the HOA by Today's Homes. **The Receiver was made aware the Today's Homes had not completed the common grounds nor deeded the common grounds and infrastructure to the HOA prior to its demise and exit from the development.** The HOA explained that the status of the development has eroded its financial health and ability to operate as a self sufficient community. Both are paramount to the value of each townhome owner and as a result townhome owners have not been able to sell or refinance their homes. The Receiver has agreed to pay approximately **\$2,000** in delinquent HOA dues to the Dublin Terrace HOA from Today's Homes.
- Reviewed the basis of the Code Violations cited by the City of Colorado Springs – Department of Code Enforcement with legal counsel.
- Reviewed the inherent nature of the Intergovernmental Agreement between Pikes Regional Building Department ("RBD") and the City of Colorado Springs.
- Reviewed the chronological order of the inspections done by RBD and discussed the same with RBD officials. Discussed the status of all open construction permits at the Property issued to Today's Homes under the existing Development Plan ("DP").

- Reviewed the height differentials calculated by the City of Colorado Springs – Department of Planning & Development and compared the same to the underlying DP and reviewed the history of amended DP submittals made by Today's Homes.
- Met with Powell Moving Structures to discuss the feasibility of physically moving the buildings in violation of the DP to other vacant lots within the Dublin Terrace development, as proposed by Today's Homes. Powell Moving Structures submitted a scope of work and bid for the same to Receiver.
- Engaged Davis/Jones Architecture (original project architect) to review the DP, the approved Construction Drawings and opine as to the overall height difference created by Today's Homes' construction of the taller building types on lots 64-66, 67-60 and 71-73. In addition Davis/Jones Architecture provided the impact analysis that concluded a height reduction of approximately two feet by reducing the roof pitch from 5:12 to 4:12 on each unit type. Davis/Jones' letter to the Receiver is attached hereto.
- Engaged DAE Construction Services, LLC to provide a detailed scope of work and price estimate for the following alternative options: Demolish the Structures in violation and Re-grade per DP, Move the existing Structures in violation or Lower the roof pitches on the existing structures from 5:12 to 4:12.
- Met with Kyle Campbell with the City of Colorado Springs – Department of Planning and Development (2nd meeting) to discuss the Receiver's progress and gain further insight as to the city staff's opinion of a compromised solution to the height issue and probability of gaining the Planning Commission's approval of an amended DP.
- Engaged CTR Engineering, Inc. (original project engineer) to review the DP and provide an analysis comparing the as-built and surveyed Finished Floor grades to the Finished Floor grades proposed in the DP submitted by Today's Homes. **CTR completed that analysis and found the existing surveyed site grades to be only four feet higher on average as compared to the proposed Grading Plan.** Tim Mitros at the City of Colorado Springs

Engineering Department verified that he gets the same result as CTR using CTR's inputs from the survey. CTR's analysis is attached hereto.

- Held a meeting with the residents on Whereabout Court and Many Springs Drive (Russ Smith, Jeanne English, Bill Sheridan, Matt Plummer, Maria Oliva-Plummer, Gilbert Aguirre and Joe Wehrman) to discuss the Receivership appointment, the Receiver's Role and Duties, the Receiver's Action Steps and the alternative options the Receiver had to consider. This was a very open discussion. The residents provided the Receiver with two additional ideas to address the code violation. **At the conclusion of this meeting a clear majority of these residents supported a sixty (60) day continuance, if granted by the City Council.** A copy of the sign-in sheet from that meeting is attached as evidence thereof.

Alternative Options

Submittal of an Amended Development Plan is inherent to each alternative option available to the Receiver. At this point, the Receiver has only reviewed the economic, legal and equitable feasibility of Options 1-5 and considered the projected sources and uses of funds. Since the Receiver does not control the remaining undeveloped lots within the Dublin Terrace development (which are owned by some related entity of Today's Homes) it isn't realistic to assume the Receiver has additional sources of revenue beyond the Property of the Receivership Estate. Furthermore since there is no revenue currently being generated by the Property, each of the following Options would require the Lender to make a protective advance of funds in order for the Receiver to act.

Option #1 – Tear Down, Re-Grade & Re-Build

The Receiver has obtained a reasonable estimate of the costs associated with Option #1. Option #1 is the most costly alternative option and counterintuitive to the Receiver's duty to protect the value of the Receivership Estate. The value of the Receivership Estate is created by the land, improvements and entitlements. The costs considered included demolition, grading and full replacement cost.

Option #2 – Move the Structures & Re-Grade and Finish Construction

Again, the Receiver has gotten estimates for completing Option #2. Option #2 is the second most costly alternative option. Although this may have been a solution that Today's Homes discussed as a resolution, Option #2 is not currently being considered as a viable alternative option. Today's Homes owned or controlled the other undeveloped lots within Dublin Terrace and could modify its construction schedule for each lot and toggle lot development accordingly. The Receiver does not own a vacant lot in Dublin Terrace and has nowhere it could move the Tall Townhome structures.

Furthermore, Today's Homes had the opportunity to recapture the expense of moving the structures as it sold through the rest of the project. The costs considered included purchasing new lots from a Today's Home affiliate, preparing the structures to be moved, moving the structures, developing the new lots and utility connections, digging new footings and pouring new foundations, reattaching the structures to the foundations and addressing all the ancillary construction necessary to complete the townhomes and ready them for sale. In addition the Receiver considered the discounted sale price that could be achieved for a building that had been moved from its original foundation with no builder warranty provided.

Option #3 – Lower the Roof Pitches

Option #3 is the third most costly alternative option. It was explained to the Receiver that lowering the roof pitches had been considered by Today's Homes and presented to the city as a potential solution for the code violation. Although this idea was not well received by Planning since it only solved for a portion of the height violation and was pulled from consideration by Today's Homes, **the Receiver considers this to be a reasonable option in terms of costs and benefits.** Davis/Jones Architecture estimates that lowering the roof pitch from 5:12 to 4:12 would yield a height reduction of approximately two feet. **This**

would appear to bring the Tall Townhomes into compliance with the 35 foot height limit stated in the DP. In addition CTR Engineering has provided that the Finished Floor Elevation grades are only four feet higher on average, which would extrapolate to an overall height violation of approximately seven or eight feet versus the eleven feet calculated by the City of Colorado Springs – Department of Planning and Development. The height violation may be less, depending on the elevation plan and lot grading – issues the Receiver needs more time to determine. CTR further explained that **the Tall Townhomes were actually set back from the adjacent property boundary more than originally contemplated by the DP.** Option #3 includes the expense of reconstructing the roofs of the Tall Townhomes and finishing the remaining construction necessary to complete them and ready them for sale. This option would allow for the structures of the Tall Townhomes to remain undisturbed and potentially net a higher market price. Higher net sale prices benefit all area home owners and provide more dollars to pay secured claimants.

First, as it relates to Option #3, the Receiver would like for all parties to agree upon, define and calculate the height violation.

Second, the Receiver would like to gain approval to engage an engineer to do a simple sight line study based on the height of the existing structures and the proposed height of the structures. This study could help all parties understand and rationalize the relationship between vertical distance and visible distance.

Third, the Receiver would like to gain approval to do an appraisal of the homes on the Whereabout Court cul-de-sac and the Dublin Terrace Townhomes to determine the negative impact that the Today's Homes code violation has created for each community, respectively.

Option #4 – Amend the Development Plan & Leave Buildings “As-Is”

For obvious reasons Option #4 is the best option in terms of protecting the value of the Receivership Estate. There is still a significant expense related to finishing the remaining construction necessary to complete the townhomes and ready

them for sale. In addition the Receiver assumes there would be an additional, undetermined expense for improving the boundary between the Property and the neighboring single-family homes on Whereabouts Court. CTR mentioned that Today's Homes had contemplated installing a substantial, landscape buffer along the subject property line.

Similar to Option #3, Option #4 should achieve higher net sale prices will benefit all area home owners and provide more dollars to pay secured claimants.

Option #5 – Abandon the Property & Withdraw the Receiver

If Options 1-4 are prevented by the City's forfeiture ordinance or if at any time the Lender feels that the chances of executing one of the aforementioned Options is not attainable in a reasonable period of time, they retain the right to petition the court and have the Receiver removed. At that point they could consider the risk/reward of abandoning their collateral and pursuing their lawsuit against Heritage Homes, Inc. d/b/a Today's Homes. The Lender has no obligation to foreclose or to take ownership of the Property.

In the Receiver's opinion, this is the worst case scenario for all parties involved. Unfortunately, given the finances of the project, the fractured ownership of the structures, common areas and vacant lots, and the competing demands of the interested parties, it may be the most likely scenario. Vacant and abandoned buildings do nothing but further erode property values, reduce the City's tax base, cause losses to local vendors and suppliers, create an ongoing animosity between citizens and City officials, and may attract irresponsible social activity.

Options #6 -#7 Park Dedication or Donation (STILL NEED TO BE EVALUATED)

In the meeting with the residents of the Whereabouts Court cul-de-sac it was mentioned that the Receivership Estate might financially benefit from donating the Tall Townhomes for a city park or donating the building materials to a non-profit organization such as Habitat for Humanity. The Receiver has not had time

to analyze either of these alternative options however would like additional time to do so.

We, as the Receiver, would like to thank the City Council for its consideration of an additional sixty (60) day continuance. We clearly understand the heightened sensitivity surrounding this particular project and Today's Homes. Please understand that we are doing the job the court ordered us to do and are trying to find an equitable solution for everyone.

Sincerely,

/s/ Andrew Checkley

MLP Receivership, LLC

O'Connor, Rick

From: Jeanne English [juttaroos1@yahoo.com]
Sent: Thursday, December 20, 2012 6:14 AM
To: O'Connor, Rick
Subject: File No CPC PUD 06 00301 Major Amendment to the Development Plan

Mr O'Connor,

I wish to voice my complete objection to File No: CPC PUD 06-00301-Major Amendment to the Development Plan regarding the town homes formerly built by Today's Homes, located off Dublin and Powers Blvd.

I attended the last city council meeting which gave the receiver brought in by the financial institution which now owns the property a extension of time. At that meeting a continuance was given for proposals how to rectify the major errors /problems that were performed in construction the town homes by the builder Today's Homes. The neighbors who directly are adjacent these buildings had previously met with the receiver and had discussions on what we (the homeowners) would like done to correct these errors. At that meeting all recommendations to receiver were noted. Now, just a month later these new proposals have provided no corrections to the problems. What has changed that should allow a different type of building and elevation be granted when it was not allowed months ago. It was clearly stated in previously city council meetings and the newspaper The Gazette by Mayor Bach that these buildings were not correct and did NOT follow approved building plans. Why should I a homeowner of 12 years have to put up with these building invading my privacy, as they loom over my property. I am sorry that the original builder did not follow the rules and as they earlier stated "made a mistake and built the wrong models". Why should I have to live in the shadow of these mistakes, which infringe on my privacy, most certainly lower my property values and have flooded my neighbors properties?

As to request for modification to change the grading to allow for 7 feet of fill at highest point, I again firmly say NO. The homes were supposed to be two level town homes, which is very fair. What is NOT fair is when the previous company brought in truck and trucks of dirt which they dumped on the property (I called immediately to one of the city offices to find out why this was occurring) and raised the land to several feet ABOVE my back yard fence, therefore creating what I would consider three story town homes, again which were not approved for this site.

As to the request to modify the landscaping along the South side of the property (adjacent to my property) I again firmly state NO. To add a four foot retaining wall and trees will unfortunately not help in any way to provide me privacy in my yard or the rooms facing the back of my home. There are no trees large enough that would allow that (unless they company is willing to provide mature Redwood trees). If large trees were even planted as a "buffer" I would not live to see the day when they would mature to provide any form of barrier. The trees that were previously planted were large evergreens which were less than one foot above my fence (remember the town homes sit seven feet higher than my property) are all now dead due to abandonment of this project.

As I stated earlier, we spoke the the receiver and offered our opinions on what would correct this problem, however the new Major amendment to the Development Plan do NOT offer any such solutions and have just allowed this fiasco to drag on much longer than is needed.

Jeanne English
6645 Whereabout Court

O'Connor, Rick

From: Dale Sampson AOL [dalewsampson@aol.com]
Sent: Monday, January 07, 2013 12:21 PM
To: O'Connor, Rick
Cc: Yvette Sampson
Subject: Public hearing for CRT ENgineering on behalf of Receiver for Today's homes Emerald Isle Heights

Hello Mr O'Connor, i am the homeowner at 5572 Many Springs Drive and currently live in Germany deployed in support of our Military. Concerning the New application to accept the changes the builder "Today's Homes" on Emerald Isle Heights made without zoning approval and their NEW attempt to make the property acceptable. As my home is one that has the building right in our back yard, my position has not changed from earlier discussion and messages. In the original process Mr Moore with CRT Engineering has all the time in the world to come around the neighborhood and show the development plans before public hearings and from our input changes were made in the development for more parking and landscaping along our fence line. At that time I made it clear that the height and style of home were very important to me and I did not want the type of home that they have put illegally on the property. That is why the style and setback were closely reviewed and changed in the final development. If I had been living in the home on Many Springs at the time I would have noticed the elevation changes and been one of the people at your office expressing concern. However, I am very glad for good neighbors who have been active in this process. Mail takes a while to get over here and with the holiday volume and my travels it resulted in just receiving the mass mailing only in the last few days to respond.

I have two principle concerns 1) they have changed the grade of the land an I now am the lowest point in the area and ripe for flooding as happened back in the spring of 2000. 2) I am sorry for the position they are in now, but it is unacceptable to try after the fact to get approval for what the homeowners opposed to in the initial meetings and discussion with Mr Moore. I find it very offensive that we had assurances which were documented in the development that they chose to ignore and attempt to get away with. My property value has been adversely affected more that others because these homes are in my immediate back yard! The smell does not get any sweeter with age or attempts to try and fix the violation of the zoning process, other than remove the home and follow the original plan. I close by restating my position, they made a choice to build contrary to what was approved and had the neighbors not pointed out the violation they might have got away with it. I oppose any "making it right action" If they continue to try and save their investment in the models they have built. Perhaps they could offer to buy all of our homes at a market premium (need some type of punitive action) and then resell to new buyers who would have full disclosure of the elevated home in their backyard. I would appreciate feedback from the meeting and information on any future meetings.

Thanks for your time and letting me vent, this is a classic text book example of seeking absolution when they went in knowing full well they were braking the rules from the first load of extra dirt.

Dale Sampson
PSC 2 Box 8487
APO AE 09012
719 260 1999

O'Connor, Rick

From: W9938@aol.com
Sent: Wednesday, April 04, 2012 9:23 AM
To: O'Connor, Rick
Cc: juttaroos1@yahoo.com; russsmith84@msn.com
Subject: Amendment

Hi Rick, I'll be short and to the point:
With regard to the amendments,

- Number # 1 "NO" The existing units should be removed and the elevation returned to ground level.
- # 2 "NO" Remove all three existing units and return the elevation to the pre-existing .
- #3 "NO" It would take at least 15yrs for those trees to provide any privacy.

It should not go unnoticed that these people who are supposed to be professional builders, clearly aware of what they were doing and clearly were gaming the system. They should be made to remove all three existing units and be held accountable to the maximum extent of the law.

I will go into more detail at the meeting on the 19th of April. Laura Haverlock/Bill Sheridan, 6625 Whereabout Ct. Tele-719-648-7778, W9938@aol.com

*Note to file: per
Mr. Sheridan - use
same letter for
current application*

Dublin Terrace Townhome Owners Association, Inc.
Colorado Springs, CO 80923

Tom Fendon, President
Elizabeth Wooley, Vice President
Karinne Gibbons, Treasurer
Jennifer Northrup, Secretary

Mr. Peter Wysocki
Planning & Community Development Director
City Administration Building
30 S. Nevada, Suite 105
Colorado Springs, CO 80903

RECEIVED

JAN 18 2013

Colorado Springs
Land Use Review

Mr. Wysocki:


As representatives of the Dublin Terrace HOA, we the board approve of the modifications proposed to the Development Plan file # CPC PUD 05-00301-A2M312 – Major Amendment to the Development Plan.

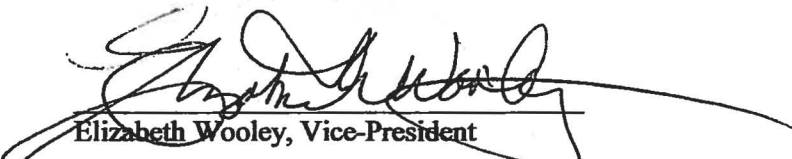
Our HOA community, consisting of 56 taxpayer/homeowners, is very concerned with the progress of our development and do not believe forfeiture of the original plan the solution.

We realize our property values have been adversely affected by the past decisions or non-decisions pertaining to the issue at hand. In order to see upgrade to our values and progress, the project must be allowed to be completed taking into effect changes or amendments to the development plan as proposed.

1. To allow a different building type and elevation than was previously approved.
2. To change the grading to allow for approximately 7 feet of fill beyond what was previously approved.
3. To modify the landscaping along the south side of the property providing additional landscaping, including a 4 foot high retaining wall.

The application also includes change in the building type for a 3 unit townhome to be located on the north side of Emerald Isle Heights.


Tom Fendon, President


Elizabeth Wooley, Vice-President


Karinne Gibbons, Treasurer


Jennifer Northrup, Secretary

Dated: January 16, 2013

Cc:City of Colorado Springs Council Members: Marv Bennett, Lisa Czedaltdko, Angela Dougan, Scott Hente, William Herpin, jr., Tim Leigh, Jan Martin, Val Snider, Brandy Williams, 107 N Nevada, Colorado Springs, CO 80903
Rick O'Connor, AICP, Planning and Development, 30 S. Nevada, Colorado Springs, CO 80903

January 16, 2013

PETER WYSOCKI, AICP

Planning and Community Development Director
City of Colorado Springs
30 S. Nevada Street, Suite 105
Colorado Springs, CO 80903

Dear Sir or Madam:

RE: Undeveloped Dublin Terrace lots and Receivership Proceedings involving Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc. or Unity Investments USA.

I am a private investor that has an interest in the 67 lots in the community of Dublin Terrace in Colorado Springs. I do not have any direct involvement or connection with Today's Homes Inc., Heritage Homes Inc., UBG Builders (USA) Inc., Unity Investments USA, UBG Alberta Builders Limited or any of the Canadian based UBG entities.

I have invested in the community of Dublin Terrace through Unity Investments and now have this investment subject to the results of the Today's Homes Inc. receivership proceedings. My investment is secured on title through ABC (US) Series A2. ABC (US) Series A2 is a group of private investors that has provided mortgage financing through a syndicated mortgage for the purchase of these lots.

I have been following the proceedings during the receivership and understand that there are several townhomes that are substantially built in this community that are currently in a violation of the building code that are in need of a solution. I also understand that these assets are now in the control of the Receiver and part of the Receivership Estate. I further understand that the city of Colorado Springs has refused any further development approval for the balance of the lots in the community of Dublin Terrace.

The current situation has a significant effect on my ability to recover my investment capital.

I am writing this letter to request that the city of Colorado Springs consider offering a variance for these partially built townhomes. I make this request based on the following reasons;

- I am 1 private investor in a group of 20 with a total investment of just over \$1.3 Million (CDN) into these lots in this community.
- I, along with the group of private investors, had no involvement in the planning, construction or financing of the townhomes in violation of the building code and feel it is unfair of the city of Colorado Springs to penalize us, as mortgage holders of the adjacent lots, for the actions of the builder.
- Without the ability to build on our lots, the value is tremendously reduced if not eliminated.
- Without the ability build on these lots, the possibility of selling these lots is non-existent.
- My investment in these lots is separate and distinct from the negligence and disregard demonstrated by Today's Homes in Colorado.
- Current lot sale values are lower today than they were when the lots were initially purchased so any equity that the builder may have had in the undeveloped lots is gone; this leaves our first

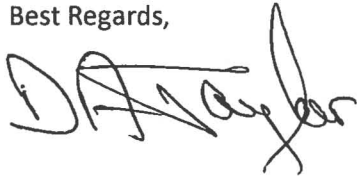
mortgage as the only stakeholder with an opportunity for recovering any capital following a lot sale.

- Alternatives such as moving or demolishing these townhomes are not feasible as there is limited capital available to cover the costs and recovery for the bank would be greatly compromised.
- I believe that foreclosure by the bank would be very costly and time consuming and the community would remain stagnant and in disrepair for a significant amount of time.

The best possible solution that I can see for this issue is for the city of Colorado Springs to offer a variance on these townhomes which would create the best possible outcome for all stakeholders that are involved.

I am open to continuing this conversation with a view to reaching an amicable solution for all stakeholders. I am interested in recovering as much of my investment capital as possible and I am willing to provide assistance where necessary.

Best Regards,

A handwritten signature in black ink, appearing to read "Dennis Taylor". The signature is stylized with a large initial "D" and a long, sweeping underline.

Dennis Taylor
Site 13, Box 3, RR2
Airdrie, AB T4B 2A4

May 1, 2012

Mr. Rick O'Connor
Land Use Review Division
30 S. Nevada Avenue
Colorado Springs, CO 80901

**RE: Dublin Terrace Development Plan Amendment
CPC PUD 05-00301-A1MJ12**

Dear Mr. O'Connor,

Today's Homes is requesting a withdrawal of the Dublin Terrace Development Plan Amendment application (CPC PUD 05-00301-A1MJ12). The original request was to modify the buildings located along the south property line that were not constructed according to the originally approved development plan. However, Today's Homes has determined that the best course of action is to relocate the three buildings in question to other areas on site.

As we have discussed, a new Minor Amendment will be submitted to Land Use Review that illustrates changes to building types within the interior of the site. Once the buildings along the south boundary are relocated, the original development plan requirements will be followed in that location. We presented this approach at a neighborhood meeting on Thursday April 26.

Thank you for your consideration of this matter. Don't hesitate to contact me if you have any questions.

Sincerely,



Matthew Ervin
Today's Homes

POWELL STRUCTURE MOVING

February 5, 2013

Re: Dublin Terrace Townhomes potential relocation

Dear Mr. OConnor,

In answer to your inquiry regarding the logistical feasibility of relocating the three townhomes in Dublin Terrace, I tender the following information.

The townhomes are more voluminous than heavy. They weigh about one half of other loads I have moved on the highways. I also have moved a number of historic masonry structures without damage. A wood frame structure is much less subject to damage than a masonry structure. I expect there would be only minor cosmetic damage to a small amount of sheetrock, primarily the taped seams above door and window corners. I have never had any structural damage to the structures I have moved.

I have inspected the townhomes and site three times since April 2012. I have reviewed the drawings. I am 100% confident that the structures can be moved successfully or I would not of bid the project last April. This project is not as complicated as others I have done. I have references from owners and engineers regarding my abilities, available. These references were provided to Leo Collins. I have been contracting for 35 years and moving structures for the last 15+ years.

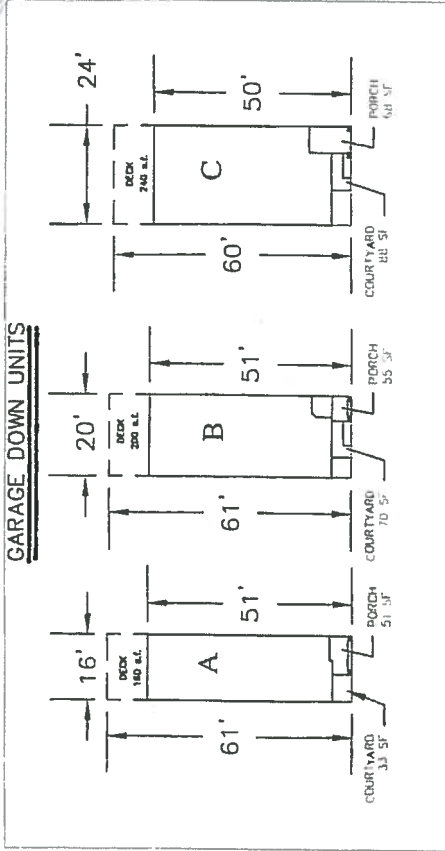
To recap my involvement with Dublin Terrace: I was contacted by Leo Collins and met with him and Matt Irvin in early April of 2012 and inspected the project, twice. I provided Leo with a price that was apparently acceptable as Todays Homes were telling the City they were going to move the townhomes. Todays Homes was anxious to get a contract from me and get the project started. I provided said contract and was informed that the development was shuttered a few days later. In early summer of 2012, I met with the Receiver to review the project, on site.

If I can be of any assistance, please call.

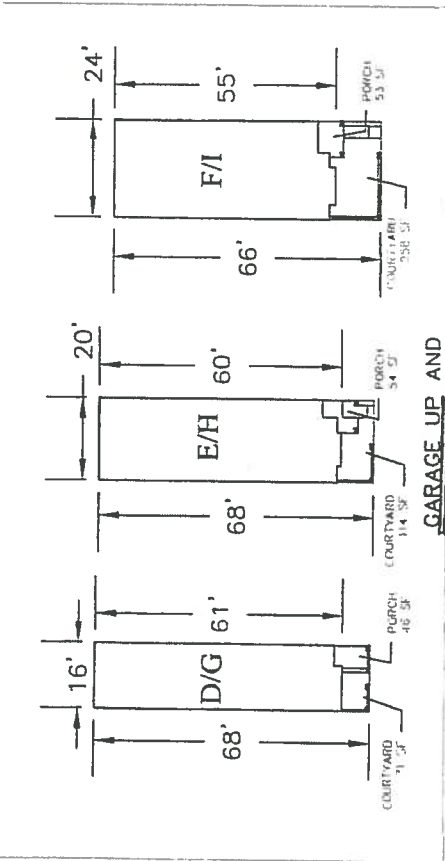
Sincerely,


Mark R Powell

10442 North 75th Street Longmont, Colorado 80503 Phone 303-678-7030

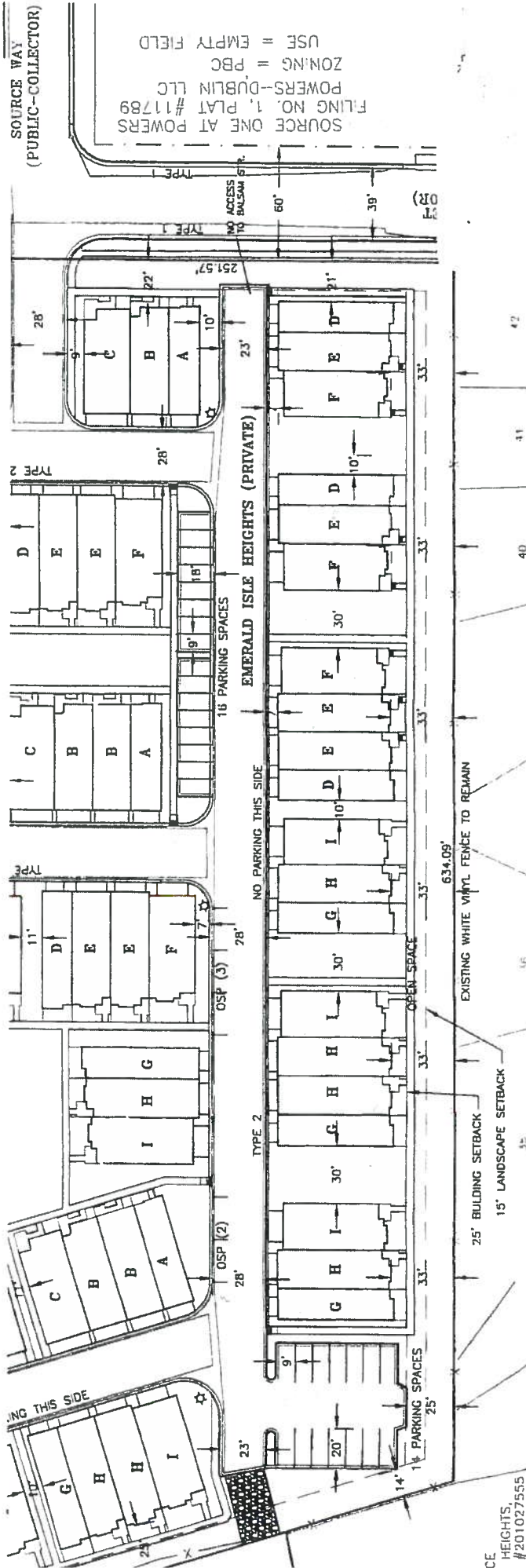


UNITS A,B,C



SCALE: 1"=30'

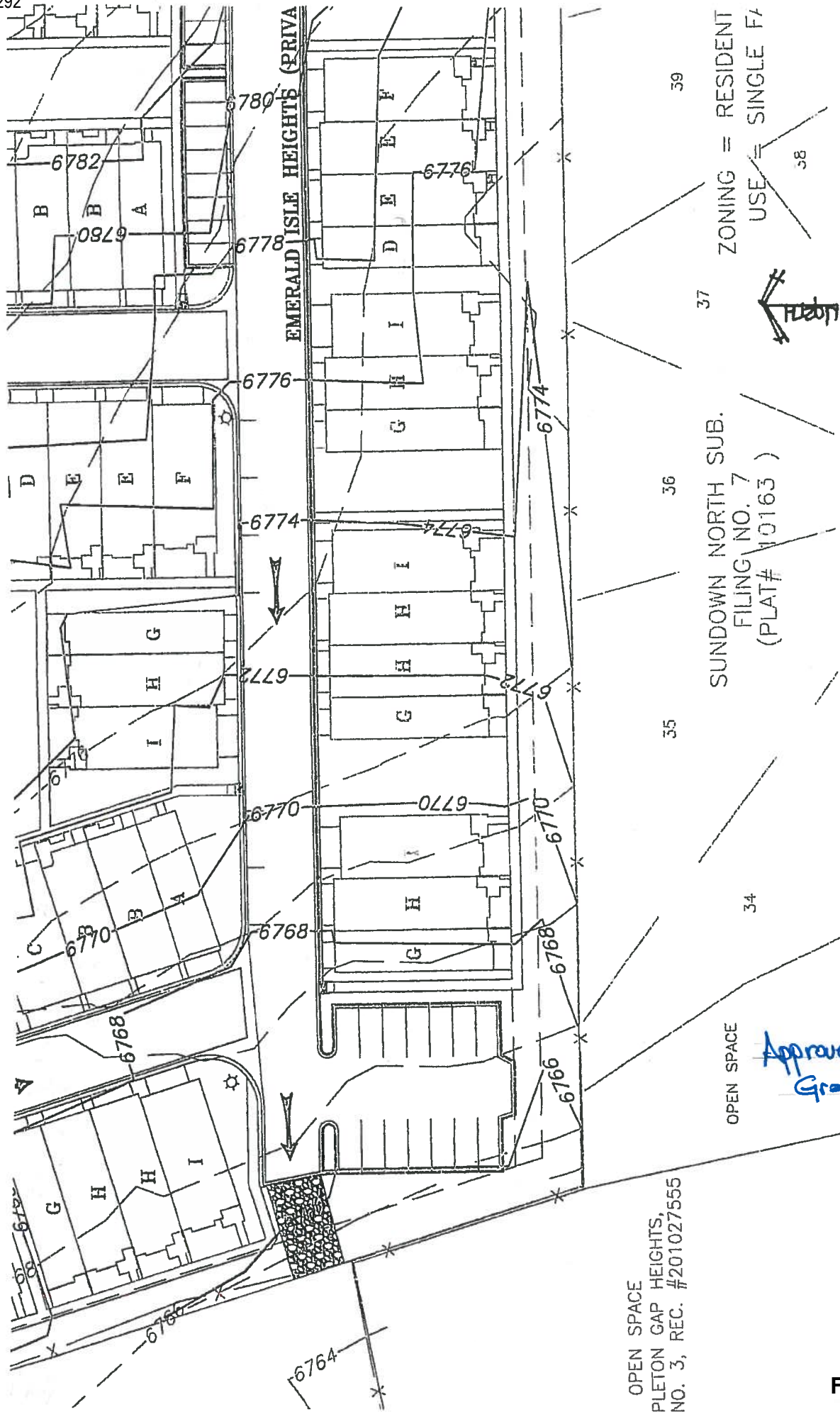
UNITS D,E,F
 G,H,I



Approved
 2006 Developer
 Plan

FIGURE 6

CE HEIGHTS, #201027555



OPEN SPACE
PLETON GAP HEIGHTS,
NO. 3, REC. #201027555

SUNDOWN NORTH SUB.
FILING NO. 7
(PLAT# 10163)

ZONING = RESIDENT
USE SINGLE F1

Approved 2006
Grading Plan

FIGURE 7

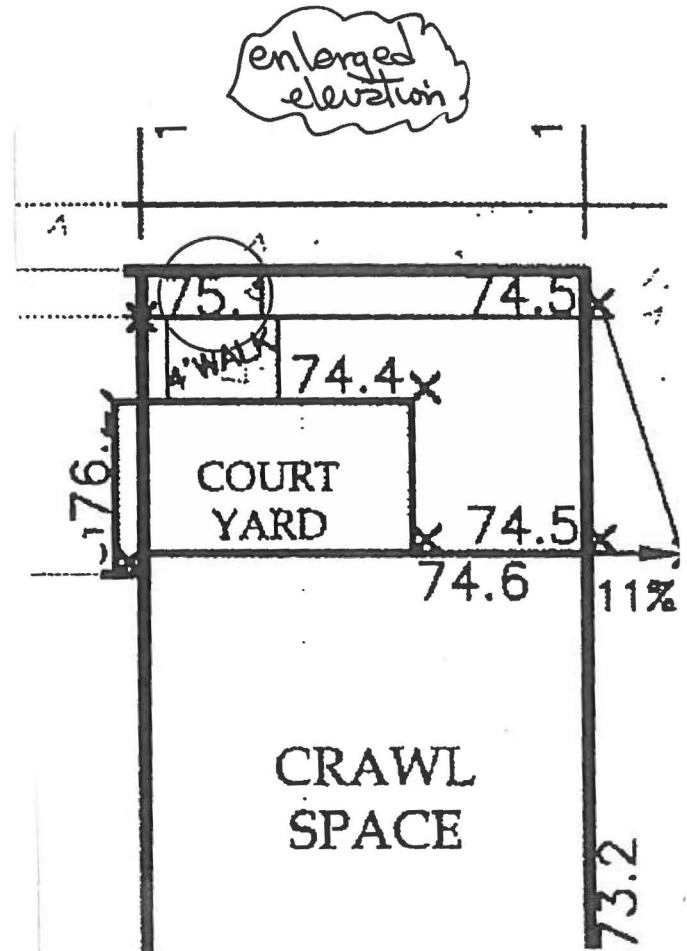
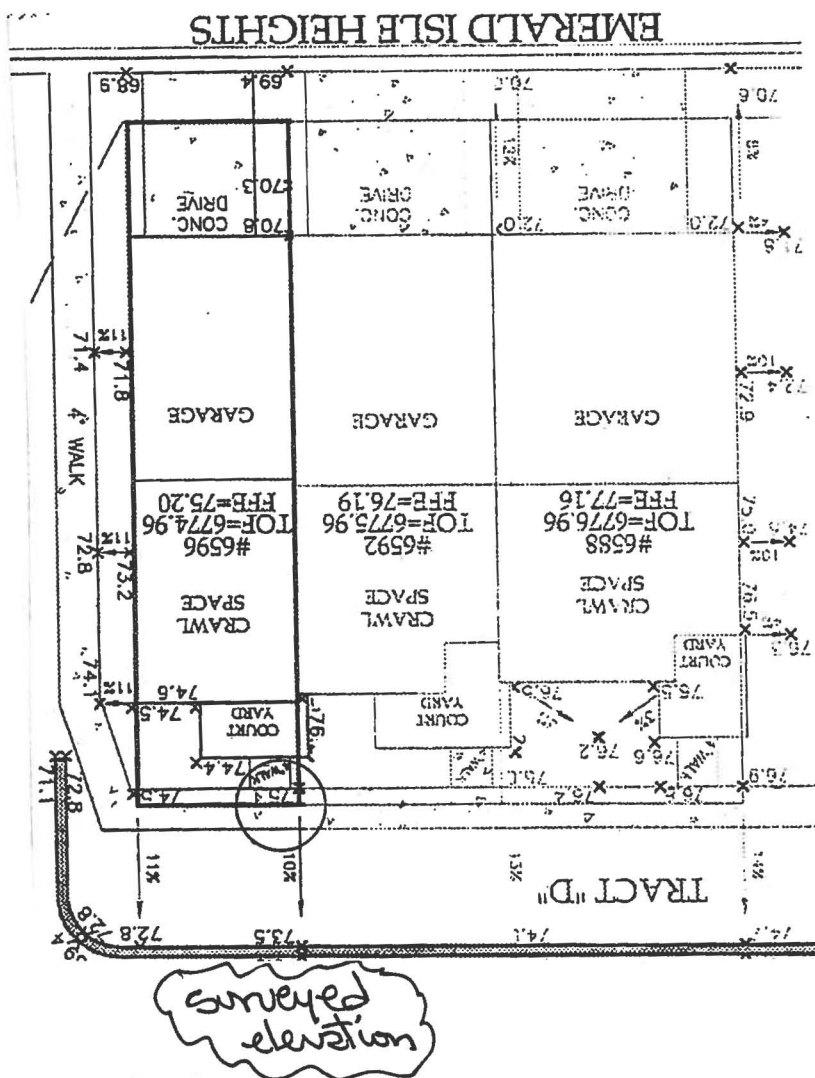
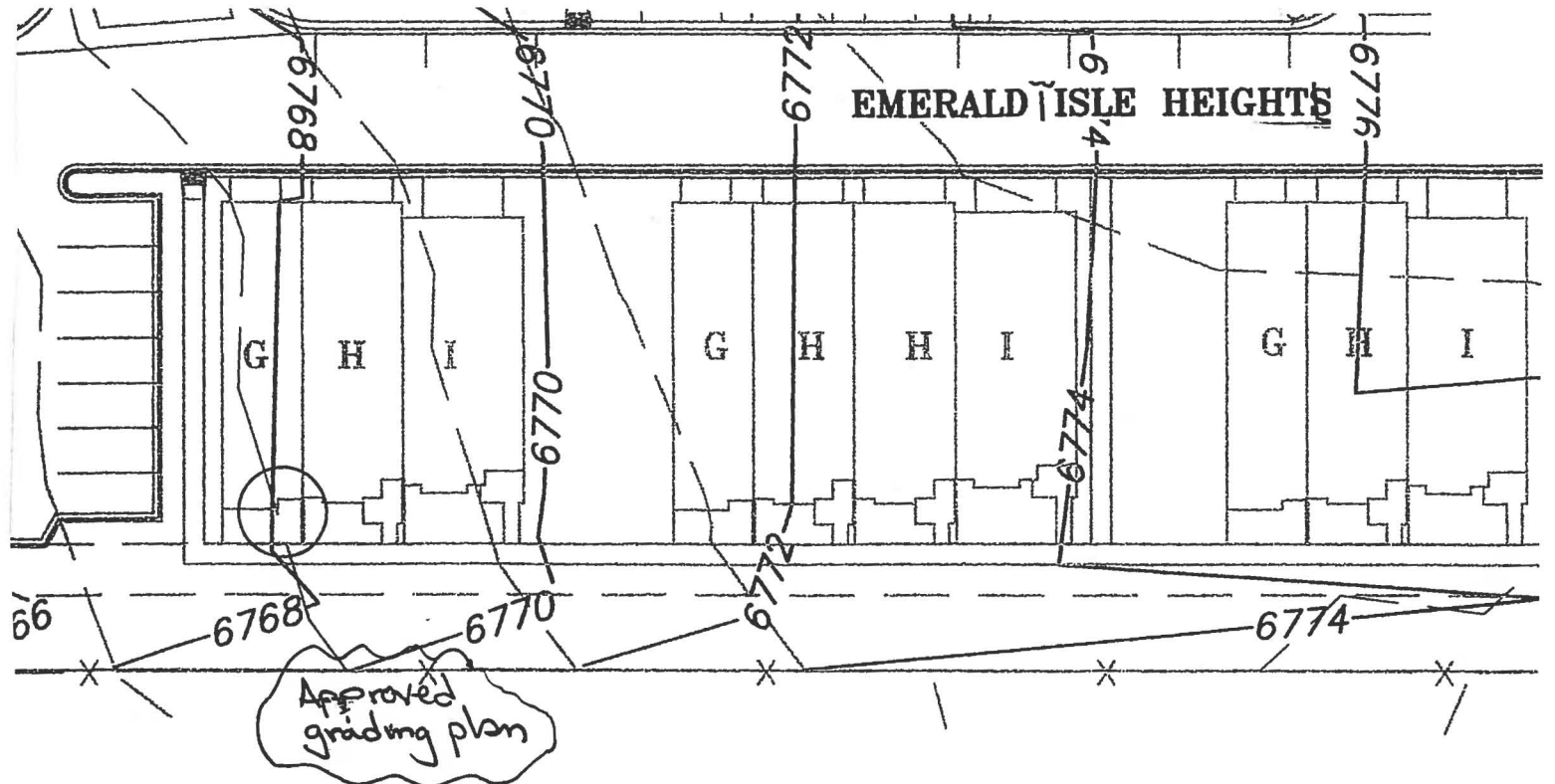


FIGURE 8

O'Connor, Rick

From: Mitros, Tim
Sent: Friday, November 30, 2012 2:07 PM
To: O'Connor, Rick
Subject: Dublin Terrace

I have reviewed the approved development plan with a stamped approval date of Nov 13, 2006. The approved grading plan is noted as sheet 3 and further identified as GP01 of the ten page dp set. The contour in front of the most southwesterly building along the south side of Emerald Isle Heights (aka lot 73) is shown with an elevation of 6768. I have been provided with an Elevation and Drainage Certificate from Surveying, Inc which provides surveyed spot elevations. The elevation shown to the south of the building on lot 73 indicates an elevation of 75.1. The difference between the approved elevation of 68 (11/13/06 plan) and the spot elevation of 75.1 reflects a difference in the ground elevation of 7.1 feet.

Please contact me if you have any questions concerning this information.

Tim

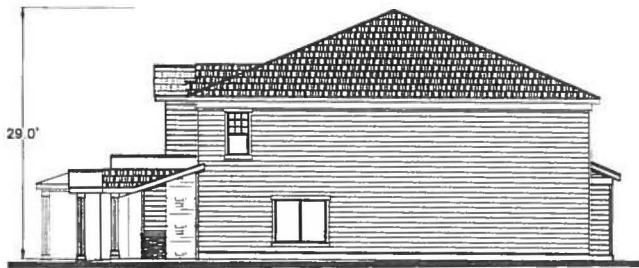
Timothy R. Mitros, P.E.
Engineering Development Review & Stormwater Manager
Public Works/City Engineering
30 S. Nevada Avenue, Suite 401
Colorado Springs, CO 80901-1575
tmitros@springsgov.com
719-385-5061



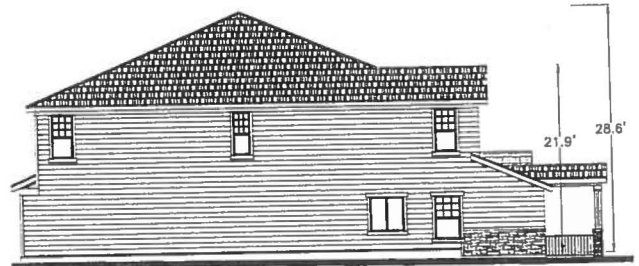
3-Plex - Flat Lot
 Front Elevation 'B'



4-Plex - Flat Lot
 Front Elevation 'B'



Flat Lot
 Side Elevation 'B'

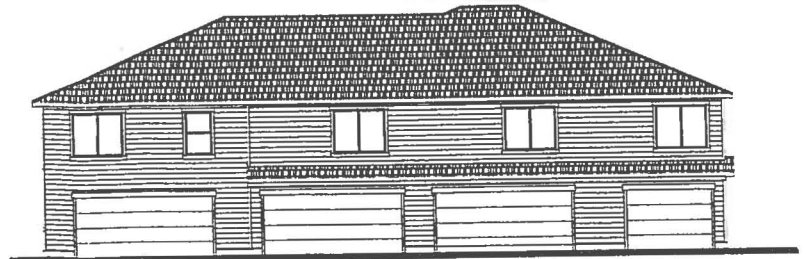


Flat Lot
 Side Elevation 'B'

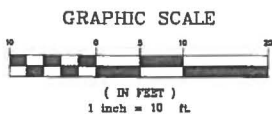
- NOTES:
- 1) NO VINYL SIDING WILL BE USED.
 - 2) BOTTOM HALF OF BUILDING FRONTS WILL BE COVERED WITH ROCK SIDING.
 - 3) ROCK SIDING WILL BE REQUIRED WHERE ELECTRIC FAULTS ARE WITHIN 10- FEET OF THE BUILDING AND THE ROCK SIDING WILL MEET CSU STANDARDS FOR HEIGHT AND WIDTH ON BUILDING FACE.
 - 4) A HOMEOWNERS ASSOCIATION WILL BE ORGANIZED AND WILL BE RESPONSIBLE FOR MAINTENANCE OF EXTERIOR OF ALL BUILDINGS AS WELL AS ALL LANDSCAPING REQUIREMENTS.
 - 5) ONLY ELEVATION "B" CAN BE USED ALONG THE SINGLE FAMILY RESIDENTIAL BOUNDARY ON THE SOUTHERN PROPERTY LINE.



3-Plex - Flat Lot
 Rear Elevation 'B'



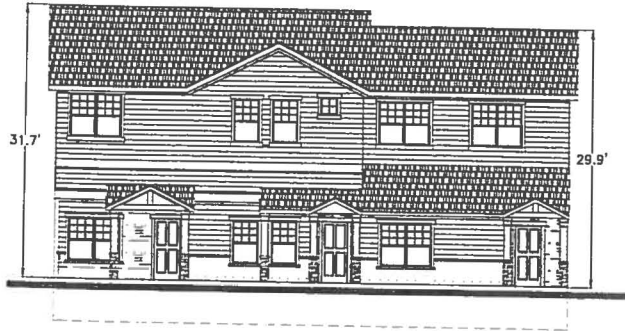
4-Plex - Flat Lot
 Rear Elevation 'B'



BUILDINGS G, H, & I

FIGURE 10

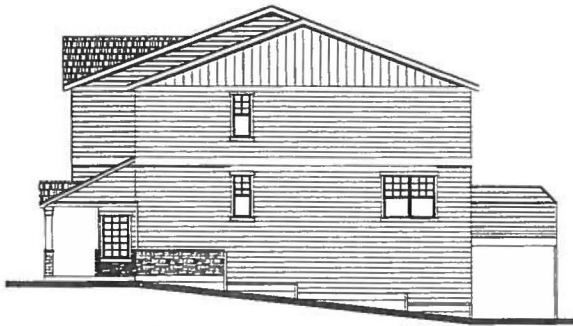
*Buildings
 As Approved*



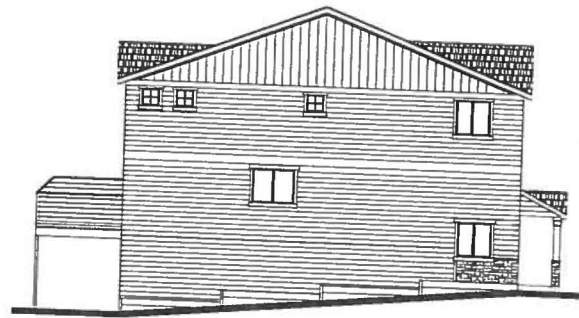
3-Plex - Garage Down
Front - Elevation 'A'



4-Plex - Garage Down
Front - Elevation 'A'



Garage Down
Side Elevation 'A'



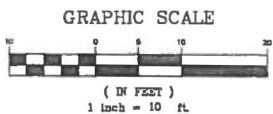
Garage Down
Side Elevation 'A'



3-Plex - Garage Down
Rear - Elevation 'A'



4-Plex - Garage Down
Rear - Elevation 'A'



BUILDINGS A, B, & C

FIGURE 11

*Buildings
Constructed*

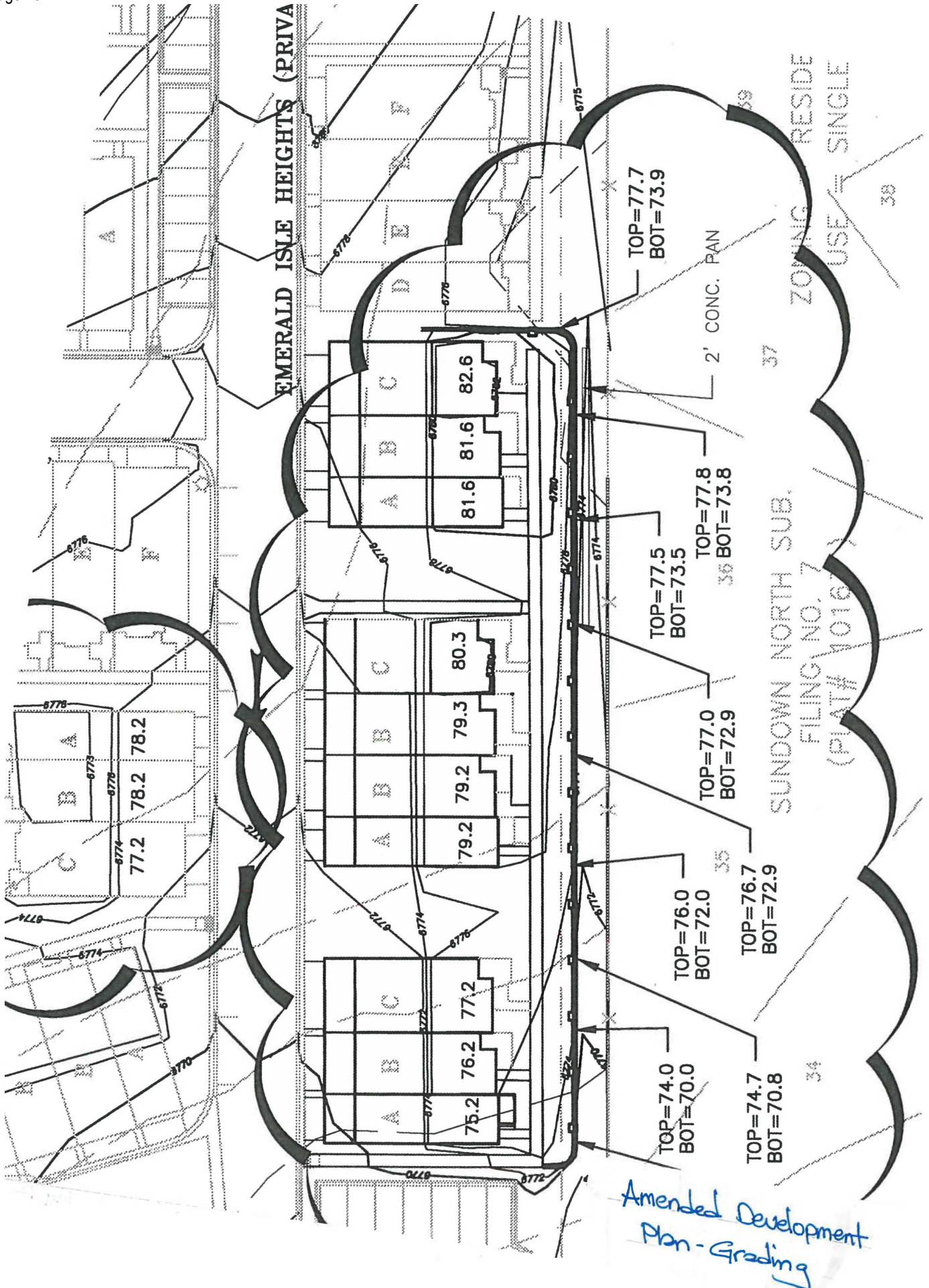
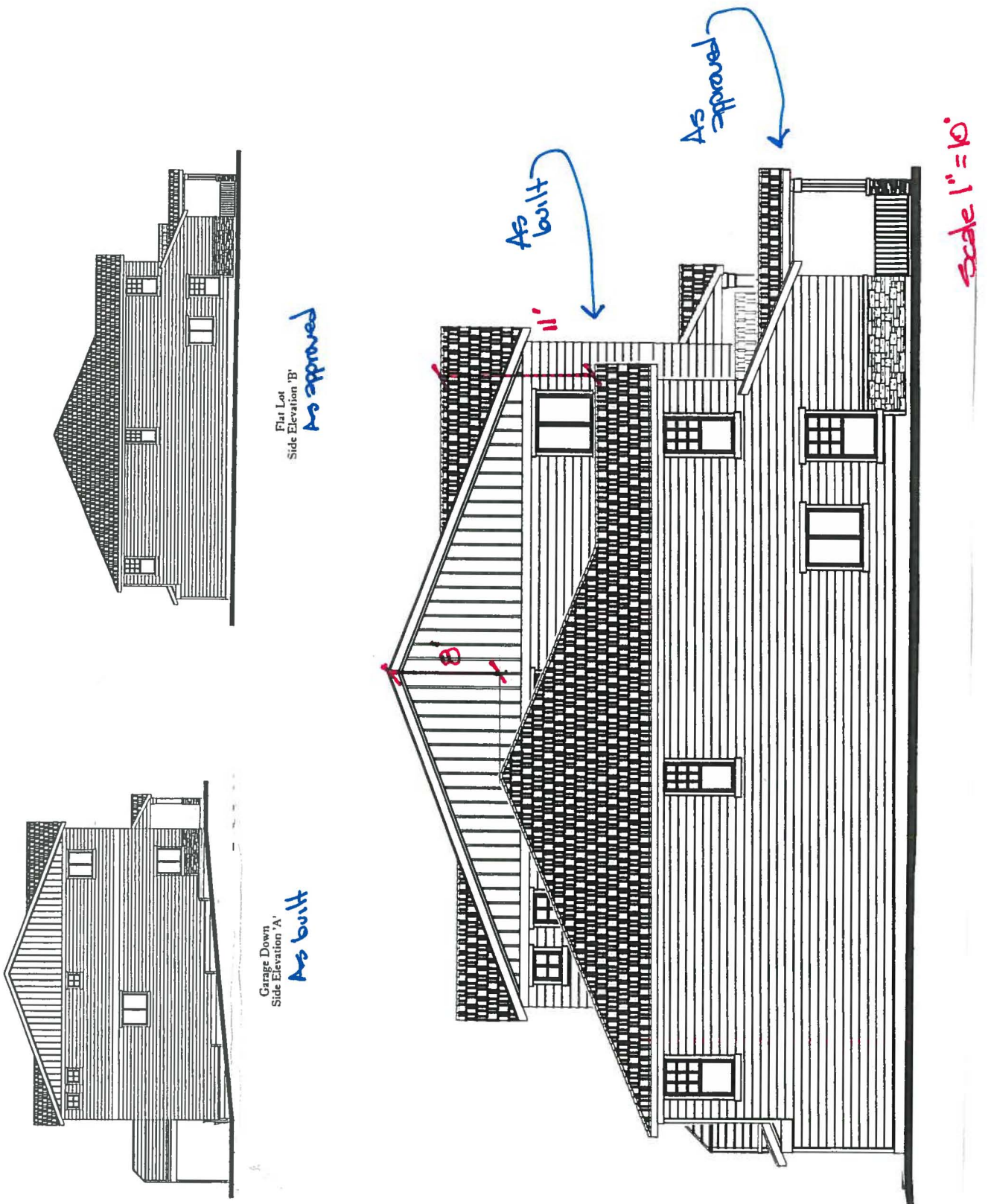


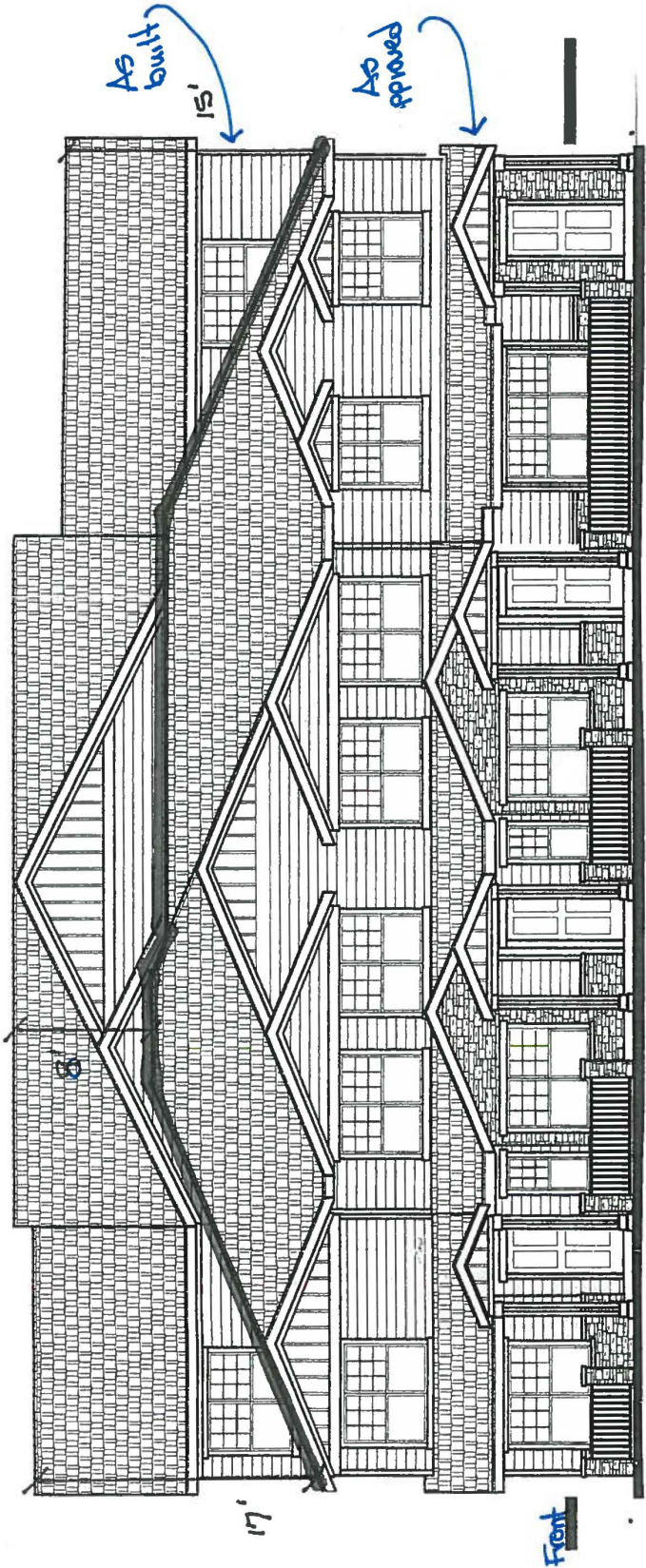
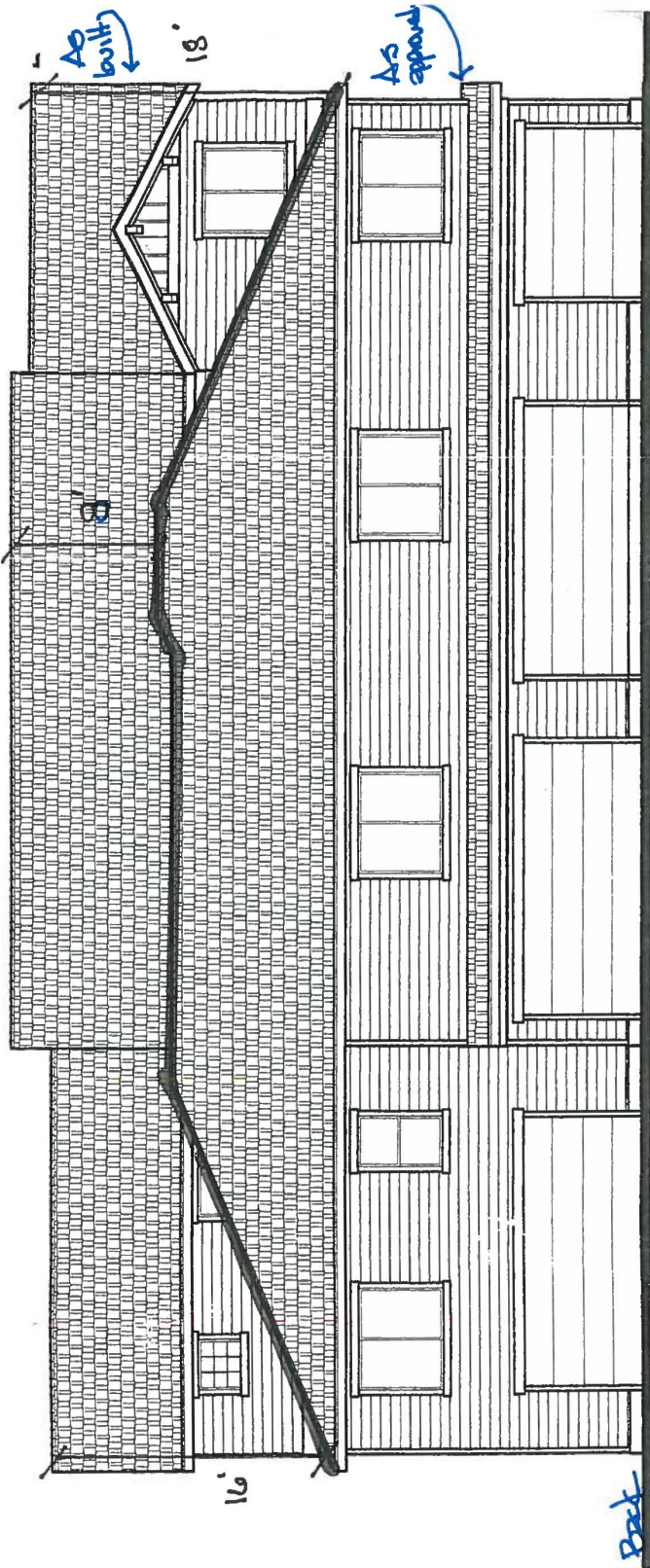
FIGURE 12



Side Elevation Comparison

FIGURE 13

source: applicants
submitted
sheets 8 & 10



Elevation Comparisons

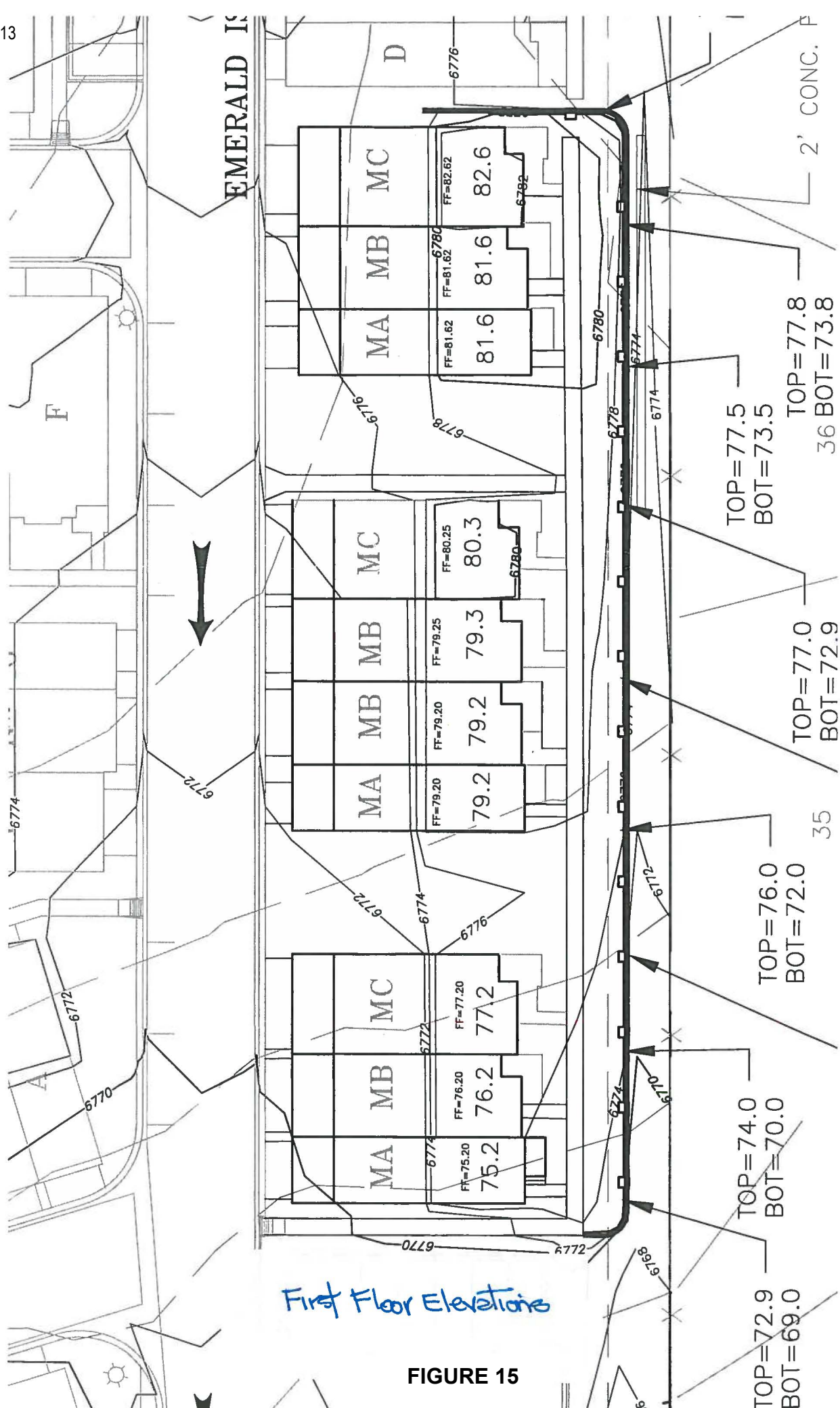
source: applicant's
submitted
sheets B & C

FIGURE 13

**AVERAGE GRADE COMPUTATIONS
(Elevation Heights)**

Corners of building	Building 1	Building 2	Building 3
1	71	73.6	76.7
2	74.5	77.9	80.3
3	76.5	77.9	80.5
4	72	75	77.7
Average base elevation	73.5	76.1	78.8

Building 1 is the most westerly building; building 2 the middle building; building 3 the most easterly building



First Floor Elevations

FIGURE 15

CTR Engineering, Inc.

13530 Northgate Estates Drive, Suite 200
Colorado Springs, Colorado 80921
(719) 964-6654

February 7, 2013

City of Colorado Springs Planning Department
C/o Rick O'Connor
30 S. Nevada Ave., Suite 105
Colorado Springs, CO 80903

Re: Building Elevations – Dublin Terrace DP CPC PUD 05-00301-A2MJ12

Dear Rick:

I have attached an analysis by an independent architectural firm (YOW Architects, PC) regarding the approved construction drawings for the building heights at Dublin Terrace. YOW Architects, PC was not the original architect, nor had they had any prior work with the project until commissioned by MLP Receivership LLC to respond to your letter dated December 18, 2012.

Per the attached analysis, the height comparison between approved GHI buildings and the built ABC buildings are as follows:

The "A" building is 1.2-feet taller than the "G" building;

The "B" building is 2.6-feet taller than the "H" building; and

The "C" building is 2.9-feet taller than the "I" building.

Please note that the building heights as determined under the rules established in the zoning code *are all less than the required 35' height restriction* on the approved Development Plan. Based on as-built survey information, we know that the average finish floor elevations of the existing units in question are an average of 4.2-feet higher than the approved construction drawings. Based on the finish floor & ridge line heights, the ten buildings are an average of 6.4-feet higher than what was approved:

Lot #	Address	First Floor Elevation			Building Heights			TOTAL
		Approved	Existing	Difference	Approved	As Built	Difference	DIFFERENCE
64	6552 Emerald Isle Hts.	78.4	82.6	4.2	29.9	32.8	2.9	7.1
65	6556 Emerald Isle Hts.	78.4	81.6	3.2	30.0	32.6	2.6	5.8
66	6560 Emerald Isle Hts.	77.4	81.6	4.2	30.7	31.9	1.2	5.4
67	6568 Emerald Isle Hts.	75.6	80.3	4.7	29.9	32.8	2.9	7.6
68	6572 Emerald Isle Hts.	75.6	79.3	3.7	30.0	32.6	2.6	6.3
69	6576 Emerald Isle Hts.	74.6	79.3	4.7	30.0	32.6	2.6	7.3
70	6580 Emerald Isle Hts.	74.6	79.3	4.7	30.7	31.9	1.2	5.9
71	6588 Emerald Isle Hts.	72.5	77.2	4.7	29.9	32.8	2.9	7.6
72	6592 Emerald Isle Hts.	72.5	76.2	3.7	30.0	32.6	2.6	6.3
73	6596 Emerald Isle Hts.	71.5	75.2	3.7	30.7	31.9	1.2	4.9
		Ave. = 4.15			Ave. = 2.27			6.42

*Bld. Heights based on YOW Arch.

I believe this information will clear up any contradictions from the Development Plan (preliminary building elevations) and the final construction drawings submitted to the Regional Building Department. Please review the attached information and let me know if you have any questions or concerns.

Sincerely,
CTR Engineering, Inc.

Jonathan Moore

Jonathan Moore, P.E.
 Principal

DUBLIN TERRACE TOWNHOMES													
RIDGELINE HEIGHTS PER RECORD CONSTRUCTION DOCUMENTS													
1-31-2013 Review by YOW Architects of PPRBD microfilm drawings													
							7	8	9	10	11	12	13
PLAN LTR.	PLAN NO.	SLOPE	RIDGE	TRUSS	TRUSS	LIV RM	OVERALL	ROUNDED	LIV RM	OVERALL	HEIGHT BY	ROUNDED	
CIVIL	ARCH	RATIO	ROOF	RISE	BRG	HEIGHT TO	LIV RM TO	LIV. RM. TO	TO GAR	GARAGE TO	ZONING	ZONING	
DESIG.	DESIG.	H/L	CAP (3)		LEG	BEARING	RIDGELINE	RIDGELINE	SLAB	RIDGELINE	DEF.(4)	HEIGHT	
A		1 5 in 12	0.1	7.613	0.687	23.479	31.879	31.9	4.875	36.754	29.566	29.6	
B		2 5 in 12	0.1	8.298	0.687	23.479	32.564	32.6	4.875	37.439	30.251	30.3	
C		3 5 in 12	0.1	8.007	0.687	23.937	32.731	32.8	4.875	37.606	30.418	30.5	
D		4 5 in 12	0.1	9.46	0.687	21.68	31.927	32.0	-3.42	28.507	25.467	25.5	
E		5 5 in 12	0.1	8.77	0.687	21.68	31.237	31.2	-3.42	27.817	24.777	24.8	
F		6 5 in 12	0.1	8.36	0.687	21.91	31.057	31.1	-3.42	27.637	24.597	24.6	
G		7 5 in 12	0.1	10.71	0.687	19.187	30.684	30.7	-1.08	29.604	25.394	25.4	
H		8 5 in 12	0.1	10.02	0.687	19.187	29.994	30.0	-1.08	28.914	24.704	24.8	
I		9 5 in 12	0.1	9.613	0.687	19.416	29.816	29.9	-1.08	28.736	24.526	24.6	
TJI OPT. A	TJI 1	1/4 in 12	0.1	0.381	1	23.479	24.960	30.0	4.875	29.835	Same	29.9	
TJI OPT. B	TJI 2	1/4 in 12	0.1	0.415	1	23.479	24.994	30.0	4.875	29.869	Same	29.9	
TJI OPT. C	TJI 3	1/4 in 12	0.1	0.4	1	23.937	25.437	25.5	4.875	30.312	Same	30.4	
INFORMATION SOURCE NOTES:													
1) TRUSS RISE PER SHOP DRAWINGS WHERE AVAILABLE.													
2) VERTICAL FRAMING DIMENSIONS PER CONSTRUCTION DOCUMENTS.													
3) ADDED 1 1/4" FOR RIDGE ROOF OVERLAP AND DECK THICKNESS.													
4) ADDED 6" FROM FF LIV. RM. TO FIN GRADE FOR ZONING HEIGHT CALC.													
COMPARISON BETWEEN APPROVED and CONSTRUCTED UNITS													
A built vs G approved: 1.2' taller													
B built vs. H approved: 2.6' taller													
C built vs. I approved: 2.9' taller													

FIGURE 16

1-31-2013

Ref. Dublin Terrace Townhome Ridge Height Review

At the request of MLP Management LLP, I reviewed the approved construction documents and truss drawings, and supplemented that information with a few layout constructs where truss drawings were missing.

I am attaching a separate spreadsheet that was used to tabulate all units to differing heights including bearing height, ridgeline, and building height definition per the zoning code. These may be helpful if you are responding to specific City Planning questions.

Below I summarized ridge heights for the non-compliant buildings, grouping the information by corresponding Building Number, Address, Lot number, Unit type and ridge heights from finish floor. These are the rounded heights from my spreadsheet.

**HEIGHT SUMMARY BY BUILDING / ADDRESS / LOT:
APPROVED DEVELOPMENT PLANS vs. AS-BUILT CONDITIONS:**

Building 9: (Per Approved drawing "KP" for Building numbers):

Addresses: 6552, 6556, 6560 Emerald Isle Hts.

Platted Lots: 64,65,66

Unit types approved: I,H, G (Arch 9,8,7) (Per Approved Devt. Plan drawing "SP-01").

Ridge heights approved units: 29.9', 30', 30.7'

Unit types built: C,B,A (Arch 3,2,1)

Ridge heights of units built: 32.8', 32.6', 31.9'

Building height of units built by Zoning definition*: 30.5', 30.3', 29.6'

Building 10:

Addresses: 6568, 6572, 6576, 6580 Emerald Isle Hts.

Platted Lots: 67,68,69,70

Unit types approved: I,H,H,G Flat units (Arch 9,8,8,7)

Ridge heights approved units: 29.9', 30', 30', 30.7'

Unit types built: C,B,B,A (Arch 3,2,1)

Ridge heights of units built: 32.8', 32.6', 32.6', 31.9'

Building height of units built by Zoning definition*: 30.5', 30.3', 30.3', 29.6'

Building 11:

Addresses: 6588, 6592, 6596 Emerald Isle Hts.

Platted Lots: 71, 72, 73

Unit types approved: I,H,G Flat units (Arch 9,8,7)

Ridge heights approved units: 29.9', 30', 30.7'

Unit types built: C,B,A (Arch 3,2,1)

Ridge heights of units built: 32.8', 32.6', 31.9'

Building height of units built by Zoning definition*: 30.5', 30.3', 29.6'

Building 33:

Addresses: 6573, 6577, 6581 Emerald Isle Hts.

Platted Lots 106, 107, 108

Unit types approved: G,H,I (Arch 7,8,9)

Ridge heights approved units: 30.7', 30', 29.9',

Unit types built: A,B,C (Arch 1,2,3)

Ridge heights of units proposed: 31.9', 32.6', 32.8'

Building height of units built by Zoning definition*:

COMPARISON OF CONSTRUCTED UNIT RIDGE HEIGHTS TO APPROVED UNITS:

Type A (Arch 1) units are 1.2' taller than the Type G (7) units approved on the Devt. Plan.
Type B (Arch 2) units are 2.6' taller than the Type H (8) units approved on the Devt. Plan.
Type C (Arch 3) units are 2.9' taller than the Type I (9) units approved on the Devt. Plan.

NOTES:

CITY PLANNING LETTER Dec. 18, 2012:

Comment 3 clarifications regarding heights from finish floor to ridge height can be found in Column 8 of my spreadsheet.

Comment 4 clarifications regarding truss bearing can be found in Column 7 of my spreadsheet.

***BUILDING HEIGHT PER ZONING CODE:**

Building height per the definition in the City Zoning Code is determined as the height from average grade at all corners measured up to a point 5 feet below the highest roof ridge on a sloped roof. Column 13 gives heights per that definition, by unit type.

ARCHITECT'S COMMENTS LETTER Sept. 9, 2012:

-The DJ Architects letter refers to unit types 4F and 6F but I assume he meant to refer to the G and I units which are the flat versions. The heights he mentioned are essentially identical to what I measured. However, these unit models are not applicable since they were not the unit types originally approved for the subject lots.

Steven L. Obering

YOW Architects PC

115 S. Weber St., Suite 200

Colorado Springs, CO 80903

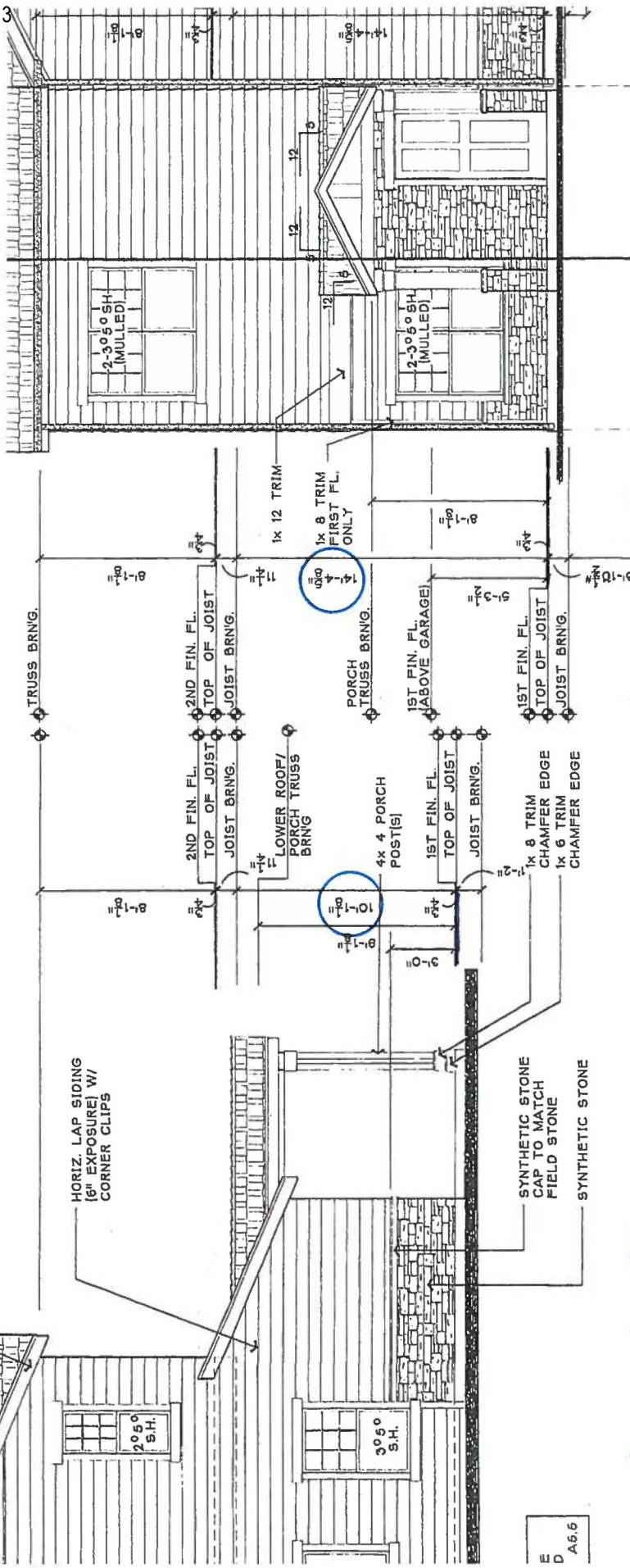
(719) 475-8133 Fax (719) 475-8324

E-mail: sobering@yowarch.com

COMP. SHINGLES OVER
 15# FELT. [TYP ROOF]
 1x 3 TRIM OVER
 1x 8 FASCIA

HORIZ. LAP SIDING
 (6" EXPOSURE) W/
 CORNER CLIPS

SYNTHETIC STONE
 CAP TO MATCH
 FIELD STONE
 SYNTHETIC STONE



"As built" units

Approved units

E
 D A6.6

FIGURE 17

Source: R&D construction drawings

After recording return to:
Jack Tanner, Esq.
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, CO 80203

(Above space for Recorder's use only)

RECEIVER'S DEED

THIS RECEIVER'S DEED is made this 13 day of November, 2012, between MLP Receivership, LLC, a Missouri Limited Liability Company, in its capacity as court appointed receiver for Heritage Homes, Inc., a Colorado Corporation d/b/a Today's Homes, Inc., a Colorado Corporation, whose address is 1242 Strassner Drive, St. Louis, MO 63144 ("Grantor"), and Tere Anne Lee, whose address is 5649 Shamrock Hts, Colo Spgs, CO 80923 ("Grantee"):

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm, unto Grantee, its successors and assigns forever, all of Grantor's right, title, and interest in and to certain real property, together with improvements, if any, situate, lying and being in County of El Paso, State of Colorado, described on Exhibit A, attached hereto and incorporated herein:

IN WITNESS WHEREOF, the Grantor has executed this Deed on the date set forth above.

MLP Receivership, LLC, a Missouri Limited Liability Company, in its capacity as court appointed receiver for Heritage Homes, Inc., a Colorado Corporation d/b/a Today's Homes, Inc., a Colorado Corporation
Andrew Checkley
By:

STATE OF)
) ss.
COUNTY OF ST. LOUIS)

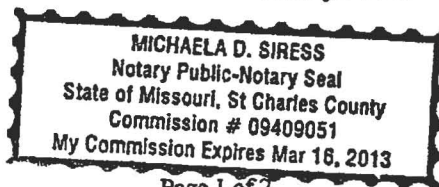
The foregoing instrument was acknowledged before me this 13 day of November, 2012, by Andrew Checkley as President of MLP Receivership, LLC, a Missouri Limited Liability Company, in its capacity as court appointed receiver for Heritage Homes, Inc., a Colorado Corporation d/b/a Today's Homes, Inc., a Colorado Corporation.

Witness my hand and official seal.

My Commission Expires:

Mar 14, 2013
(Seal)

Michael D. Siress
Notary Public



212136694

EXHIBIT A

LEGAL DESCRIPTION

Lot 120, Dublin Terrace Filing No. 1A, in the City of Colorado Springs, County of El Paso, State of Colorado.

For Informational Purposes Only: 5649 Shamrock Heights, Colorado Springs, CO 80923



Public Record Sale Information

(Seq # 3)

Schedule No: 6312405148

Reception: 212136694

Sale Amount: \$ 169500

Book:

Date: 11/16/2012

Code: Good sale; verified

Verified: Yes

Page:

Doc

Fee: \$16.95

Deed

Type: DEED

-OTHER

Grantee: LEE TERE ANNE

Grantor: MLP RECEIVERSHIP LLC RECEIVER

Amt. Financed: \$ 163842

Down Pmt: \$ 0

Financing: New 3.25% Fixed

Term: 30 yr 0 mo

Points: 0 by:

Condition: Average

Balloon: N

Amount: \$ 0

Installment Contract:

Date: 0

PP/Good Will: \$ 0

Trade/Exch: \$ 0

Interest: 100%

Finance Fee: \$ 0

Related Parties: N

Land Inspection:

Due: 0



Assessor:

Mark Lowderman

Location:

1675 W. Garden of the Gods Rd
Suite 2300
Colorado Springs, CO 80907

Telephone:
(719) 520-6600

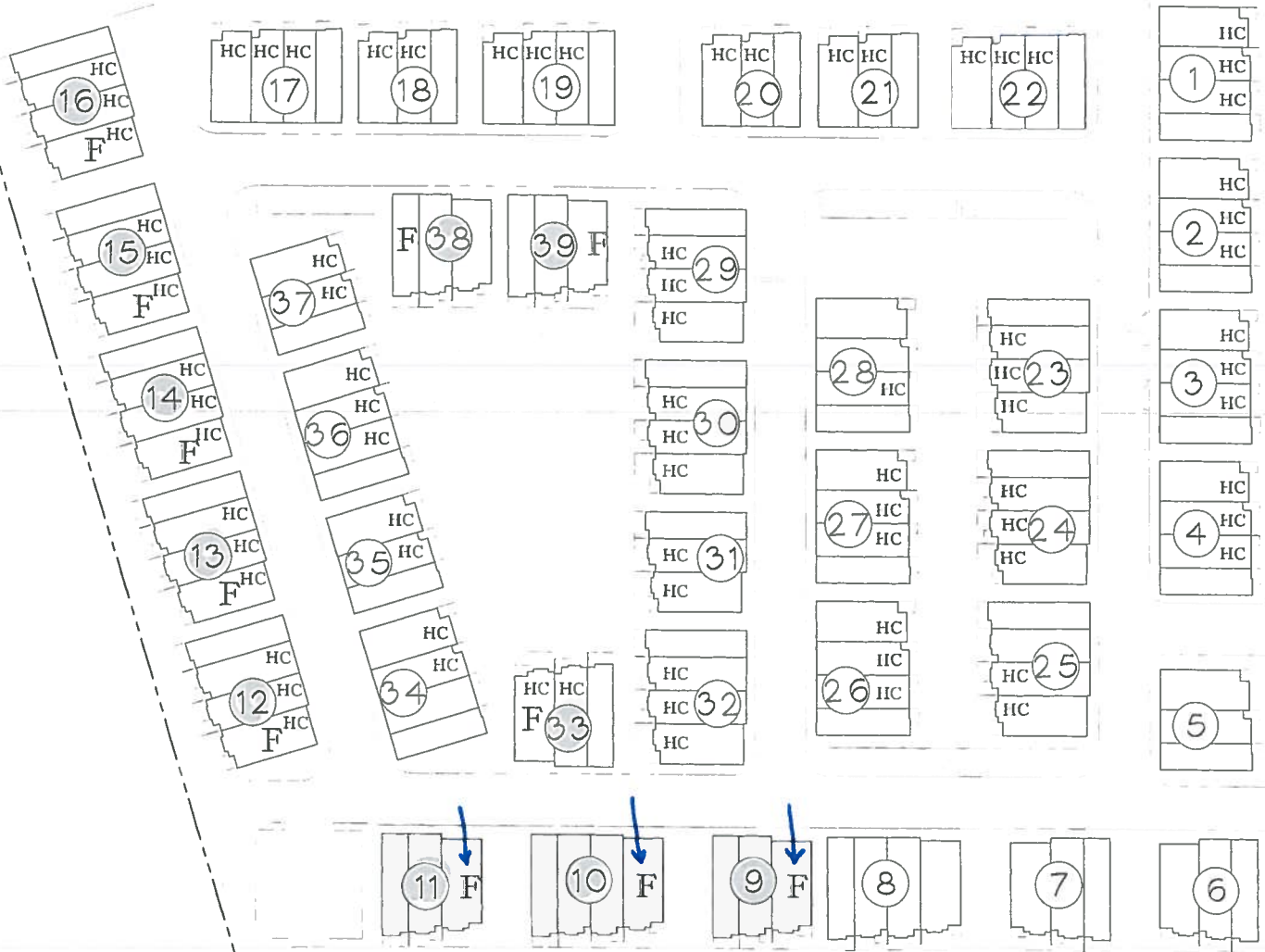
Fax Number:
(719) 520-6635

Hours:
8:00 AM - 5:00 PM
Monday - Friday
Offices closed:
Saturday - Sunday, weekly

Send any concerns or comments
to:
asrweb@elpasoco.com

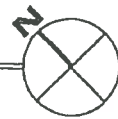
We have made a good-faith effort to provide you with the most recent and most accurate information available. However, if you need to use this information in any legal or official venue, you will need to obtain official copies from the Assessor's Office. Do be aware that this data is subject to change on a daily basis. If you believe that any of this information is incorrect, please call us at (719) 520-6600.

05



1 Key Plan

KP SCALE: 1"=40.0'



This key plan is based on the approved site development plans prepared by CTR Engineering, Inc and dated June 2006.

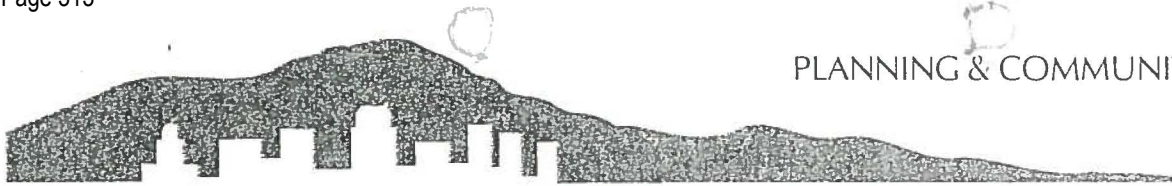
Buildings marked with "F" are flat units and they contain no foundation elevation changes from front to rear.

Buildings marked with 'HC' are Type B visitable ground floor units worth 1 point each. The project consists of 142 units which require 60 accessibility points. 79 accessibility points are provided.

Ref. Stamped DP-CPC PUD 06-301 dated Nov. 13, 2006 for siteplan.

Released for 2008
 12.12.07
 Plan Review JAN 17 2008
 IGC
 RBD Construction

FIGURE 20 Source: RBD drawings



CITY OF COLORADO SPRINGS

November 13, 2006

Mr. Jonathan Moore
CTR Engineering
6451 Galeta Drive
Colorado Springs, CO 80922

RE: Dublin Terrace Townhomes Development Plan; File No. CPC PUD 06-301

Dear Jonathan:

City Planning administratively approved the above-mentioned Development Plan for Dublin Terrace Townhomes on November 13, 2006 subject to satisfying the conditions as approved by City Council on June 13, 2006. The annexation has been recorded so the development plan can now be approved. This approval is subject to the following conditions:

1. **Development must conform completely to the approved Development Plan.**
2. **The building architecture must comply with the approved Elevation Drawings.**
3. **All site grading must comply with the grading illustrated on the Development Plan.**
4. All landscaping and irrigation installation must comply with the details of the approved Final Landscape Plan.
5. The review and approval of an irrigation plan must be submitted within ninety (90) days subsequent to a building permit and approved prior to the installation of any irrigation components and prior to the issuance of a Certificate of Occupancy.
6. **Construction plans and profiles for the public improvements shall include for the demolition of vacated Balsam and shall be submitted/approved prior to building permit approval.**

Four (4) copies of the approved Development Plan and one copy of the approved Geologic Hazards Report are enclosed. Please attach one (1) copy of the approved Development Plan set, including the Final Landscape Plan and Architectural Elevations, to each of the two (2) sets of construction drawings submitted to the Regional Building Department in conjunction with the building permit application. A Certificate of Occupancy will not be issued for the development until all private and public improvements shown on the plan are completed or financially secured.

If an appeal is filed on this item within 10 (ten) days from the above approval date, this approval shall be suspended until the appeal process is finalized.

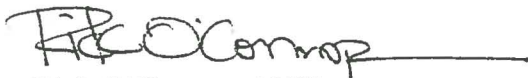
FIGURE 21

This Development Plan approval will expire four (4) years from the approval date unless a building permit is issued for the construction of the development. If any changes to the approved site or building design become necessary prior to, or during construction, an amended plan ~~for~~ will need to be submitted for City Planning review and approval.

I have attached a short Customer Satisfaction Survey form to this letter for your use. The City Planning Group is committed to the provision of excellent customer service in conjunction with the development review process. To this end we are interested in receiving your comments regarding the service provided to you in conjunction with the review of this application. Please take a few minutes to complete the attached survey form and mail it to CommuniCon, Inc. our survey research consultants. CommuniCon will provide the City Plan Group with an annual report of the survey results but your individual responses are not disclosed and are completely confidential.

Please feel free to contact me at 385-5365 if you have any questions regarding this approval.

Sincerely,



Rick O'Connor, AICP
Senior Planner

cc: Development Review CAB Office File (CPC DP 05-301)
Development Review RBD Office File (CPC DP 05-301)
Steve Smith - Fire Prevention
Wendy Hardy - CSPD
City Engineering (SERT)
Tim Roberts - Traffic Engineering
Lois Ruggera, City Planning
Mary Talbott, Neighborhood Representative

DEVELOPMENT APPLICATION REVIEW CRITERIA

7.3.606: REVIEW CRITERIA FOR DEVELOPMENT PLAN:

A PUD development plan for land within a PUD zone shall be approved if it substantially conforms to the approved PUD concept plan and the PUD development plan review criteria listed below. An application for a development plan shall be submitted in accord with requirements outlined in article 5, parts 2 and 5 of this chapter. Unless otherwise specified by a development agreement, the project shall be vested by the PUD development plan in accord with section 7.9.101 and subsection 7.5.504(C)(2) of this chapter.

- A. Consistency with City Plans: Is the proposed development consistent with the Comprehensive Plan or any City approved master plan that applies to the site?
- B. Consistency with Zoning Code: Is the proposed development consistent with the intent and purposes of this Zoning Code?
- C. Compatibility Of The Site Design With The Surrounding Area:
 - 1. Does the circulation plan minimize traffic impact on the adjacent neighborhood?
 - 2. Do the design elements reduce the impact of the project's density/intensity?
 - 3. Is placement of buildings compatible with the surrounding area?
 - 4. Are landscaping and fences/walls provided to buffer adjoining properties from undesirable negative influences that may be created by the proposed development?
 - 5. Are residential units buffered from arterial traffic by the provision of adequate setbacks, grade separation, walls, landscaping and building orientation?
- D. Traffic Circulation:
 - 1. Is the circulation system designed to be safe and functional and encourage both on and off site connectivity?
 - 2. Will the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
 - 3. Will adequately sized parking areas be located to provide safe and convenient access, avoid excessive parking ratios and avoid expanses of pavement?
 - 4. Are access and movement of handicapped persons and parking of vehicles for the handicapped appropriately accommodated in the project design?
 - 5. As appropriate are provisions for transit incorporated?
- E. Overburdening Of Public Facilities: Will the proposed development overburden the capacities of existing and planned streets, utilities, parks, and other public facilities?
- F. Privacy: Is privacy provided, where appropriate, for residential units by means of staggered setbacks, courtyards, private patios, grade separation, landscaping, building orientation or other means?

DEVELOPMENT APPLICATION REVIEW CRITERIA

G. Pedestrian Circulation:

1. Are pedestrian facilities provided, particularly those giving access to open space and recreation facilities?
2. Will pedestrian walkways be functionally separated from vehicular ways and located in areas that are not used by motor vehicles?

H. Landscaping:

1. Does the landscape design comply with the City's landscape code and the City's landscape policy manual?
2. The use of native vegetation or drought resistant species including grasses is encouraged. The City's landscape policy manual or City Planning's landscape architect can be consulted for assistance.

I. Open Space:

1. Residential Area:

A. Open Space: The provision of adequate open space shall be required to provide light, air and privacy; to buffer adjacent properties; and to provide active and passive recreation opportunities. All residential units shall include well designed private outdoor living space featuring adequate light, air and privacy where appropriate. Common open space may be used to reduce the park dedication requirements if the open space provides enough area and recreational facilities to reduce the residents' need for neighborhood parks. Recreational facilities shall reflect the needs of the type of residents and proximity to public facilities.

B. Natural Features: Significant and unique natural features, such as trees, drainage channels, slopes, and rock outcroppings, should be preserved and incorporated into the design of the open space. The Parks and Recreation Advisory Board shall have the discretion to grant park land credit for open space within a PUD development that preserves significant natural features and meets all other criteria for granting park land credit.

2. Nonresidential And Mixed Use; Natural Features: The significant natural features of the site, such as trees, drainage channels, slopes, rock outcroppings, etc., should be preserved and are to be incorporated into the design of the open space.

J. Mobile Home Parks: Does a proposed mobile home park meet the minimum standards set forth in the mobile home park development standards table in section 7.3.104 of this article? (Ord. 03-110; Ord. 03-190, Ord. 12-68)

DEVELOPMENT APPLICATION REVIEW CRITERIA

7.5.502 (E): DEVELOPMENT PLAN REVIEW CRITERIA:

- E. Development Plan Review Criteria: A development plan shall be reviewed using the criteria listed below. No development plan shall be approved unless the plan complies with all the requirements of the zone district in which it is located, is consistent with the intent and purpose of this Zoning Code and is compatible with the land uses surrounding the site. Alternate and/or additional development plan criteria may be included as a part of an FBZ regulating plan.
1. Will the project design be harmonious with the surrounding land uses and neighborhood?
 2. Will the proposed land uses be compatible with the surrounding neighborhood? Will the proposed development overburden the capacities of existing streets, utilities, parks, schools and other public facilities?
 3. Will the structures be located to minimize the impact of their use and bulk on adjacent properties?
 4. Will landscaping, berms, fences and/or walls be provided to buffer the site from undesirable views, noise, lighting or other off site negative influences and to buffer adjacent properties from negative influences that may be created by the proposed development?
 5. Will vehicular access from the project to streets outside the project be combined, limited, located, designed and controlled to channel traffic to and from such areas conveniently and safely and in such a manner which minimizes traffic friction, noise and pollution and promotes free traffic flow without excessive interruption?
 6. Will all the streets and drives provide logical, safe and convenient vehicular access to the facilities within the project?
 7. Will streets and drives within the project area be connected to streets outside the project area in such a way that discourages their use by through traffic?
 8. Will adequately sized parking areas be located throughout the project to provide safe and convenient access to specific facilities?
 9. Will safe and convenient provision for the access and movement of handicapped persons and parking of vehicles for the handicapped be accommodated in the project design?
 10. Will the design of streets, drives and parking areas within the project result in a minimum of area devoted to asphalt?
 11. Will pedestrian walkways be functionally separated from vehicular traffic and landscaped to accomplish this? Will pedestrian walkways be designed and located in combination with other easements that are not used by motor vehicles?
 12. Does the design encourage the preservation of significant natural features such as healthy vegetation, drainage channels, steep slopes and rock outcroppings? Are these significant natural features incorporated into the project design? (Ord. 94-107; Ord. 95-125; Ord. 01-42; Ord. 02-64; Ord. 03-74; Ord. 03-157; Ord. 09-50; Ord. 09-78)