CHAPTER 17

Subdivisions

ARTICLE I

Purpose; Definitions

Sec. 17-1. Declaration of purpose.

(a) The following regulations have been prepared and enacted in accordance with Section 31-23-101*, et seq.*, C.R.S., for the purpose of promoting the health, safety and general welfare of the present and future inhabitants.

(b) To these ends, such regulations are intended to assure efficient circulation, adequate improvements, sufficient open space and basic order in subdivision design by providing for the proper arrangement of streets in relation to other existing or planned streets; for adequate and convenient open spaces for traffic circulation, utilities, emergency access, recreation, light and air; for the avoidance of population congestion; and for the establishment of standards for the design and construction of improvements herein required. (Prior code Appx. C, § I)

Sec. 17-2. Definitions.

(a) The language set forth in the text of this Article shall be interpreted in accordance with the following rules of construction:

(1) The singular number includes the plural and the plural the singular.

(2) The present tense includes the past and future tenses, and the future the present.

(3) The word *shall* is mandatory, while the word *may* is permissive.

(4) The masculine gender includes the feminine and neuter.

(b) The following words and terms, wherever they occur in this Article shall be construed as herein defined:

(1) *Block* means a parcel of land bounded on all sides by a street or streets.

(2) *Comprehensive plan* means a plan for guiding and controlling the physical development of land use and circulation facilities and any amendment or extension of such a plan.

(3) *Consumer* means any person contacted as a potential purchaser, lessee or renter as well as one who actually purchases, leases or rents property in the subdivision.

(4) *Dedication* means a grant by the owner of a right to use land to the public in general involving a transfer of property rights and an acceptance of the dedicated property by the appropriate public agency.

(5) *Easement* means a dedication of land for a specified use, such as providing access for maintenance of utilities.

(6) *Lot* means a parcel of land intended for transfer of ownership or building development, having its full frontage on a public street.

(7) *Person* means an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated ownership. The word *person* also means a municipality or state agency.

(8) *Plat* means a map, drawing or chart upon which the subdivider presents proposals for the physical development of a subdivision, and which he or she submits for approval and intends to record in final form.

(9) *Reservation* means a legal obligation to keep property free from development for a stated period of time, not involving any transfer of property rights.

(10) *Rights-of-way* means the width between property lines of a street.

(11) *Street* means a way for vehicular traffic, further classified and defined as follows:

a. Arterial streets are those which permit the relatively rapid and unimpeded movement of large volumes of traffic from one (1) part of the community to another.

b. Collector streets are those which collect traffic from local streets and carry it to arterial streets or to local traffic generators such as neighborhood shopping centers and schools. Collector streets include the principal entrance streets to a residential development, those streets linking such adjacent developments, and those streets providing circulation within such developments.

c. Local streets are those used primarily for direct access to properties abutting the right-of-way. Local streets carry traffic having an origin or destination within the development and do not carry through traffic.

(12) *Subdivider* or *developer* means any person, individual, firm, partnership, association, corporation, estate, trust or any other group or combination acting as a unit, dividing or proposing to divide land so as to constitute a subdivision as herein defined, including any agent of the subdivider.

(13) *Subdivision* means:

a. The division of a parcel of land into two (2) or more parcels, sites or lots for the purpose, whether immediate or future, of transfer of ownership or building development, provided that the division of land into parcels of more than five (5) acres which does not involve the creation of any new streets or easements of access shall be exempted; or

b. The improvement of one (1) or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners,

occupants or lease holders or as easements for the extension and maintenance of public sewerage, water, storm drainage or other public utilities or facilities. (Prior code Appx. C, § X)

Secs. 17-3—17-10. Reserved.

ARTICLE II

Applicability of Regulations

Sec. 17-11. Control.

These regulations shall be held to be minimum requirements and shall apply to those subdivisions of land where streets are constructed to give access to newly created lots. Any and all such subdivisions shall be submitted in the form of plats or plans to the Planning Commission and the Board of Trustees for their approval or disapproval. The dedication to public use of any street, utility system or site shall also be governed by these regulations. No final plat on a subdivision shall be approved and accepted by the Board of Trustees unless it conforms to this Chapter. (Prior code Appx. C, § II[1])

Sec. 17-12. Jurisdiction.

The territory within which these regulations are applicable shall include all land located within the legal boundaries, and all land located within three (3) miles of the corporate limits and not located in any other municipality for purposes of control with reference to the plan for major streets only. (Prior code Appx. C, § II[2])

Sec. 17-13. Fees.

(a) There shall be required a fee for each plat submitted for approval. The following fees shall be paid at the time of submission of such plats to the Planning Commission:

(1) Preliminary plat and final plat: engineer's study of preliminary and final plats, five hundred dollars ($500.00).

(2) All plats an additional twenty-five dollars ($25.00) for each filing.

(3) Recording fee required by the County Clerk and Recorder.

(b) The subdivider shall pay all fees as specified prior to approval of the final plat by the Planning Commission. (Prior code Appx. C, § II[3]; Ord. 463, § 1, 1991; Ord. 491, 1994)

Sec. 17-14. Interpretation.

On the interpretation and application of the provisions of this Chapter, the following shall govern:

(1) The provision herein contained shall be regarded as minimum requirements for the protection of the public health, safety and welfare.

(2) Whenever a provision of this Chapter and any provision in any other law of the Town cover the same subject matter, whichever is the most restrictive or imposes the higher standard or requirement shall govern. (Prior code Appx. C, § XI[2])

Secs. 17-15—17-30. Reserved.

ARTICLE III

Variances and Modifications

Sec. 17-31. Procedure.

Applications for variances or modifications of these regulations shall be submitted to the Planning Commission. Such application shall include a statement setting forth the nature and extent of the requested variance or modification, together with evidence supporting the need for such variance. (Prior code Appx. C, § IX[1])

Sec. 17-32. Criteria for grant of variances or modifications.

Hardship: Where the Planning and Zoning Commission and the Board of Trustees find that extraordinary hardships may result from strict compliance with these regulations, they may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variance is based on a finding that unusual topography or other exceptional conditions not caused by the subdivider make such variance necessary; and that the granting thereof will not have the effect of nullifying the intent and purpose of these regulations. (Prior code Appx. C, Sec IX[2])

Sec. 17-33 Conditions.

In granting variances and modifications, the Planning and Zoning Commission and the Board of Trustees may require such conditions as will, in their judgment, secure substantially the objectives of the requirements and standards so varied or modified. (Prior code Appx. C, § IX[3])

Secs. 17-34—17-50. Reserved.

ARTICLE IV

Dedication and Reservation of Land

Sec. 17-51. Dedication.

(a) Dedication of land, free of all liens and encumbrances, for park and recreation areas shall be required in each new subdivision or other designation. The subdivider shall allocate and convey no less than ten percent (10%) of the gross land area, exclusive of streets, alleys and utility easements, of the proposed subdivision for such public purposes. Specific sites to be dedicated for parks shall be subject to approval by the Planning and Zoning Commission and Board of Trustees upon consultation with appropriate public agencies having jurisdiction.

(b) In addition to such conveyance of land as set forth under Subsection (a) above, a park fee of five hundred dollars ($500.00) per lot shall be collected at the time the building permit is issued from the party obtaining said building permit. Such five-hundred-dollar fee shall be deposited in a special fund to be accounted for separately and used only for improvements to parks and not for land acquisition. (Prior code Appx. C, § VII[1]; Ord. 492, 1994; Ord. 691 § 1, 2002)

Sec. 17-52. Reservation.

(a) Reservation by covenant, in lieu of dedication, may be permitted in some cases such as a Planned Unit Development where land is to be used for recreational or amenity purposes by the property owners.

(b) Reservation of land within a subdivision may be required for the duration of the preliminary plat approval in order to afford the appropriate public agency the opportunity to coordinate its acquisition of public land with the development of the subdivision. An agreement shall be entered into between the subdivider and the public agency regarding the timing and method of acquisition. (Prior code Appx. C, § VII[2])

Sec. 17-53. School site dedication.

Dedication of land or payments in lieu thereof for school purposes shall be required for each new subdivision or residential land development within the Town. The subdivider or developer shall be required to allocate land or make payments in lieu thereof for the appropriate value in accordance with an agreement entered into between Weld County School District RE-5J and the Town, such payment to be pursuant to the current methodology as indicated in such intergovernmental agreement. (Ord. 98-589 §1)

Secs. 17-54—17-60. Reserved.

ARTICLE V

Subdivision Procedure

Sec. 17-61. Pre-application procedure.

(a) Prior to the filing of application for approval of a Preliminary Plat, the subdivider shall submit to the Planning and Zoning Commission an Outline Development Plan as specified in Section 17-81. This procedure shall not require formal application, fee or filing of plat with the Planning and Zoning Commission.

(b) The Planning and Zoning Commission shall review the Outline Development Plan to determine its general acceptability and compliance with the objectives and standards of these regulations, and shall hold conference with the subdivider to discuss desirable modifications of the plan. (Prior code Appx. C, § III[1])

Sec. 17-62. Conditional approval of Preliminary Plat.

(a) Upon formal application, the subdivider shall submit to the Planning and Zoning Commission ten (10) copies of a Preliminary Plat, together with supplementary material as specified in Section 17-

82. The Preliminary Plat shall be submitted together with written application for conditional approval at least twenty (20) days prior to the Planning and Zoning Commission meeting at which it is to be considered. Notice of the hearing before the Planning and Zoning Commission shall be posted on the property and published in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing before the Planning and Zoning Commission.

(b) Upon receipt of the Preliminary Plat, the Planning and Zoning Commission shall transmit copies to public agencies having jurisdiction and utility companies, who shall examine the plan and report their recommendations thereon to the Planning and Zoning Commission.

(c) The Planning and Zoning Commission shall review the Preliminary Plat for compliance with these regulations and negotiate with the subdivider on the type and extent of improvements to be installed and on modifications deemed advisable.

(d) Within thirty (30) days following submittal, the Planning and Zoning Commission shall inform the subdivider of its approval or disapproval, stating the conditions of approval, if any, or if disapproved, stating the reasons therefor. The Planning and Zoning Commission shall then forward to the Board of Trustees, for final approval, its recommendations. Any conditions must be met before submittal of a final plat.

(e) Conditional approval of the Preliminary Plat shall be deemed a tentative expression or approval of the general layout as submitted or modified, pending approval of the Final Plat. The Planning and Zoning Commission shall then forward its recommendations to the Board of Trustees to be considered at a public hearing, and prior to the hearing before the Board of Trustees there shall be given notice by posting on the property and publication in a newspaper of general circulation within the Town at least ten (10) days prior to the hearing. (Prior code Appx. C, § III[2]; Ord. 569 §1, 1997; Ord. 99-598 §1)

Sec. 17-63. Approval of Final Plat.

(a) A Final Plat, containing the information specified in Section 17-83, shall be submitted to the Planning and Zoning Commission within twelve (12) months after approval of the Preliminary Plat; otherwise such approval shall become null and void unless an extension of time is applied for and granted by the Planning and Zoning Commission. Notice of the hearing before the Planning and Zoning Commission shall be posted on the property and published in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing before the Planning and Zoning Commission.

(b) The Final Plat as submitted shall conform substantially with the Preliminary Plat as approved, and may constitute only that portion of the approved Preliminary Plat which the subdivider proposes to record and develop at the time. In the case of partial submission, the approval of the remaining portion of the preliminary plat shall automatically gain an extension of twelve (12) months before another phase of the plat must be submitted in final form.

(c) Following review, the Planning and Zoning Commission shall act to approve or disapprove the Final Plat, and send its recommendations to the Board of Trustees for its approval or disapproval of the Final Plat. If the Plat is disapproved, the reasons therefor shall be stated in writing and a copy furnished to the subdivider. Prior to such hearing of the Board of Trustees, notice of such hearing

shall be posted on the property and published in a newspaper of general circulation within the Town at least ten (10) days prior to the hearing. Only upon approval and recording of the Final Plat, with the County Clerk and Recorder, shall the Town issue building permits for structures within the subdivision. (Prior code Appx. C, § III[3]; Ord. 99-598 §2)

Sec. 17-64. Resubdivision procedures.

(a) Resubdivision of land or changes to a recorded plat shall be considered a subdivision, and it shall comply with these regulations, with the following exceptions. Lot lines may be revised from those shown on the recorded plat, provided that in making such changes:

(1) No lot or parcel of land shall be created or sold that is less than the minimum requirements for area or dimension as established by these regulations, the zoning ordinance or other applicable regulations or ordinances;

(2) Drainage easements or rights-of-way reserved for drainage shall not be changed, unless supported by complete engineering data;

(3) Street locations and street rights-of-way shall not be changed; and

(4) The plat shall not be altered in any way which will adversely affect the character of the plat filed.

(5) For a lot line adjustment meeting the foregoing requirements, an administrative review by the Town Planner without a formal hearing shall be sufficient. A revised plat with signatures of both the Town Planner and the Mayor shall be filed and recorded with the records of the County Clerk and Recorder.

(b) A copy of all final plat revisions shall be resubmitted to the Planning and Zoning Commission and the Board of Trustees for their review.

(c) Where the resubdivision complies with the appropriate requirements of these regulations, a plat indicating the resubdivision shall be submitted to the Planning and Zoning Commission and the Board of Trustees for their endorsements, prior to the filing of such plat with the County Clerk and Recorder. Such plats shall specifically indicate the revisions being made compared to the previously recorded plat. (Ord. 567 §1, 1997; Ord. 99-610 §1)

Secs. 17-65—17-80. Reserved.

ARTICLE VI

Plats and Data

Sec. 17-81. Outline Development Plan and data.

The Outline Development Plan and data shall contain the following information presented in generalized and schematic form:

(1) Location map: The location map shall be prepared on a published sheet map or zoning map and shall indicate clearly the relationship of the proposed subdivision to the surrounding area within one-quarter (¼) mile of the subdivision's boundaries. The map shall show existing development including major streets, existing public sewers, public water supply and storm drainage systems; major land use concentration; principal places of employment; community facilities such as schools and parks; zoning on and adjacent to the tract; school districts, taxing districts and other special districts, if any. The location map shall include a title, scale, total acreage of the tract, north arrow and date. Scale not less than 1" = 600 feet.

(2) Sketch plan: The sketch plan may be a free-hand drawing at suitable scale not less than 1" = 200 feet, in a legible medium, and shall clearly show the following: the proposed layout of streets and lots in relation to topographic conditions and natural landscape features on the site; the proposed location and extent of major open spaces and public sites; general locations of utilities, easements and installations; proposed land uses; and indication of building types, with approximate location of major buildings exclusive of single-family residential dwellings.

(3) General development information: This information shall describe or outline the existing conditions of the site and the proposed development as necessary to supplement the drawings required in Subsections (1) and (2) above, and shall include information on existing covenants, land characteristics and information describing the development proposal, such as number of residential lots or dwelling units, typical lot width and depth, price ranges of lots and dwelling units, proposed protective covenants, proposed utilities and street improvements. (Prior code Appx. C, § IV[1])

Sec. 17-82. Preliminary Plat and data.

(a) The Preliminary Plat may be drawn with scaled dimensions and need not be an engineering drawing with calculations or dimensions and survey closures. The Preliminary Plat shall be prepared at a scale of not less than 1" = 100'; shall show all existing conditions required in Section 17-81, and shall contain all information including but not limited to that required below:

(1) Outer boundary lines of the tract.

(2) Location and dimensions of all existing streets, alleys, utility easements, drainage areas, irrigation ditches and laterals and all other significant features.

(3) Proposed streets on and adjacent to the tract; name, right-of-way width and location; type, width and elevation of surfacing; curbs, gutters, sidewalks and culverts.

(4) Lot lines, lot numbers and block numbers.

(5) Location, dimensions and purpose of all other proposed easements and rights-of-way to be reserved or dedicated for public use, such as schools, parks, playgrounds, etc.

(6) Location and acreage of sites, if any, for multi-family dwellings, shopping centers, community facilities, industry or other use exclusive of single-family dwellings.

(7) Site data, including number of residential lots and typical lot size.

(8) Name of proposed subdivision; names and addresses of owners, subdividers, designers and engineers; date; scale; north arrow; and legal description of tract.

(b) A drainage plan shall be submitted along with the Preliminary Plat and shall show all information including but not limited to that required below:

(1) A topographic map of ground elections on the tract based on the United States Geological Survey datum plane or an approved datum plane by the Planning Commission showing contours at two (2) foot intervals.

(2) A map showing the method of moving storm runoff water through the subdivision. The map should show runoff concentrations in acres of drainage area on each street entering each intersection. (This may be combined with the topographic map.) Flow arrows should clearly show the complete runoff flow pattern at each intersection. For storm drainage facilities not on or adjacent to the tract, indicate the direction and distance to, size and invert elevation or nearest extensions of such utilities.

(c) A utilities plan shall be submitted showing:

(1) Location and size of existing utilities within and adjacent to the subdivision, including water, sewer, electricity, gas and telephone.

(2) Proposed utility system including water mains, fire hydrants, sewers, other utility mains (electricity, gas, telephone) and any other services that shall supply the subdivision. All utilities must be constructed within approved easements.

(3) Utility clearance record showing approval by utility companies that service can be supplied (form supplied by Town).

(d) Supplemental data shall be submitted as follows:

(1) Subsurface conditions on the tract; location and results of tests made to ascertain subsurface soil, rock and ground water conditions.

(2) Draft of proposed covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development.

(3) Such additional information as may be required by the Planning Commission in order to determine that the subdivision can be constructed without an adverse effect on the surrounding area, and by reason of its location or design, will not cast an undue burden on public utilities and community facilities.

(4) Application for rezoning if required for the development of the subdivision. (Prior code Appx. C, § IV[2])

Sec. 17-83. Final Plat and data.

(a) Final Plat: The Final Plat shall be an engineering drawing prepared to normal engineering tolerances of accuracy with calculated rather than scale dimension. The exterior lines of the Final

Plat shall join or close. The Plat shall be drawn in permanent ink on reproducible linen or mylar with outer dimensions of twenty-four (24) inches by thirty-six (36) inches and shall be at a scale of 1" = 100'. The Final Plat may constitute the entire approved Preliminary Plat or any logical portion of the approved Preliminary Plat proposed for immediate recording. The Final Plat shall conform to the approved Preliminary Plat and shall include all changes and additions as required by the Planning Commission and shall show the following:

(1) Primary control point, description and "ties" to such control points to which all dimensions, angles, bearings and similar data on the plat shall be referred.

(2) Tract boundary lines; right-of-way lines of streets, easements and other rights-of-way; property lines of residential lots and other sites; with accurate dimensions, bearings or deflection angles and radii, arcs and central angles of all curves. All dimensions, both linear and angular, shall be determined by an accurate control survey in the field which must balance and close within a limit of one (1) in ten thousand (10,000). No final plat showing plus or minus dimensions will be approved.

(3) Total acreage and surveyed legal description of the subdivision.

(4) Name and right-of-way width of each street or other right-of-way.

(5) Location, dimensions and purpose of any easements.

(6) Numbers to identify each block, lot and/or site.

(7) Purpose for which sites, other than residential lots, are dedicated or reserved.

(8) Location and description of all monuments, both found and set.

(9) Names of record owners of adjoining unplatted land.

(10) Reference to recorded subdivision plats of adjoining platted land by record name, date and number.

(11) Signature and seal of land surveyor registered in the State certifying to the accuracy of the survey and plat, including a statement explaining how bearings, if used, were determined.

(12) Signature block for certification of approval by the Planning Commission and Board of Trustees, with signatures by the Chairman of the Planning Commission and the Mayor.

(13) Certification of title showing that the applicant is the land owner.

(14) Statement by the subdivider dedicating streets, rights-of-way, easements and public sites.

(15) Title under which the subdivision is to be recorded, scale, north arrow and date.

(b) Other documents required at the time of submission of the Final Plat shall be:

(1) Complete engineering plans and specifications for all public facilities to be installed, including water and sewer utilities, streets and related improvements, bridges and storm drainage.

(2) Agreements made with ditch companies when needed.

(3) Clearance record showing approval by the Health Department and utility companies (form supplied by Town).

(4) A financial statement, a copy of which shall be available for public inspection at Town Hall and shall include:

a. Name and address of each person having an interest in the subdivision or development and the extent of such interest.

b. A statement of the condition of the title to the land comprising the subdivision or development, including all encumbrances, deed restrictions and covenants applicable thereto.

c. A statement of the general terms and conditions including the range of selling prices or nets at which it is proposed to dispose of lots, dwellings or structures.

d. In the case of a subdivision development or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrances and the steps, if any, taken to protect the purchase in such eventuality.

e. Copies of all forms of conveyance to be used in selling or leasing lots, dwellings or structures.

f. Such certified and uncertified financial statements of the developer as the Planning Commission and Board of Trustees may require and such other information, documents and certifications as the Commission and Board of Trustees may require as being reasonably necessary or appropriate for the protection of consumers.

(5) A performance bond drawn and posted in favor of the Town, which bond shall be of sufficient amount to assure completion of all required improvements.

(6) Protective covenants in form for recording.

(7) Such other certificates, affidavits, endorsements or deductions as may be required by the Planning Commission or Board of Trustees in the enforcement of these regulations. (Prior code Appx. C, § IV[3])

Secs. 17-84—17-100. Reserved.

ARTICLE VII

Design Standards

Sec. 17-101. General site considerations.

(a) A proposed subdivision shall be in general compliance with respect to adequate dedication and/or reservation of major street rights-of-way, major utility easements and open spaces for schools and recreation areas.

(b) A proposed subdivision shall not, by reason of its location or design, cast an undue burden on public utility systems and community facilities on or adjacent to the tract. Where extension and enlargement of public utility systems and community facilities is necessary, the subdivider shall make provision to off-set higher net public cost or earlier incursion of public cost necessitated by the subdivision. Due consideration shall be given to the difference between anticipated public costs of installation, operation and maintenance and anticipated public revenue derived from the fully developed subdivision in determining added net public cost.

(c) No land shall be subdivided in areas where soil, subsoil or flooding conditions are a potential danger to health and safety.

(d) Drainage areas wherever possible shall be left in a natural state, and no encroachment shall be made on the natural channel. Multiple use of drainage and park facilities as, for example, through use of retention ponds is encouraged. A plan to prevent water pollution shall be submitted and adhere to wherever any modification of topography is required during construction within one hundred (100) feet of any stream, ditch or drainage channel.

(e) Provision shall be made to preserve groves of trees, streams, unusually attractive topography and other desirable natural landscape features. Provision shall be made for the perpetual maintenance of such features through private covenants or other means acceptable to the Planning Commission and Board of Trustees.

(f) A proposed subdivision shall be designed in such manner as to be coordinated with adjoining subdivisions with respect to the alignment of street rights-of-way and utility and drainage easements and open spaces.

(g) Where a subdivision borders a railroad right-of-way, freeway or arterial street, a landscaped buffer area shall be provided for adequate reduction of noise. (Prior code Appx. C, § V[1])

Sec. 17-102. Streets.

(a) Arrangement of streets:

(1) The arrangement, extent, width, type and location of all streets shall be designed in relation to existing or planned streets, to topographic conditions, to public convenience and safety, and to the proposed use of land to be served.

(2) Local streets shall be arranged so that their use by through traffic will be discouraged.

(3) Arterial streets shall not be intersected by local streets. Collector streets shall not intersect arterial streets at intervals of less than one thousand three hundred twenty (1,320) feet.

(4) Streets shall be extended to the boundaries of the property, except where such extension is prevented by topography or other physical conditions, or where the connection of streets with exiting or probable future streets is deemed unnecessary for the advantageous development of adjacent properties.

(5) Where future extension of a street is anticipated, a temporary turn-around having a minimum outside diameter of eighty (80) feet shall be provided.

(b) Closed-end streets:

(1) The maximum allowable length of closed-end streets in single-family residential and multi-family residential developments shall be six hundred (600) feet.

(2) Closed-end streets shall be provided with circular turnarounds having a minimum outside right-of-way diameter of one hundred twenty (120) feet, and a minimum pavement diameter of ninety (90) feet.

(c) Intersection. Streets shall intersect at right angles.

(d) Half streets. The dedication of a half street shall not be accepted unless:

(1) The subdivider obtains for the Town a dedication from the abutting landowner of the other one-half (½) of the street; and

(2) The subdivider obtains from the abutting landowner an agreement in a form satisfactory to the Town which guarantees the cost of the improvements and construction of the same on the half street within a time suitable to the Town; and

(3) The subdivider guarantees the construction of the improvements on the half street which he or she is dedicating.

(e) Perimeter streets. When the plan dedicates a street which ends on the plat or is on the perimeter of the plat, the subdivider shall convey the last foot of the streets on the terminal end or outside border of the plat to the Town in fee simple and such shall be designated as outlets; the Town shall put the same to public use for public road and access purposes when, within its sole and absolute discretion, it deems advisable.

(f) Right-of-way, pavement and sidewalk widths shall be as follows:

Minimum widths in feet, by street type:

Type	Right-of-way	Pavement	Sidewalk
Arterial	100	48 (divided)	5
Collector	80	40*	5
Local	60	36*	4
Alley	20	15	--

* Measured from flow line of gutter to flow line of gutter.

(g) Horizontal alignment:

(1) Where street centerlines deflect from each other at any point by more than fifteen degrees (15º), they shall be connected by horizontal curves having minimum radii as follows:

Local streets	100 feet
Collector streets	200 feet
Arterial streets	400 feet

(2) A tangent not less than one hundred (100) feet long shall be provided between reverse curves on collector and arterial streets.

(3) Cross streets which cannot be directly aligned at intersections shall be separated by a horizontal offset of not less than one hundred twenty-five (125) feet between centerlines, provided that this requirement shall not apply to the alignment of short, opposing closed-end streets.

(h) Vertical alignment:

(1) No vertical grade shall be less than two-tenths percent (0.2%) in order to facilitate adequate drainage.

(2) Maximum percent of street grade, except as provided below*:

Local streets	8%
Collector streets	7%
Arterial streets	5%

* Where a horizontal curve occurs on a grade of over five percent (5%), the maximum allowable percent of grade on the curve shall be reduced by five-tenths percent (0.5%) of each fifty (50) feet that the curve radius is less than four hundred (400) feet.

* Streets grades shall not exceed four percent (4.0%) for a distance extending at least forty (40) feet in each direction from a street intersection.

(i) Street names. Names of new streets shall not duplicate names of existing streets, provided that new streets which are extensions of, or which are in alignment with, existing streets shall bear the names of such streets. (Prior code Appx. C, § V[2])

Sec. 17-103. Utility easements.

(a) Where necessary for installation and maintenance of utility systems, easements of at least ten (10) feet in width shall be reserved along rear lot lines, or at other locations which will not interfere with the siting of buildings.

(b) Where a subdivision is traversed by a water course, drainage way or stream, there shall be provided a perpetual drainage easement conforming substantially with the lines of such water course, and of such width as necessary and adequate to carry off the predictable volume of storm water drainage from a twenty-five (25) year frequency storm.

(c) In general, utility systems shall be arranged and located in such manner as to avoid cross connections, minimize trenching and adequately separate incompatible systems. (Prior code Appx. C, § V[3])

Sec. 17-104. Blocks.

(a) Lot size, width, depth, shape, orientation and minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated, and shall facilitate the placement of buildings with sufficient access, outdoor space, privacy and view.

(b) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for off-street parking, landscaping and loading areas required by the type of use and development contemplated.

(c) Corner lots for residential use shall have extra width to accommodate the required building setback line on both street frontages.

(d) Each lot shall be provided with satisfactory access to an existing public street.

(e) Double frontage and reverse frontage lots shall not be permitted except where essential to provide separation of residential properties from arterial streets or commercial uses, or to overcome specific disadvantages of topography and orientation.

(f) A planting screen easement, across which there shall be no right of access, shall be provided along the property line of lots abutting an arterial street. A statement dissolving right of access from individual lots to the arterial street shall be included with the Final Plat.

(g) Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets. (Prior code Appx. C, § V[4])

Secs. 17-105—17-110. Reserved.

ARTICLE VIII

Required Improvements

Sec. 17-111. General regulations.

(a) The subdivider or developer shall enter into an agreement with the Town to guarantee construction of all required improvements, including streets, curbs and gutters, driveways, sidewalks, storm drainage system, sanitary sewerage, potable water system, street lights and street trees.

(b) Under such agreement, the subdivider shall post a performance bond or certified check, which bond or check shall be drawn in favor of the Town in an amount equal to the estimated cost of construction of improvements.

(c) The performance bond or certified check posted by the subdivider or developer shall not be released until final construction of improvements has been completed, inspected at the subdivider's expense, and approved and accepted by the Town.

(d) The improvements required by the following subsections shall be provided in each subdivision or development proposed, and to the extent determined by the Planning Commission and

Board of Trustees. Required improvements shall be designed in accordance with the detailed design standards and specifications deemed necessary by the Town, and shall be constructed in accordance with the approved plans and profiles and the construction requirements and specifications.

(e) No improvements shall be made until all plans, profiles and specifications have been reviewed and approved by the Town. (Prior code Appx. C, § VI[1])

Sec. 17-112. Street improvements.

(a) Grading: Street right-of-way shall be graded as necessary to provide adequate surface drainage and convenient access to lots or sites.

(b) Pavement base: The pavement base shall be properly drained and constructed of suitable materials so as to support the contemplated traffic load.

(c) Pavement: Pavement shall be constructed of asphalt or concrete of sufficient thickness to support the contemplated traffic load. Streets shall be paved to the widths required under Section 17-102(f).

(d) Alleys: If alleys are provided, they shall be paved.

(e) Curbs and gutters: All streets shall be provided with concrete curbs and gutters for the pavement edging. Such curbs and gutters shall be designed as an integral part of the pavement.

(f) Driveways and accessways: Where appropriate to the type of development proposed, driveways or accessways shall be provided for vehicular access to each structure or parking or loading area. Driveways and accessways provided shall be of adequate width constructed with suitable subgrade, base, drainage and surfacing to be durable under the use contemplated.

(g) Sidewalks and walkways: Sidewalks and walkways shall be provided where necessary or appropriate for the safety and convenience of pedestrians. Width of sidewalks shall be as specified in Section 17-102(f). Sidewalks and walkways shall be durably constructed with all-weather surfacing and shall be adequately lighted and maintained for the use contemplated.

(h) Street name signs: Easily legible street name signs shall be installed at street intersections or as necessary for convenient identification of streets. (Prior code Appx. C, § VI[2])

Sec. 17-113. Public improvements required.

(a) Sanitary sewerage system. The sanitary sewerage system shall be connected to an existing public sanitary sewer system and shall consist of a closed system of sanitary sewer mains and lateral branch connections to each structure or lot upon which a structure is to be built. The sanitary sewerage system shall be of sufficient size and design to collect all sewage from all proposed or probable structures within the subdivision or development.

(b) Potable water system. The potable water system provided shall connect to an existing public water system and shall consist of water mains directly connected to using structures by means of lateral branches. The water system shall be of sufficient size and design to supply potable water to each structure or lot upon which a structure is to be built.

(c) Fire hydrants. Fire hydrants shall be installed at street intersections and at other points as necessary to assure that no building is located more than five hundred (500) feet from the nearest fire hydrants.

(d) Underground electric power and telephone distribution systems:

(1) Electric power and telephone connections and wire shall be placed below the surface of the ground in raceways and conduits or other acceptable means. Transformers, switching bases, terminal boxes, meters cabinets, pedestal ducts and other facilities necessarily appurtenant to such underground connections shall not be located on power poles, but shall be placed on or under the surface of the ground and, where placed on the surface, shall be adequately screened and fenced as necessary for safety and concealment.

(2) Electrical transmission and distribution feeder lines and communication trunk and feeder lines may be placed above ground.

(e) Street lights. Ornamental street lighting and associated underground street lighting supply circuits shall be installed. The minimum requirement shall be seven thousand (7,000) lumen lamps at a maximum spacing of four hundred (400) feet. The street lighting plan specifying the number, kind and approximate location of street lights must be included on the Final Plat.

(f) Street trees. One (1) tree of one-and-one-half-inch caliper shall be provided for each lot of seventy-foot frontage or less and at least two (2) trees for every lot in excess of seventy-foot frontage. For corner lots, at least one (1) tree shall be required for each street. The trees shall be located so as not to interfere with sight distance at driveways. The Planning and Zoning Commission shall furnish a list of acceptable trees. Street trees shall be installed in conjunction with the issuance of a building permit and prior issuance of a certificate of occupancy, or a certificate from a local nursery must be provided the homeowner with a copy to the Building Inspector.

(g) Reference monuments. Permanent reference monuments of stone or concrete, at least thirty-six (36) inches in length and six (6) inches square or round with suitable center point, shall be located and placed within the subdivision or development as required by the Town Council. Iron pin monuments at least twenty-four (24) inches long and flush with the surface shall be placed at all points on boundary lines where there is a change in direction, at all block and lot corners, and at other points as required by the Town Council.

(h) Maintenance of required improvements. Adequate provisions for the satisfactory maintenance of streets and utilities improvements, including easements, shall be made by dedication of such improvements to the Town. Prior to acceptance by the Town, the improvements to be dedicated shall be inspected and approved by the Town Council or its authorized representatives. (Prior code Appx. C, § VI[3]; Ord. 505, 1995; Ord. 506, 1995; Ord. 552 §1, 1996; Ord. 99-614 §1; Ord. 689, 2002; Ord. 2005-739 §1)

Secs. 17-114—17-130. Reserved.

ARTICLE IX

Planned Unit Development

Sec. 17-131. Intent.

Planned Unit Development is provided in order to minimize the environmental impact of urban development, to enable the subdivider to make more efficient use of the site by minimizing grading and reducing the amount of land needed for streets and utilities, and to provide the consumer a wider choice of housing types and amenities. (Prior code Appx. C, § VIII[1])

Sec. 17-132. Procedure.

The procedure for preparing, processing and presenting a Planned Unit Development shall be the same as that specified for all subdivision of land in this Chapter except that there shall be no partial submission of a Final Plat. The Zoning procedures and requirements of Article XVII of Chapter 16 must be met. (Prior code Appx. C, § VIII[2])

Sec. 17-133. Requirements.

The Planned Unit Development is intended to allow originality in the planning of a community development by relaxing the minimum and maximum requirements set forth in this Chapter. It will be expected that development under the Planned Unit Development will provide for maintained open spaces and recreational areas, safety features for pedestrian and vehicular traffic, elimination of unsightly uniformity and conservation of natural features.

(1) The following requirements as set forth in Chapter 16 can be modified as established by the Planned Unit Development plan, subject to the approval by the Planning Commission and Board of Trustees:

a. Minimum lot area;

b. Minimum lot width;

c. Minimum setback; and

d. Minimum offset.

(2) The following additional requirements are established for Planned Unit Development:

a. Maximum building height not to exceed thirty-five (35) feet.

b. Maximum density of residential units shall be twelve (12) units per acre or less if the Planning Commission so requires. A requirement of a density less than twelve (12) units per acre must be based on the proposed land use plan.

c. Minimum common open space shall be thirty percent (30%) of the gross acreage of the site.

d. Unified ownership of site.

e. Where uses other than residential are proposed:

1. Architectural elevations at a scale of not less 1/8" = 1' for all nonresidential structures.

2. Size, type and location of all signs, other than street signs.

f. Covenants specifying how common areas are to be maintained. (Prior code Appx. C, § VIII[3])

Secs. 17-134—17-150. Reserved.

ARTICLE X

Local Improvement Districts

Sec. 17-151. Authority to establish.

The Board of Trustees shall have the authority to establish improvement districts in the Town for the purpose of constructing or installing therein any public improvements, including parking and off-street parking facilities but excepting light or gas systems or plants. (Prior code 15-1)

Sec. 17-152. Petition required.

(a) The organization of a district under this Chapter must be initiated by petition which is to be filed with the Town Clerk. The petition must be signed by no less than a majority of the taxpaying electors owning real or personal property in the proposed district having an assessed value of not less than one-half (½) of the value of all real and personal property in the district. In addition to the required signature, there must be:

(1) Address of the residence of the signer.

(2) Address or property description of the property within the proposed district if it is different than the residence of the signer.

(3) Date of signing.

(b) After the filing of a petition, no petitioner shall be permitted to withdraw his or her name therefrom. (Prior code 15-2)

Sec. 17-153. Contents of petition.

The petition required by Section 17-152 must contain:

(1) The name of the proposed district, which shall include the name of the Town, a descriptive name or number and the words *general improvement district.*

(2) A general description of the improvement to be constructed.

(3) The estimated cost of the proposed improvement.

(4) A general description of the boundaries of the district, with sufficient specificity that the property owners will be able to determine if they are located within the district.

(5) The names of three (3) taxpaying electors who will represent the petitioners and who will have the power to enter into agreements relating to the organization of the district.

(6) A prayer for the organization of the district. (Prior code 15-3)

Sec. 17-154. Defects in and duplicates of petition.

Defects in the petition required by Section 17-152 will not be grounds for dismissal and the Board of Trustees shall allow any petition that is filed to be amended to correct such defects. If similar or duplicate petitions are filed, they shall be regarded as one (1) petition. (Prior code 15-4)

Sec. 17-155. Bond.

At the time of filing the petition required by Section 17-152 or at any time prior to the hearing on the petition, a bond shall be filed with security approved by the Board of Trustees or cash sufficient to pay all expenses connected with the proceedings in case the organization of the district is denied. If the Board of Trustees should determine that the bond is insufficient, an additional bond or cash may be required within a time to be fixed by the Board of Trustees, not less than ten (10) days distant. Upon failure of the petitioner to file or deposit the required bond or cash, the petition shall be dismissed. (Prior code 15-5)

Sec. 17-156. Hearing on petition.

After the filing of the petition as provided in this Chapter, the Board of Trustees shall fix a place and time, not less than twenty (20) days nor more than forty (40) days after the petition is filed, for a hearing thereon. (Prior code 15-6)

Sec. 17-157. Notice of petition.

(a) The Town Clerk shall publish notice of the pendency of the petition filed under the provisions of this Chapter, of the purposes and boundaries of the proposed district and of the time and place of the hearing thereon.

(b) Publication shall be once a week in three (3) consecutive weekly editions of a newspaper of general circulation within the proposed district.

(c) The Town Clerk shall also mail a copy of the notice to each taxpaying elector in the district at his or her last known address, as disclosed by the tax records of the County.

(d) The notice of hearing on the petition must set forth the fact that all property in the district is subject to the lien of the indebtedness and must set forth the amount of the proposed indebtedness. (Prior code 15-7)

Sec. 17-158. Board of Trustees determination of electors and assessments; dismissal of petition.

The Board of Trustees shall make a determination as to the number of taxpaying electors and the assessed valuation of the property in the district. The Board of Trustees shall dismiss the petition and assess the costs against the petition if it is found that:

(1) The petition is not signed by at least a majority of the taxpaying electors owning property within the district having an assessed value of not less than one-half (½) of the assessed value of all the real and personal property in the district.

(2) The proposed improvement will not confer a general benefit on the district.

(3) The cost of the improvement would be excessive as compared with the value of the property in the district. (Prior code 15-8)

Sec. 17-159. Approval of petition.

If it appears to the Board of Trustees that the petition for the organization of the district has been duly signed and presented in conformity with this Chapter and the statutes of the State, and that the allegations of the petition are true, the Board of Trustees, by ordinance, shall declare the district organized and give it the corporate name specified in the petition. (Prior code 15-9)

Sec. 17-160. Appeal of Board of Trustees finding.

The finding of the Board of Trustees on the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive on all parties in interest. No appeal, writ or error shall lie from an order the dismissing petition. (Prior code 15-10)

Sec. 17-161. Filing of ordinance establishing district.

Within thirty (30) days after the district has been declared duly organized, the Town Clerk shall file with the County Clerk and Recorder a copy of the ordinance establishing the district. (Prior code 15-11)

Sec. 17-162. Organization, powers and authority in compliance with state law.

The organization, powers and authority shall be in accordance with the provisions of Section 31-25-501, *et seq,* C.R.S. (Prior code 15-12)

Sec. 17-163. Election required on indebtedness.

Whenever the Board of Directors of any district formed in accordance with this Chapter and state statutes shall determine by ordinance that the interest of the district and the public interest and necessity demand the acquisition, construction, installation or completion of any improvements to carry out the purpose of the district, requires the creation of an indebtedness of twenty-five thousand dollars ($25,000.00) or more, the proposition for the issuance of such obligations, bonds or other indebtedness must be submitted to the taxpaying electors of the district at an election held for that purpose. (Prior code 15-13)

Sec. 17-164. Requirements for the ordinance creating indebtedness.

The ordinance creating the indebtedness provided for in Section 17-163 must contain:

(1) The declaration of public interest and necessity.

(2) Provisions for the holding of such election.

(3) The objects and purposes for which the indebtedness is proposed to be incurred.

(4) The estimated cost of the works or improvements.

(5) The amount of principal of the indebtedness to be incurred.

(6) The maximum rate of interest to be paid on such indebtedness.

(7) The date upon which the election shall be held and the manner for holding the election.

(8) The method for voting for or against the incurring of the proposed indebtedness.

(9) The compensation to be paid the officers of the election.

(10) Designation of the polling places and the officers for each, consisting of three (3) judges, one (1) of whom shall act as Town Clerk for each polling place. (Prior code 15-14)

Secs. 17-165—17-180. Reserved.

ARTICLE XI

Oil and Gas Exploration and Production

Sec. 17-181. Purpose.

These regulations are enacted to protect and promote the health, safety, morals, convenience, order, prosperity or general welfare of the present and future residents of the Town. It is the Town's intent by enacting these regulations to facilitate the mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that under Colorado law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners of oil and gas interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface oil and gas interests, subject to compliance with the provisions of these regulations and any other applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources and particularly in the prevention of waste and protection of the correlative rights of common source owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with these

regulations. Local governments have a recognized, traditional authority and responsibility to regulate land use within their Jurisdiction, including use for oil and gas drilling. These regulations are intended as exercise of this land use authority. Should it be established by competent evidence that a proposed oil or gas facility cannot be operated in compliance with these regulations, land use approval for such a facility may be denied. (Ord. 557, 1997)

Sec. 17-182. Definitions.

(a) Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

(1) *Act* shall mean the Oil and Gas Conservation Act of the State.

(2) *Commission* or *OGCC* shall mean the Oil and Gas Conservation Commission of the State.

(3) *Day* shall mean a period of twenty-four (24) consecutive hours.

(4) *Director* shall mean Director of the Oil and Gas Conservation Commission of the State.

(5) *Inspector* means any person designated by the Town Administrator, who shall have the authority to inspect a well site to determine compliance with this Article and other applicable ordinances of the Town.

(6) *Mineral owner* means any person having title or right of ownership in subsurface oil or leasehold interest therein.

(7) *Operating plan* means a general description of a facility identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

(8) *Operator* means the person designated by the owner or so lessee of the mineral rights as the operator andidentified in Oil and Gas Conservation Commission applications.

(9) *Surface owner* means any person having title or right of ownership in the surface estate of real property or leasehold interest therein.

(10) *Twinning* means the drilling of a well adjacent to or near an existing well bore when the said existing well cannot be drilled to the objective depth and/or produced due to an engineering problem such as collapsed casing or formation damage.

(11) *Well* means a hole drilled into the earth for the purpose of exploring for or extracting oil, gas or other hydrocarbon substances or for purposes of recharging, secondary recovery, storage or disposal.

(12) *Wellhead* means the mouth of the well at which oil or gas is produced.

(13) *Well site* means that area surrounding a proposed or existing well or wells, tank and tank batteries, and accessory structures and equipment necessary for the operation of drilling and production activities.

(b) All terms used herein that are defined in the Act or in Commission regulations and are not otherwise defined in Subsection (a) of this Section shall be defined as provided in the Act or in such regulations.

(c) All other words used herein shall be given their usual customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry. (Ord. 557, 1997)

Sec. 17-183. Well and tank batteries location and setbacks.

(a) In all areas of the Town except as provided for in Subsection (b) below, the following shall apply:

(1) A wellhead location shall not be established less than three hundred fifty (350) feet from any approved subdivision platted building lot, any occupied building, any proposed building for which a building permit has been issued where the primary use includes regular occupancy, or any building for which a certificate of occupancy has been issued.

(2) Production tanks and/or associated on-site production equipment proposed for installation shall be located not less than three hundred fifty (350) feet from any building or building permitted for construction.

(3) Wellheads, tank batteries and associated on-site production equipment shall be located not less than one hundred (100) feet from the edge of any public right-of-way. This requirement may be waived as part of the use by special review process at the request of the surface owner if such request is consistent with public safety.

(b) Where compliance with OGCC spacing rules, regulations or orders makes it impossible for the applicant to meet the setbacks stipulated in Subsection (a) of this Section, the applicant shall not be required to fully meet the above described setbacks to the maximum extent possible within the OGCC spacing regulations and may be required to implement special mitigation measures as described herein. (Ord. 557, 1997)

Sec. 17-184. Floodplain and floodway location restrictions.

The well and tank battery shall comply with all applicable federal, state and local laws and regulations when located in a floodway or a one-hundred-year floodplain area. All equipment at production sites located within a floodway or a one-hundred-year floodplain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by a berm with a top elevation at least one (1) foot above the level of a one-hundred-year flood. Any activity or equipment at any well site within a floodway or a one-hundred-year floodplain shall comply with the Federal Emergency Management Act and shall not endanger the eligibility of residents of the Town to obtain federal flood insurance. (Ord. 557, 1997)

Sec. 17-185. Disposal of drilling mud and exploration and production waste.

No drilling mud or other drilling fluids shall be disposed of at the drilling site. All exploration and production waste shall be disposed of in accordance with OGCC regulations. (Ord. 557, 1997)

Sec. 17-186. Seismic operations.

All persons shall comply with all OGCC rules with respect to seismic operations. In addition, the owner or operator shall provide at least fifteen (15) days' advance written notice to the Town Administrator and the Fire District whenever seismic activity will be conducted within the city. (Ord. 557, 1997)

Sec. 17-187. Signage.

The well and tank battery owner or operator shall comply with all OGCC rules with respect to signage. In addition, the owner or operator shall maintain in good, readable condition all signs required by such OGCC regulations. (Ord. 557, 1997)

Sec. 17-188. Access roads.

All private roads used to access the tank battery and the wellhead shall be improved and maintained according to the following standards:

(1) Tank battery access roads. Access roads to tank batteries shall, at a minimum, be:

a. A graded gravel roadway at least twenty (20) feet wide and with a minimum unobstructed overhead clearance of thirteen (13) feet six (6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Town. The aggregate material, at a minimum, shall meet the requirements for Class 6, Aggregate Base Course as specified in the Colorado Department of Highways *Standard Specifications for Road and Bridge Construction,* latest edition.

b. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage of waterways (i.e., roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval of the Town.

c. Maintained so as to provide a passable roadway generally free of ruts.

(2) No mud or gravel, except minor and nominal amounts, shall be carried onto the Town streets. If mud or gravel is carried onto the Town streets, the owner or operator shall insure that the streets are promptly cleaned.

(3) No public facilities such as curbs, gutters, pavement, water or sewer lines, etc., shall be damaged by vehicles entering or leaving the site. In the event of damage, the owner and operator, jointly and severally, shall indemnify the Town for any reasonable repair costs.

(4) All tank battery and wellhead access roads which intersect a paved Town street or alley shall be paved to standards determined by the Town from the existing paved roadway to the edge of the public right-of-way. (Ord. 557, 1997)

Sec. 17-189. Compliance with state environmental requirements.

Operators shall conform to all current Town, County, state and federal regulations and standards concerning air quality, water quality and noise. (Ord. 557, 1997)

Sec. 17-190. Noise regulation and special mitigation measures.

(a) State law and regulations concerning noise abatement (Title 25, Article 12, C.R.S.) shall apply to all operations together with applicable local government ordinances, rules or regulations.

(b) Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from a buildings certified or intended for occupancy to the extent practicable.

(c) Special mitigation measures.

(1) Where a well or tank battery does not comply with the required setback or other portions of the ordinance codified in this Article or where the well or tank battery is in an area of particular noise sensitivity (for example, near hospitals), additional noise mitigation may be required. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:

a. Nature and proximity of adjacent development (design, location, type).

b. Prevailing weather patterns, including wind directions.

c. Vegetative cover on or adjacent to the site.

d. Topography.

(2) Based upon the specific site characteristics set forth above, nature of the proposed activity, and its proximity to surrounding development and type and intensity of the noise emitted, some additional noise abatement measures may be required. The level of required mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and/or the level of noise emitted by the well and well site. One (1) or more of the following additional noise abatement measures may be required:

a. Acoustically insulated housing or cover enclosing the motor, engine or compressor.

b. Vegetative screen consisting of trees and shrubs.

c. Solid wall or fence of acoustically insulating material surrounding all or part of the facility.

d. Noise management plan identifying and limiting hours of maximum noise emissions, type, frequency, and level of noise to be emitted, and proposed mitigation measures.

e. Lowering the level of pumps or tank battery.

f. Requirement for electric motors only. (Ord. 557, 1997)

Sec. 17-191. Visual impact/aesthetics regulation and special impact measures.

(a) Visual impacts and aesthetics.

(1) To the maximum extent practicable, oil and gas facilities shall be located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings and other landmarks.

(2) To the maximum extent practicable, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.

(3) To the maximum extent practicable, the applicant shall use structures of minimal size to satisfy present and future functional requirements.

(4) At all times, the applicant shall attempt to avoid the removal of trees.

(5) To the maximum extent practicable, the applicant shall locate facilities at the base of slopes to provide a background of topography and/or natural cover.

(6) The applicant shall replace earth adjacent to water crossings at slopes at an angle, which insures stability for the soil type of the site.

(7) The applicant shall align access roads to follow existing grades and minimize cuts and fills.

(8) Facilities shall be painted as follows:

a. Uniform, noncontrasting, nonreflective color tones, similar to Munsell soil color coding system.

b. Color matched to land, not sky, slightly darker than adjacent landscape.

(9) Storage tanks and other facilities shall be kept clean and well painted and otherwise properly maintained.

(b) Special mitigation measures. Where a well or tank battery does not comply with the required setback or other portions of the ordinance codified in this Article, or in areas of increased visual sensitivity determined by the Town, the applicant shall submit a visual mitigation plan which shall include but not be limited to one (1) or more of the following standards:

(1) Exterior lighting shall be directed away from residential areas or shielded from said areas to eliminate glare.

(2) Construction of buildings or other enclosures may be required where facilities create noise and visual impacts nonmitigable because of proximity, density and/or intensity of adjacent residential land use.

(3) One (1) or more of the following landscaping practices may be required, on a site specific basis:

a. Establishment and proper maintenance of adequate ground covers, shrubs and trees.

b. Shaping cuts and fills to appear as natural forms.

c. Cutting rock areas to create irregular forms.

d. Designing the facility to utilize natural screens.

e. Construction of fences or walls such as woven wood or rock for use with or instead of landscaping.

(4) Safety measures. Any well located less than three hundred fifty (350) feet from an occupied building shall be equipped with blowout preventers during drilling. (Ord. 557, 1997)

Sec. 17-192. Wildlife impact mitigation.

(a) When one (1) or more wells or tank batteries are located within wildlife sensitive areas as identified by the Town's comprehensive plan, the applicant shall consult with the Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. Site and cumulative impact recommendations shall be submitted for review and comment by the Town, not to exceed the recommendations of the Division of Wildlife.

(b) Multiple sites. In lieu of a site specific mitigation review for each well and well site, the applicant may submit to the Town a multi-site plan addressing cumulative impacts to wildlife from the estimated total number of facilities. (Ord. 557, 1997)

Sec. 17-193. Recordation of flow lines.

All flow lines, including transmission and gathering systems, shall have their location recorded with the Weld County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow lines shall be recorded with the Weld County Clerk and Recorder within thirty (30) days after abandonment. (Ord. 557, 1997)

Sec. 17-194. Reclamation.

The operator shall comply with all Commission rules with respect to site reclamation. The OGCC Drill Site Reclamation Notice shall be filed with the Town at the same time it is sent to the surface owner. (Ord. 557, 1997)

Sec. 17-195. Abandonment and plugging of wells.

(a) The operator shall comply with all OGCC rules with respect to abandonment and plugging of wells.

(b) Operators of wells which are to be abandoned upon the completion of drilling and not be put into production shall notify the Fire District not less than two (2) hours prior to commencing plugging operations.

(c) Operators of formerly producing wells shall notify the Fire District not less than two (2) working days prior to removing production equipment or commencing plugging operations.

(d) The operator shall provide copies of all OGCC plugging and abandonment reports to the Town at the same time they are filed with the OGCC. (Ord. 557, 1997)

Sec. 17-196. Operations within one-half mile of development.

(a) Any proposed well or associated equipment, such as tank batteries, located within one-half (½) mile of existing buildings or existing or platted development, as measured from the nearest point of the plat boundary or existing building, shall comply with the following requirements:

(1) All tank batteries shall be restricted to one (1) site per each one hundred sixty (160) acres wherever practicable.

(2) All drilling rigs shall be equipped with blowout preventers.

(3) All production wells shall be equipped with automatic control valves on the wellhead which close in the well with a sudden change in pressure.

(4) All production wellheads and tank batteries shall be fenced with a fence sufficient for safety and aesthetics.

(5) At least fifteen (15) days prior to the first Planning and Zoning Commission meeting to consider a use by special review in any location described in paragraph (1) of this Section, the applicant shall notify by first class mail or hand delivery to all surface land owners within one-half (½) mile of the wellhead and tank battery and adjacent to the surface parcel in which the proposed well is to be located of the proposed well and the date, time and place of the first Planning and Zoning Commission meeting.

(6) Except for electrically operated drilling rigs or drilling rigs equipped with enhanced efficiency mufflers on any drilling or workover rig operating within one-half (½) mile of an occupied residential building, the bit and drilling pipe shall not be inserted into or removed from the hole for routine operations such as for bit change or logging, between the hours of 11:00 p.m. and 6:00 a.m. This requirement shall not apply in emergencies. This requirement may be waived by written permission of the occupants of all residential buildings within one-half (½) mile of the drilling site.

(7) Wellhead access roads to well-heads located within one-half (½) mile of existing buildings shall meet the construction standards of Section 17-188 of this Chapter.

(b) Exceptions to the provisions of this Section may granted by the Board of Trustees as part of its resolution granting the use by special review only if the owner or operator demonstrates by a preponderance of evidence that the waiver or variance is necessary to prevent waste or protect correlative rights and can provide equivalent mitigation measures for the standards waived. (Ord. 557, 1997)

Sec. 17-197. Building permit.

Building permits shall be obtained for all aboveground structures as required by the Town Uniform Building and Fire Codes then in effect. (Ord. 557, 1997)

Sec. 17-198. Requirements and procedures.

(a) Proposed new wells, redrilling and enhanced recovery operations. Within all zone districts, it shall be unlawful for any person to drill a well, reactivate a plugged or abandoned well or perform initial installation of accessory equipment or pumping systems unless a special use permit has first been granted by the Town in accordance with the procedures in the ordinance codified herein, where applicable. The initial special use permit shall allow any twinning of a well and relocation of accessory equipment or gathering and transmission lines so long as the standards in this Article are met. If any twinning of a well or relocation of accessory equipment or gathering and transmission lines occurs, then not less than thirty (30) days prior to such activity, the operator shall file a revised site plan with the Town depicting any changes from the approved special use permit. When a special use permit has been granted for a well, reentry of such well for purposes of sidetracking, deepening, recompleting or reworking shall not require a special use permit amendment. The granting of such use by special review shall not relieve the operator from otherwise complying with all applicable regulatory requirements of this jurisdiction, the State and United States.

(b) Inspections. In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures shall be subject to inspection by inspectors of the Town at all times to determine compliance with applicable provisions of this Article, the Uniform Fire Code, as adopted by the Town, the Uniform Building Code, as adopted by the Town and other applicable Town ordinances and regulations. (Ord. 557, 1997)

Sec. 17-199. Site plan application elements.

An application for a use by special review pursuant to this Article shall be filed with the Planning and Zoning Commission or other official designated by the Town, and shall include the following information:

(1) Vicinity Map: application elements.

a. Location and name (if any) of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and will show all existing water bodies and watercourses with a physically defined channel within a four-hundred-foot radius of the proposed well. For any existing water body or watercourse topographically lower and within two thousand (2,000) feet or less from the drill site, a description shall be submitted of

proposed methods to be employed to prevent water pollution or contamination of the water body or watercourse.

b. Location and type of water supply (rivers, creeks, lakes, ponds, wells and ditches or similar features). This information may be shown on a plat or map or may be a written description. Source of all water to be used in the drilling operation of the proposed wells shall be noted. Also include methods and routes for transporting water to the well site.

c. Location of drill site. This information shall be submitted on a plat or map of the section in which the drill site is to be located. The scaled plat of the section will include and clearly show the following information:

1. All dimensions of the section (north line, south line, west line and east line) as shown on USGS 7.5 minute quadrangle maps.

2. Location of drill site, given in feet from two (2) lines of the section, e.g. one thousand (1,000) feet from the north line and one thousand six hundred (1,600) feet from the west line.

3. Township and range information.,

4. Section number.

5. Location expressed in appropriate ¼ ¼ ¼ section.

6. True north arrow.

7. Parcel tax identification number.

(2) Site map. This information for the site shall be submitted on a scaled plat or map showing:

a. Proposed location of the wellhead, tank battery and recorded or unrecorded flow lines associated with the proposed well in the event production is established. Future development of the resource shall be considered in the location of the tank battery. Existing tank batteries and flow lines within a half mile radius of the proposed location shall be shown.

b. Location of layout, including, without limitation, positions of the rig, mud reserve pits, racks and all other structures and equipment.

c. True north arrow.

d. Any and all existing surface improvements and equipment within one-half (½) mile. Existing subdivisions may be shown by shading or color in lieu of showing any and all existing surface improvements.

e. Recorded or known unrecorded existing utility easements and other rights-of-way.

f. Irrigation or drainage ditches within four hundred (400) feet of the wellhead.

g. Drainage and erosion control plans for on-site and off-site drainage.

h. Location of access roads, either private or public.

i. Site and lease boundaries.

j. Adjacent surface owners within one thousand five hundred (1,500) feet of the wellhead and tank battery.

k. A title block showing scale, date of preparation, identity of preparer including name, address and telephone number and identity of applicant.

(3) Narrative elements. In addition to the mapped information required in Subsections (1) and (2) of this Section, the application shall also include:

a. The operator's and surface owner's names and addresses, copies of any legal instruments of public record identifying the applicant's interest in the property and any required OGCC form 1, Designation of Agent.

b. An operating plan.

c. A listing of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than OGCC.

d. An emergency response plan including, but not limited to, listing of local telephone numbers of the public and private entities and individuals to be notified in the event of an emergency, means of identifying location of well and provisions to be made for access by emergency response entities to secured facilities.

e. Plans designed to minimize negative effects. Negative effects are deemed to include but are not limited to noise levels, air, water and land quality impacts, vibration and odor levels, visual impacts, wildlife impacts, waste disposal and public safety. (Ord. 557, 1997)

Sec. 17-200. Application review criteria.

(a) The Planning and Zoning Commission and Board of Trustees decision to approve or deny an application shall be made and determined based upon the proposed facility's compliance with all applicable performance standards and other requirements of these regulations and by applying the following valuative criteria to the evidence in the record of proceedings before the Planning and Zoning Commission and Board of Trustees:

(1) Whether the special use will be consistent with the Town's current comprehensive plan.

(2) Whether the special use will be compatible with existing conforming surrounding and probable future land uses.

(3) Whether the special use will cause an unreasonable demand on Town services.

(4) Whether the special use will unreasonably and adversely affect traffic flow and parking in the surrounding area.

(5) Whether the public welfare requires approval of the special use.

(b) The Planning and Zoning Commission recommendation and Board of Trustees resolution shall be based upon competent evidence presented in the application and at the public hearing. Following the conclusion of the public hearing, the Planning and Zoning Commission and the Board of Trustees may proceed to verbally render their provisional decision on the application or they may take the matter under advisement to an announced date certain not to exceed thirty (30) days, at which time they shall verbally render their provisional decision. (Ord. 557, 1997)

Sec. 17-201. Consideration of waste and correlative rights.

(a) In the event that an application is provisionally denied based upon the criteria of paragraphs (a) (1) through (5) of Section 17-200, the applicant may, within ten (10) days, request a rehearing to demonstrate how issuance of the permit is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits.

(b) If the applicant demonstrates by a preponderance of the evidence that the use by special review must be granted to prevent waste, or to protect owners of correlative rights in a common source of oil and/or gas to a fair share of production profits, the Board of Trustees shall grant the use by special review, but may attach reasonable mitigation conditions to the use by special review to protect the health, safety and welfare of the public. (Ord. 557, 1997)

Sec. 17-202. Written resolution of decision.

(a) Following the Board of Trustees oral announcement of its decision and any subsequent rehearing, a written resolution shall be adopted in ten (10) days or less as its final action or decision on the application. This written resolution shall set forth findings based upon competent evidence in the record of proceedings before the Board of Trustees and any applicable federal, state or Town statutes, rules, regulations or policies.

(b) For the purpose of judicial review, the Town's final action or decision regarding the application shall be deemed to have been made as of the date upon which the Board of Trustees executes the written resolution, which shall constitute the Board of Trustees final action or decision. (Ord. 557, 1997)

Sec. 17-203. Notice to proceed.

Prior to commencement of construction, drilling, redrilling or enhanced recovery operations for which a use by special review has been previously granted, a Notice to Proceed shall be obtained from the Town. A copy of any necessary state or federal permits issued for the operation shall be provided to the Town. (Ord. 557, 1997)

Sec. 17-204. Reports and inspections.

(a) The operator of any producing oil or gas well within the Town shall provide to the Fire District proof of insurance required by any Town, county, state or federal law or regulation, and certification of compliance with the conditions of any special use permit, the requirements of this Article and the Uniform Building and Fire Codes, as adopted by the Town, annually.

(b) As a condition of any special use permit for any oil or gas exploration or production activity or operation, the holder or agent of the special use permit shall allow inspections by the Town personnel at any reasonable hour. Failure to allow inspections shall result in an immediate suspension of the special use permit. Failure to allow inspections for more than thirty (30) days shall result in revocation of the special use permit, subject only to appeal to the Board of Trustees. The Board of Trustees decision on a special use permit revocation based on failure to allow inspections shall be final. (Ord. 557, 1997)

Sec. 17-205. Inspection and reporting fees.

Any operator of any oil and gas well within the Town shall remit to the Town an annual inspection and reporting fee. The fee shall be determined annually by the Town Manager or his or her designee and shall be set to cover the reasonable costs of the Town to inspect oil and gas wells and process the annual reports of operators. This fee shall be paid not later than February 1 of the year following that for which the fee is due. Wells which have been plugged and abandoned are exempt from this fee. (Ord. 557, 1997)

Sec. 17-206. Violation and enforcement.

(a) It is unlawful to construct or install unapproved oil and gas facilities. It is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the Town unless approval has been granted by the Board of Trustees or its designee pursuant to this Code. The unlawful drilling or redrilling of any well or the production therefrom shall constitute a public nuisance. The Town shall have the right to abate the nuisance at the sole reasonable expense of the operator of the nuisance by any means to include but not be limited to:

(1) Injunctive relief.

(2) A stop work order issued by the Town Administrator.

(3) Criminal charges.

(4) Removal of the nuisance by the Town personnel or Town contractors.

(b) Penalty. Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil and gas well or well site in violation of any provision of this Article or of the conditions and requirements of the special use permit may be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment. Each day of such unlawful operation shall constitute a separate violation. Any subsequent violation after any conviction of a violation of

this Article shall be punished by a minimum fine of five hundred dollars ($500.00) for each subsequent violation which may not be suspended by the Court.

(c) Civil action. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of this Article or the conditions and requirement of the special use permit, the Town Manager, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to abate nuisances and/or to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

(d) False or inaccurate information. The Town Council may revoke approval of a facility if it is determined at a public hearing, held on at least ten (10) days' notice to the applicant, that the applicant provided information and/or documentation upon which approval was based, which the applicant, its agents, servants and employees, knew or reasonably should have known, was false, misleading, deceptive or inaccurate. The applicant and Town staff shall be provided with an opportunity to be heard at the public meeting prior to the Town Council rendering its decision.

(e) For the purpose of implementing and enforcing these regulations, Town personnel may enter onto subject property upon notification of the permittee, lessee or the other party holding a legal interest in the property; if such entry is denied, the Town shall have the right to obtain an order from a court of competent jurisdiction to obtain entry.

(f) In any action for legal or equitable relief, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover any damages, costs of action, expert witness fees and reasonable attorney's fees incurred should the Town prevail. (Ord. 557, 1997)

Sec. 17-207. Severability.

If any provision of the ordinance codified in this Article is found by a court of competent jurisdiction to be invalid, the remaining provisions of the ordinance codified in this Article will remain valid, it being the intent of the Town Council that the provisions of the ordinance codified in this Article are severable. (Ord. 557, 1997)

Secs. 17-208—17-215. Reserved.

ARTICLE XII

Impact Fees

Sec. 17-216. Purpose and intent.

The purposes and intent of these impact fee procedures are:

(1) To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new land development;

(2) To implement the goals, objectives and policies of the Town's Comprehensive Plan to assure that new land development contributes its fair share towards the costs of capital improvements reasonably necessitated by such new land development;

(3) To ensure that new land development is reasonably benefited by the provision of the capital improvements provided with the proceeds of impact fees;

(4) To ensure that all applicable legal standards and criteria are properly incorporated in these procedures; and

(5) To ensure that all applicable procedures and requirements of Sections 29-1-801 through 29-1-804, C.R.S., and Sections 29-20-101 through 29-20-107, C.R.S., have been met. In addition, Section 29-20-104.5, C.R.S. (as adopted in 2001) procedures and requirements are to be met. (Ord. 616, § 1, 2000; Ord. 2005-735 §1)

Sec. 17-217. Definitions.

The words or phrases used herein shall have the meaning prescribed in this Code except as otherwise indicated herein:

Applicant means any person who files an application with the Town for a building permit for new land development.

Appropriation or *to appropriate* means an action by the Town to identify specific capital improvements for which impact fee funds may be utilized. *Appropriation* shall include, but shall not necessarily be limited to: inclusion of a capital improvement in the adopted Town budget or capital improvements program execution of a contract or other legal encumbrance for construction of a capital improvement using impact fee funds in whole or in part; and/or actual expenditure of impact fee funds through payments made from an impact fee account.

Capital expenditure means any expenditure for an improvement, facility or equipment necessitated by new land development, which has an estimated useful life of five (5) years or longer. *Capital expenditures* may be for any or all of the following: water resources; water facilities; sewer facilities; storm drainage and flood control facilities; transportation; law enforcement, including lands, buildings, and vehicles; fire and emergency medical services; municipal facilities, including lands and buildings; library, including lands and buildings; solid waste disposal; utilities; and parks, recreation open space and trails; provided that the expenditures are addressed in one of the categories identified in this Article.

Capital improvements expenditures include amounts appropriated in connection with the planning, design, engineering and construction of capital improvements; planning, legal, appraisal and other costs related to the acquisition of land; financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the capital improvement.

Commercial or *industrial use* means any use or establishment not defined as a dwelling unit.

Connection means the physical tie-in of a land developer's water, effluent or sewer service to the Town's water, effluent or sewer main.

Developer means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for creating a demand for Town facilities and capital improvements by seeking approval of a new land development.

District or *impact fee district* means a defined geographic area or subarea of the Town and/or its planning area within which particular capital improvements are provided and in which impact fees will be collected, appropriated and expended for capital improvements serving new land development within such area or subarea.

Dwelling unit means one (1) or more rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy or for rental or lease on a monthly or longer basis, physically separated from any other rooms or dwelling units which may be in the same structure. *Dwelling unit* shall not include those units designed primarily for transient occupant purposes, nor shall they include rooms in hospitals or nursing homes.

a. Single-family detached dwelling unit means a residential building containing not more than one (1) dwelling unit entirely surrounded by open space on the same lot.

b. All other dwelling units means a single-family attached dwelling, a duplex, multi-family dwelling or other dwelling unit not defined as a single-family detached dwelling unit.

Governing body means the Board of Trustees of the Town.

Impact fee means a fee adopted pursuant to Section 29-1-802, C.R.S., which is imposed on new land development on a pro rata basis in connection with and as a condition of the issuance of a building permit or land development approval and which is calculated to defray all or a portion of the costs of the capital improvements required to accommodate new land development at Town-designated level of service (LOS) standards and which reasonably benefits the new land development. See *Land development charge*.

Impact fee adoption and imposition — Sections 17-216 through 17-223 establish procedures and requirements for all impact fees which may be adopted by the Town.

Impact fee district maps means the maps defining the geographical extent of the impact fee districts, if any, for each adopted impact fee, as may be necessary.

Land development means the issuance of a building permit or a connection permit for the construction, reconstruction, redevelopment or conversion of a use of land or any structural alteration, relocation or enlargement which results in an increase in the number of "service units" required, or, the extension of a use or a new use of land which results in an increase in the number of service units.

Land development charge (or *impact fee*) means a fee relating to a capital expenditure or service provided by the Town which is imposed on land development as a condition of approval of

such land development as a prerequisite to obtaining a permit (building permit) or service (connection permit).

Multiple uses means a new development consisting of both residential and nonresidential uses, or one (1) or more different types of nonresidential use, on the same site or part of the same new land development.

Municipal planning area means an area outside of the present Town limits, but in which the Town will provide public facilities and capital improvements.

Service unit means a standard unit of measurement of consumption, use, generation or discharge of a capital improvement or service provided by the Town.

Town Administrator includes his or her designee.

Transient occupancy means occupancy by any one (1) person or group of persons for a period of less than thirty (30) days at a time. (Ord. 616, § 1, 2000)

Sec. 17-218. General provisions; applicability.

(a) Term. This Article and the procedures established herein shall remain in effect unless and until repealed, amended or modified by the Board of Trustees in accordance with applicable State law and this Code, ordinances and resolutions.

(b) Annual review.

(1) At least once every year not later than October 15 of each year, beginning October 15, 2001, and prior to the Board of Trustees' adoption of the annual budget and capital improvements program, the Town Administrator shall coordinate the preparation and submission of an annual report to the Board of Trustees on the subject of impact fees.

(2) The annual report may include any or all of the following:

a. Recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting impact fees for particular capital improvements;

b. Proposed changes to the Comprehensive Plan or plan elements and/or an applicable Capital Improvements Program, including the identification of additional capital improvement projects anticipated to be funded wholly or partially with impact fees;

c. Proposed changes to the boundaries of impact fee districts, if applicable;

d. Proposed changes to impact fee schedules as set forth in the ordinances imposing and setting impact fees for particular capital improvements;

e. Proposed changes to level of service standards for particular categories of capital improvements;

f Proposed changes to any impact fee calculation methodology;

g. Proposed changes to the population, housing, land use, persons per household or nonresidential development projections included in the impact fee report and upon which the impact fee amounts have been determined;

h. Other data, analysis or recommendations as the Town Administrator may deem appropriate, or as may be requested by the Board of Trustees.

(3) The annual report may additionally include any or all of the following on an annual basis:

a. Number of building permits issued by type of residential or nonresidential development;

b. Square footage (gross floor area) of nonresidential development, by type;

c. Total amount of impact fees collected, by category of capital improvement and by land use type;

d. The amount of expenditures made from the impact fee account or subaccounts and the purpose for which the expenditure was made, i.e., the description, type and location of the capital improvement project;

e. When the capital improvement project was initiated and when it was (or will be) completed;

f. Whether additional impact fee funds will be appropriated for the same project in the future;

g. Whether supplemental nonimpact fee funds have been used for the project and, if so, how much and what percentage;

h. The service area of the capital improvement project;

i. The total estimated cost of the capital improvement project and the portion funded with impact fees;

j. Whether the capital improvement project is in the Town's current annual budget or capital improvements program;

k. The estimated useful life of the capital improvement project;

l The extent to which the capital improvement project is needed to serve new land development;

m. The extent to which the capital improvement project is needed to maintain the existing level of service (LOS) standard and;

n. Such other facts as may be deemed relevant by the Board of Trustees.

(4) Submission of impact fee annual report and Board of Trustees action. The Town Administrator shall submit the impact fee annual report to the Board of Trustees, which shall

receive the annual report and which may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.

(c) Affected area.

(1) Impact fee district. Impact fees shall be imposed on new land development in the Town which, for purposes hereof, may be divided into impact fee districts by the Board of Trustees.

(2) Municipal planning areas. Impact fees imposed by the Town shall, if necessary and appropriate, be collected by other municipalities or by the County on new land development within the Town's municipal planning area, but outside of the Town limits, pursuant to an intergovernmental agreement which provides that the impact fees collected be transferred to the appropriate Town fund for expenditure in accordance with the terms of this Article.

(3) Identification. The affected area, including impact fee districts, if applicable, shall be described and/or mapped in the particular impact fee ordinance for a category of capital improvements.

(4) Change in boundaries of impact fee districts. The Board of Trustees may amend the boundaries of the impact fee districts at such times as may be deemed necessary to carry out the purposes and intent of this Article and applicable legal requirements for use of impact fees. In the event of annexation of unincorporated county land by the Town, the Board of Trustees shall consider whether such annexed area should be included in a particular impact fee district and whether new land development in such annexed area shall be subject to impact fees.

(d) Type of land development affected. This Article shall apply to all land development as herein defined and as may be further defined in the individual impact fee-setting ordinances for particular public facilities or categories of capital improvements, but excluding land developments described in Subsection (e) below.

(e) Type of land development not affected. This Article shall not apply to:

(1) Previously issued building permits. No impact fee shall be imposed on land development for which a building permit has been issued prior to the effective date of this Article, except in the event of a change of use.

(2) Previous payment of impact fees. Subject to the requirements of Subsection 17-219(d) of this Article, no impact fees shall be due at a later stage of the development permit or approval process if impact fees have been paid for such category of capital improvements at an earlier stage in the development permit or approval process.

(3) No net increase in dwelling units. No impact fee shall be imposed on any new residential development which does not add a new dwelling unit (service unit).

(4) No net increase in nonresidential square footage. No impact fee shall be imposed on any new nonresidential development which does not add square footage, unless the new nonresidential

development increases the demand for capital improvements (service units) for which impact fees are being imposed.

(5) Other uses. No impact fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in the demand for capital improvements (service units).

(6) New land developments which are the subject of a development agreement containing provisions in conflict with these provisions, but only to the extent of the conflict or inconsistency.

(f) Effect of payment of impact fees on other applicable Town land use, zoning, platting, subdivision or development regulations.

(1) The payment of impact fees shall not entitle the applicant to a building permit unless all other applicable land use, zoning, planning, platting, subdivision or other related requirements, standards and conditions have been met. Such other requirements, standards and conditions are independent of the requirement for payment of an impact fee.

(2) Neither this Article nor the specific impact fee ordinances for particular categories of capital improvements shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the Town land development regulations, which shall be operative and remain in full force and effect without limitation. (Ord. 616, § 1, 2000)

Sec. 17-219. Procedures for imposition, calculation and collection of impact fees.

(a) In general. An applicant shall be notified by the Town of the applicable impact fee requirements at the time of application for a building permit. At such time, an impact fee calculation form shall be prepared, and a copy shall be given to the applicant. Impact fees shall be calculated by the Town at the time of application for a building permit and shall be paid by the applicant prior to the issuance of a building permit.

(b) Calculation.

(1) Upon receipt of an application for a building permit or an application for a business license, the Town shall determine:

a. Whether it is a residential or nonresidential use,

b. The specific category (type) of residential or nonresidential development, if applicable,

c. If residential, the number of new dwelling units,

d. If nonresidential, the number of new or additional square feet of gross floor area (rounded up to the nearest square foot) and the proposed use, and

e. The impact fee district in which the new land development is located (if applicable).

(2) Upon receipt of an application for a building permit, the Town shall determine whether it is for a change in use. In such cases, the impact fee due shall be based only on the incremental increase in the fee for the additional service units added by the change in use.

(3) After making these determinations, the Town shall calculate the demand for the capital improvements (service units) added by the new land development for each capital improvements category for which an impact fee is being imposed and calculate the applicable impact fee by multiplying the demand (service units) added by the new development by the amount of the applicable impact fee per service unit, incorporating any applicable offset if set forth in the particular impact fee calculation methodology.

(4) If the type of land use proposed for land development is not expressly listed in the particular impact fee ordinance and schedule, the Town shall:

a. Identify the most similar land use type listed and calculate the impact fee based on that land use or

b. Identify the broader land use category within which the specified land use would fit and calculate the impact fee based on that land use category; or

c. At the option of the applicant or the Town Administrator, determine the basis used to calculate the fee pursuant to an independent impact analysis of service units added. This option shall be available only for transportation impact fees and shall be requested by the applicant on a form provided by the Town for such purpose. If this option is chosen, the following shall apply:

1. The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the Town Administrator and, if appropriate, other Town staff or officials, prior to payment of the fee.

2. The independent impact analysis shall measure the impact (in service units) that the proposed development will have on the particular category of capital improvements at issue, and shall be based on the same methodologies used in the impact fee calculation methodology report, and shall be supported by professionally acceptable data and assumptions.

3. After review of the independent impact analysis submitted by the applicant, the Town Administrator shall accept or reject the analysis and provide written notice to the applicant of its decision on a form provided for such purpose within thirty (30) days. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.

4. The final decision of the Town Administrator may be appealed pursuant to Section 17-221 herein.

(5) An applicant may request a nonbinding estimate of impact fees due for a particular land development at any time by filing a request on a form provided for such purpose by the Town; provided, however, that such estimate may be subject to change when a formal application for a

building permit for land development is made. Such nonbinding estimate is solely for the benefit of the prospective applicant and shall in no way bind the Town nor preclude it from making amendments or revisions to any provisions of this Article, the specific impact fee implementing ordinances or the impact fee schedules.

(6) The calculation of impact fees due from a multiple-use land development shall be based upon the aggregated demand (in service units) for each category of capital improvements generated by each land use type in the land development.

(7) The calculation of impact fees due from a phased land development shall be based upon the demand (in service units) generated by each specific land use within the phase of development for which a separate building permit is requested.

(8) Impact fees shall be calculated based on the impact fee amount in effect at the time of application for a building permit, or a change in use.

(c) Offsets.

(1) Offsets against the amount of an impact fee due from a land development shall be provided for, among other things, contributions made or to be made in the future in cash, or by dedication of land or by actual construction of all or part of a capital improvement by the affected property owner for capital improvements meeting or exceeding the demand generated by the land development and the contribution is determined by the Town to be an acceptable substitute for the cost of capital improvements which are included in the particular impact fee calculation methodology.

(2) The amount of the excess contribution shall be determined by the Town upon receipt of an application form requesting an offset; provided, however, that:

a. The Town will make no reimbursement for excess contributions unless and until the particular capital improvements fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the Town's capital improvements program; and

b. The excess contribution may not be transferred or credited to any other type of impact fees calculated to be due from that development for other types of capital improvements. The determination of the eligibility for and the amount of the credit shall be made by the Town on a form provided for such purposes. The discretion of the Town shall not be abused. If the applicant contends that any aspect of the Town's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to Section 17-221 below.

(3) No offset shall be allowed unless the Town has approved the contribution or expenditure before it is made.

(4) Offsets for dedication of land or provision of capital improvements shall be applicable only as to impact fees imposed for the same types of capital improvements which are proposed to be dedicated or provided. Even if the value of the dedication of land or provision of a capital improvement exceeds the impact fee due for the type of capital improvement, the excess value may not be transferred to impact fees calculated to be due from the applicant for other types of

capital improvements. Offsets may, however, be transferred to other applicants within the same development for the same type of capital improvement.

(d) Collection.

(1) The Town shall collect all applicable impact fees at the time of issuance of a building permit and shall issue a receipt to the applicant for such payment unless:

a. The applicant is determined to be entitled to a full offset; or

b. The applicant has been determined to be not subject to the payment of an impact fee; or

c. The applicant has filed an appeal and a letter of credit, or other surety in the amount of the impact fee, as calculated by the Town and approved by the Town Attorney and Treasurer, has been posted with the Town.

(2) The Town shall collect an impact fee at the time of issuance of a building permit even if impact fees were paid by the applicant at an earlier time in the development permit or approval process if the amount of the impact fees has increased since such prior approval. Except as provided for in Section 17-218(e), the applicant shall only be liable for the difference between the impact fees paid earlier and those in effect at the time of issuance of the subsequent building permit. (Ord. 616, § 1, 2000)

Sec. 17-220. Establishment of impact fee accounts; appropriation of impact fee funds; refunds.

(a) Impact fee accounts. An impact fee account shall be established by the Town for each category of capital improvements for which impact fees are imposed. Such account shall clearly identify the category, account or fund for which the impact fee has been imposed. Subaccounts may be established for individual impact fee districts. All impact fees collected by the Town shall be deposited into the appropriate impact fee account or subaccount, which shall be interest-bearing. All interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other Town funds, over time. The Town shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited, accounted for and appropriated in accordance with these provisions and any other applicable legal requirements.

(b) Appropriation of impact fee funds.

(1) In general. Impact fee funds may be appropriated for capital improvements and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the Town or other applicable local governmental entities to finance such capital improvements. All appropriations from impact fee accounts shall be detailed on a form provided for such purposes and filed with the Town Treasurer.

(2) Restrictions on appropriations. Impact fees shall be appropriated only:

a. For the particular category of capital improvements for which they were imposed, calculated and collected; and

b. Within the impact fee district where collected, unless the impact fee funds will be appropriated for a capital improvement necessitated by or serving the new land development as provided herein. Impact fees shall not be appropriated for funding maintenance or repair of capital improvements nor for operational or personnel expenses associated with the provision of the capital improvements.

(3) Appropriation of impact fee funds outside of district where collected. Impact fee funds may be appropriated for a capital improvement located outside of the district of the new land development where collected only if the demand for the capital improvement is generated in whole or in part by the new land development or if the capital improvement will actually serve the new land development.

(c) Procedure for appropriation of impact fee funds.

(1) The Town shall each year identify capital improvement projects anticipated to be funded in whole or in part with impact fees. The capital improvement recommendations shall be based upon the impact fee annual review set forth in Section 17-218(b) herein and such other information as may be relevant, and may be part of the Town's annual budget and capital improvements programming process.

(2) The recommendations shall be consistent with the provisions of this Article, the particular impact fee ordinances or other applicable legal requirements and any guidelines adopted by the Board of Trustees.

(3) The Board of Trustees may include impact fee-funded capital improvements in the Town's annual budget and capital improvements program. If included, the description of the capital improvement shall specify the nature, location, capacity to be added, service area, need/demand for, and the anticipated timing of completion of the capital improvement.

(4) The Board of Trustees may authorize impact fee-funded capital improvements at such other times as may be deemed necessary and appropriate by the Board of Trustees.

(5) The Board of Trustees shall verify that adequate impact fee funds are or will be available from the appropriate impact fee account for the particular category of capital improvements.

(d) Refunds.

(1) Eligibility for refund.

a. Expiration or revocation of building permit. An applicant who has paid an impact fee for a land development for which the necessary building permit has expired or for which the building permit has been revoked prior to construction shall be eligible to apply for a refund of impact fees paid on a form provided by the Town for such purposes.

b. Abandonment of development after initiation of construction. An applicant who has paid an impact fee for a new land development for which a building permit has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to

completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.

c. A ten-percent administrative fee, but not to exceed five hundred dollars ($500.00), shall be deducted from the amount of any refund granted and shall be retained by the Town in the appropriate impact fee account to defray the administrative expenses associated with the processing of a refund application.

(2) Except as provided in Sections 17-220(d)(1) and 17-220(d)(5) hereof, refunds shall be made only to the current owner of property on which the new land development was proposed or occurred.

(3) Processing of applications for a refund. Applications for a refund shall be made on a form provided by the Town for such purposes and shall include all information required in Section 17-220(d) hereof, as appropriate. Upon receipt of a complete application for a refund, the Town shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Town.

(4) Applications for refunds due to abandonment of a new land development prior to completion shall be made on forms provided by the Town and shall be made within sixty (60) days following expiration or revocation of the building permit. The applicant shall submit:

a. Evidence that the applicant is the property owner or the duly designated agent of the property owner,

b. The amount of the impact fees paid by capital improvements category and receipts evidencing such payments, and

c. Documentation evidencing the expiration or revocation of the building permit or approval of demolition of the structure pursuant to a valid Town-issued demolition permit. Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the Town in calculating the amount of the refunds.

(5) The Town may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same category of capital improvements for new land development on the same property, or by other means subject to agreement with the property owner. (Ord. 616, § 1, 2000)

Sec. 17-221. Appeals.

(a) An appeal from any decision of a Town official pursuant to this Article shall be made to the Board of Trustees by filing a written appeal pursuant to the appropriate Town form with the Town Clerk within thirty (30) days following the decision which is being appealed; provided, however, that if the notice of appeal is accompanied by a letter of credit in a form satisfactory to the Town Attorney and the Town Treasurer in an amount equal to the impact fee calculated to be due, a building permit

may be issued to the new land development. The filing of an appeal shall not stay the imposition or the collection of the impact fee as calculated by the Town unless a letter of credit or other sufficient surety has been provided.

(b) The burden of proof shall be on the appellant to demonstrate that the decision of the Town is erroneous.

(c) All appeals shall detail the specific grounds therefor and all other relevant information and shall be filed on a form provided by the Town for such purposes. (Ord. 616, § 1, 2000)

Sec. 17-222. Exemptions; waivers.

(a) Filing of application. Petitions for exemptions to the application of the provisions of this Article or waivers from specific impact fees shall be filed with the Town Council on forms provided by the Town.

(b) Effect of grant of exemption/waiver. If the Town Council grants an exemption or waiver in whole or in part of impact fees otherwise due, the amount of the impact fees exempted or waived shall be provided by the Town from nonimpact fee funds, as may be provided in the particular impact fee ordinances establishing such fees for particular capital improvements, and such funds shall be deposited to the appropriate impact fee account within a reasonable period of time consistent with the applicable Town capital improvements program.

(c) Development agreements. Nothing herein shall be deemed to limit the Town's authority or ability to enter into development agreements with applicants for new land development which may provide for dedication of land, payments in lieu of impact fees or actual infrastructure improvements. Such development agreements may allow offsets against impact fees for contributions made or to be made in the future in cash, or by taxes or assessments or dedication of land or by actual construction of all or part of a capital improvement by the affected property owner. (Ord. 616, § 1, 2000)

Sec. 17-223. Development fee adjustment for inflation.

(a) On January 1, 2001, and on January 1st of each year thereafter in which development fees are in effect, the amount of the development fee per dwelling unit for residential development and/or per one thousand (1,000) square feet of gross floor areas for nonresidential development shall be automatically adjusted to account for inflationary increases in the cost of providing public facilities, utilizing the most recent data from the Engineering News Record Construction Cost Index for the Denver metropolitan area.

(b) In lieu of this automatic annual adjustment, the Town Council may, at its option, determine the appropriate annual inflation factor pursuant to the annual review process as set forth in Section 17-219(b).

(c) Nothing herein shall prevent the governing body of the Town from electing to maintain an existing development fee or from electing to waive the inflation adjustment for any given fiscal year.

(d) Any action of the Town Council to adjust development or impact fees may be by resolution. (Ord. 616, § 1, 2000)

Sec. 17-224. Transportation facilities development fee.

All residential and nonresidential development in the Town shall be subject to the payment of a transportation facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223 as follows:

Residential Development by Type	***Development Fee per Dwelling unit***
Detached Housing	$1,627.00
Attached Housing	1,120.00
Commercial/Shopping Centers	***Development Fee per Square Foot***
Com/Shop Ctr 25,000 SF or less	$2.13
Com/Shop Ctr 25,001–100,000 SF	1.73
Com/Shop Ctr 100,001–400,000 SF	1.28
Gen Ofc 25,000 SF or less	1.16
Gen Ofc 25,001–100,000 SF	0.84
Gen Ofc 100,001–200,000 SF	0.72
Medical-Dental Office	2.29
Hospital	1.11
Business Park	0.81
Light Industrial	0.44
Warehousing	0.31
Manufacturing	0.24
Mini-Warehouse	0.15
Other Nonresidential Development by Type	***Development Fee per Demand Unit***
Lodging (per room)	$357.00
Private Elementary School (per student)	81.00
Private Secondary School (per student)	108.00
Day Care (per student)	284.00
Nursing Home (per bed)	150.00

(Ord. 621, § 1, 2000; Ord. 2005-735 §2)

Sec. 17-225. Parks and recreation facilities development fee.

All residential development in the Town shall be subject to the payment of a parks and recreation facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223 as follows:

Residential Development by Type	*Development Fee per Dwelling Unit*
Single-family detached	$980.00
All other dwelling units	852.00

(Ord. 617, § 1, 2000; Ord. 2005-735 §3)

Sec. 17-226. Public facilities development fee.

All future residential and nonresidential development in the Town shall be subject to the payment of a public facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223, as follows:

Residential Development by Type	*Development Fee per Dwelling Unit*
Detached Housing	$1,008.00
Attached Housing	877.00
Nonresidential Development by Type	***Development Fee per Square Foot***
Com/Shop Ctr 25,000 SF or less	$0.39
Com/Shop Ctr 25,001–100,000 SF	0.29
Com/Shop Ctr 100,001–400,000 SF	0.23
Gen Ofc 25,000 SF or less	0.49
Gen Ofc 25,001–100,000 SF	0.44
Gen Ofc 100,001–200,000 SF	0.41
Medical-Dental Office	0.48
Hospital	0.40
Business Park	0.37
Light Industrial	0.27
Warehousing	0.15
Manufacturing	0.21
Mini-Warehouse	0.00
Other Nonresidential	***Development Fee per Demand Unit***
Lodging (per room)	$52.00
Private Elementary School (per student)	9.00
Private Secondary School (per student)	10.00
Day Care (per student)	19.00
Nursing Home (per bed)	42.00

(Ord. 618, § 1, 2000; Ord. 2005-735 §4)

Sec. 17-227. Library facilities development fee.

All future residential development in the Town shall be subject to the payment of a library facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223, as follows:

Residential Development by Type	*Development Fee per Dwelling Unit*
Single-family detached	$196.00
All other dwelling units	171.00

(Ord. 620, § 1, 2000; Ord. 2005-735 §5)

Sec. 17-228. Police facilities development fee.

All future residential and nonresidential development in the Town shall be subject to the payment of a police facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223, as follows:

Residential Development by Type	*Development Fee per Dwelling Unit*
Detached Housing	$378.00
Attached Housing	328.00
Nonresidential Development by Type	***Development Fee per 1,000 sq. ft.***
Com/Shop Ctr 25,000 SF or less	$0.21
Com/Shop Ctr 25,001–100,000 SF	0.17
Com/Shop Ctr 100,001–400,000 SF	0.13
Gen Ofc 25,000 SF or less	0.08
Gen Ofc 25,001–100,000 SF	0.05
Gen Ofc 100,001–200,000 SF	0.05
Medical-Dental Office	0.16
Hospital	0.07
Business Park	0.05
Light Industrial	0.03
Warehousing	0.02
Manufacturing	0.01
Mini-Warehouse	0.01

Other Nonresidential	*Development Fee per Demand Unit*
Lodging (per room)	$25.00
Private Elementary School (per student)	5.00
Private Secondary School (per student)	7.00
Day Care (per student)	20.00
Nursing Home (per bed)	10.00

(Ord. 619, § 1, 2000; Ord. 2005-735 §6)

Sec. 17-229. Credit for historical use.

(a) Intent. If an existing building is to undergo a change of use, but has been in existence for at least five (5) years, the owner shall be entitled to credit for historical usage under the presumption that the owner or prior owner has paid real estate property taxes to support existing infrastructure that would be paid for by impact fees.

(b) Calculation of credit. For a building in existence for at least five (5) years, the owner shall receive a credit to be applied against all impact fees due of one percent (1%) for each year beyond five (5) years that the buildings has been in existence, up to a maximum possible credit of seventy-five percent (75%). Credit shall only apply to that portion of the building in existence, and within the Town boundaries of Johnstown, for at least five (5) years and not to any additions or other constructed buildings on the same property.

(c) Proof of age. Owner must be able to show proof satisfactory to the Town of the date when the building was originally constructed by building permit, tax assessment records or other similar verification. (Ord. 668, § 1, 2001)

Secs. 17-230—17-240. Reserved.

ARTICLE XIII

Vested Property Rights

Sec. 17-241. Intent.

The intent of this Article is to provide the procedures necessary to implement the provisions of Article 68, Title 24, C.R.S., and to effectuate local control over creation of vested property rights to the fullest extent permitted under the law. (Ord. 685, § 1, 2002)

Sec. 17-242. Definitions.

(a) *Site specific development plan* means a map, plat or site plan that has been submitted to the Town by a landowner's representative describing the reasonable certainty, type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of the following: final site plan, final subdivision plat, planned unit development plan, use by special review or as otherwise

agreed by the Board of Trustees and the owner for a specific project or development phase which occurs prior to building permit application for those vested rights, and has submitted an application and receives approval by the Board of Trustees. A *site specific development plan* deemed to have been created, a *site specific development plan* shall not include a variance, sketch plan or preliminary plan.

(b) *Vested property right* means the right to undertake and complete the development and use of the property under the terms and conditions of a site specific development plan. A property right which becomes vested upon final approval of an ordinance or resolution, as the case may be, shall remain vested for a period of three (3) years. This vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the Board of Trustees. The Town shall conduct a hearing at the request of the landowner, which hearing follows the successful approval of the development at all other required stages of the development review process. Failure of the landowner to request such hearing renders the approval not a "site specific development plan," and no vested rights shall be deemed to have been created. (Ord. 685, § 1, 2002)

Sec. 17-243. Notice and hearing.

(a) No site specific development plan shall be approved until after a public hearing, preceded by written notice of such hearing which is published in a newspaper of general circulation at least ten (10) days prior to such hearing. Such notice may, at the Town's option, be combined with the notice required for final plan approval, or any other required notice. At such hearing, interested persons shall have an opportunity to be heard.

(b) The Board of Trustees may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. The conditional approval shall result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights. (Ord. 685, § 1, 2002)

Sec. 17-244. Development agreements.

The Board of Trustees may enter into development agreements with landowners that provide property rights shall be vested for a period exceeding three (3) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions. (Ord. 685, § 1, 2002)

Sec. 17-245. Notice of approval.

Each map, plat or other document constituting a site specific development plan shall contain the following language: "Approval of this plan may create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended." Failure to contain this statement shall invalidate the creation of the vested property right. In addition, a notice describing generally the type and intensity of use approved, the specific parcel or parcels of property affected and stating that a vested property right has been created shall be published once, not more than fourteen (14) days after approval of the site specific development plan, in a newspaper of general circulation. (Ord. 685, § 1, 2002)

Sec. 17-246. Approval; effective date; amendments.

A site specific development plan shall be deemed approved when the Board of Trustees approves the related ordinance or resolution subject to the right or appeal and judicial review. In the event amendments to a site specific development are proposed and approved, the effective date of such amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original site specific development plan, unless the Town Council specifically finds to the contrary and incorporates such finding in its approval of the amendment. (Ord. 685, § 1, 2002)

Sec. 17-247. Payment of costs.

In addition to any and all other fees and charges imposed by this Code, the applicant for approval of a site specific development plan shall pay all costs occasioned to the Town as a result of the site specific development review, including publication of notices, public hearing and reviewing costs, which costs may be established by the Town Council by resolution. (Ord. 685, § 1, 2002)

Sec. 17-248. Other provisions unaffected.

Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions of this Code pertaining to the development and use of property. The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town, including but not limited to building, fire, plumbing, electrical, and mechanical codes. (Ord. 685, § 1, 2002)

Sec. 17-249. Limitations.

Nothing in this Section is intended to create any vested property right, but only to implement the provisions of Article 68, Title 24, C.R.S., as amended. In the event of the repeal of said Article or a judicial determination that said Article is invalid or unconstitutional, this Article shall be deemed to be repealed and the provisions hereof no longer effective. (Ord. 685, § 1, 2002)

Secs. 17-250—17-260. Reserved.

ARTICLE XIV

Flood Damage Prevention

Sec. 17-261. Statement of purpose.

It is the purpose of this Article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers are notified that property is in a flood area. (Ord. 2006-780 §1)

Sec. 17-262. Methods of reducing flood losses.

(a) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood or cause excessive increases in flood heights or velocities.

(b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(c) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.

(d) Control filling, grading, dredging and other development which may increase flood damage.

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands. (Ord. 2006-780 §1)

Sec. 17-263. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted to give them the meaning they have in common usage and to give this Article its most reasonable application.

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Area of shallow flooding means a designated AO, AH or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a nonbasement building: (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor or, in the case of a building in Zones V1-30, VE or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the floor of the water; and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, *elevated building* also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE or V, *elevated building* also includes a building otherwise meeting the definition of *elevated building*, even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.

Existing construction means, for the purposes of determining rates, structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as *existing structures*.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the Town.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow in inland waters; or

b. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

Flood protection system means those physical structural works for which funds have been authorized, appropriated and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodplain or *flood-prone area* means any land area susceptible to being inundated by water from any source (see definition of *flooding*).

Floodplain management means the operation of an overall program of corrective and preventative measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinance, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures or their contents.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a state inventory of historic places in communities with historic preservation programs which have been approved by the Secretary of the Interior; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior; or

2. Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system which consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one (1) or more sections and designed for use with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction means, for the purpose of determining insurance rates, structures for which the start of construction commenced on or after the effective date (December 19, 2006) of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means

structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the Town and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the Town.

Recreational vehicle means a vehicle which is:

a. Built on a single chassis;

b. Four hundred (400) square feet or less when measured at the largest horizontal projections;

c. Designed to be self-propelled or permanently towable by a light-duty truck; and

d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Start of construction (for other than new construction or substantial improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]) includes substantial improvement and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before start of construction of the improvement. This includes structures

which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or

b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance is a grant of relief to a person from the requirement of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Article. For full requirements, see Section 60.6 of the National Flood Insurance Program regulations.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in Section 60.3(b)(5), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. (Ord. 2006-780 §1)

Sec. 17-264. General provisions.

(a) Lands to which this Article applies. This Article shall apply to all areas of special flood hazard within the jurisdiction of the Town.

(b) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Larimer County, Colorado, and Incorporated Areas," dated December 19, 2006, with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Article.

(c) Establishment of development permit. A development permit shall be required to ensure conformance with the provisions of this Article.

(d) Compliance. No structure or land shall hereafter be located, altered or have its use changed without full compliance with the terms of this Article and other applicable regulations.

(e) Abrogation and greater restrictions. This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f) Interpretation. In the interpretation and application of this Article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(g) Warning and disclaimer of liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by manmade or natural causes. This Article does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder. (Ord. 2006-780 §1)

Sec. 17-265. Administration.

(a) Designation of Floodplain Administrator. The Town Planner is hereby appointed the Floodplain Administrator, to administer and implement the provisions of this Article and other appropriate sections of 44 C.F.R. (National Flood Insurance Program Regulations) pertaining to floodplain management.

(b) Duties and responsibilities of Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(1) The Floodplain Administrator shall maintain and hold open for public inspection all records pertaining to the provisions of this Article.

(2) The Floodplain Administrator shall review permit applications to determine whether proposed building sites, including the placement of manufactured homes, will be reasonably safe from flooding.

(3) The Floodplain Administrator shall review, approve or deny all applications for development permits required by adoption of this Article.

(4) The Floodplain Administrator shall review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334) from which prior approval is required.

(5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.

(6) The Floodplain Administrator shall notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Colorado Water Conservation Board, prior to any

alteration or relocation of watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(7) The Floodplain Administrator shall assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

(8) When base flood elevation data has not been provided in accordance with Subsection 17-264(b) above, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of Section 17-266 below.

(9) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

(10) Under the provisions of 44 C.F.R., Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE and AH on the community's FIRM which increases the water surface elevation of the base flood by more than one (1) foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

(c) Permit procedures.

(1) Application for a development permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

a. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;

b. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

c. A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Paragraph 17-266(b)(2);

d. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

e. Maintain a record of all such information in accordance with Paragraph (b)(1) of this Section.

(2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the provisions of this Article and the following relevant factors:

a. The danger to life and property due to flooding or erosion damage;

b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

c. The danger that materials may be swept onto other lands to the injury of others;

d. The compatibility of the proposed use with existing and anticipated development;

e. The safety of access to the property in times of flood for ordinary and emergency vehicles;

f. The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges and public utilities and facilities, such as sewer, gas, electrical and water systems;

g. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

h. The necessity to the facility of a waterfront location, where applicable;

i. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and

j. The relationship of the proposed use to the comprehensive plan for that area.

(d) Variance procedures.

(1) The Appeal Board shall be the Town Council and shall hear and render judgment on requests for variances from the requirements of this Article.

(2) The Appeal Board shall hear and render judgment on an appeal only when it is alleged that there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this Article.

(3) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.

(4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historical Places or the Colorado State Register of Historic Properties without regard to the procedures set forth in the remainder of this Article.

(6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the relevant factors in Paragraph (c)(2) of this Section have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.

(7) Upon consideration of the factors noted above and the intent of this Article, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article, pursuant to Section 17-261.

(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(10) Prerequisites for granting variances:

a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

b. Variances shall only be issued upon:

1. Showing a good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expenses, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

a. The criteria outlined in Paragraphs (d)(1) through (d)(9) above are met; and

b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. (Ord. 2006-780 §1)

Sec. 17-266. Provisions for flood hazard reduction.

(a) General standards. In all areas of special flood hazards, the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(b) Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in: (i) Subsection 17-264(b); (ii) Paragraph 17-265(b)(8); or (iii) Paragraph 17-255(c)(3), the following provisions are required:

(1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation. A registered professional engineer, architect or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this Subsection, as proposed in Subparagraph 17-265(c)(1)(a), is satisfied.

(2) Nonresidential construction. New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Subsection.

A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

(3) Enclosures. New construction and substantial improvements with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one (1) foot above grade.

c. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

(4) Manufactured homes.

a. Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

b. Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM on sites: (i) outside of a manufactured home park or subdivision; (ii) in a new manufactured home park or subdivision; (iii) in an expansion to an existing manufactured home park or any subdivision; or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

c. Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of this Paragraph be elevated, so that either:

1. The lowest floor of the manufactured home is at or above the base flood elevation; or

2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(5) Recreational vehicles. Require that recreational vehicles placed on sites within Zones A1-30, AH and AE on the community's FIRM either:

a. Be on the site for fewer than one hundred eighty (180) consecutive days;

b. Be fully licensed and ready for highway use; or

c. Meet the permit requirements of Paragraph 17-265(c)(1) of this Article and the elevation and anchoring requirements for manufactured homes in Paragraph (4) above. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices and has no permanently attached additions.

(c) Standards for subdivision proposals.

(1) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with Subsections 17-262(b), (c) and (d) of this Article.

(2) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of Subsection 17-264(c), Subsection 17-265(c) and the provisions of this Section.

(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Subsection (b) above or Paragraph 17-265(b)(8) of this Article.

(4) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.

(5) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(d) Standards for areas of shallow flooding (AO/AH Zones). Located within the areas of special flood hazard established in Subsection 17-264(b) are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions shall apply:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two [2] feet if no depth number is specified).

(2) All new construction and substantial improvements of nonresidential structures shall:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two [2] feet if no depth number is specified); or

b. Together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Subparagraph 17-265(c)(1)a., are satisfied.

(4) Require within Zones AH or AO adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

(e) Floodways. Located within areas of special flood hazard established in Subsection 17-264(b) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway.

(2) If Paragraph (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Section.

(3) Under the provisions of 44 C.F.R., Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA. (Ord. 2006-780 §1)

Sec. 17-267. Penalty.

A person who violates the requirements of this Article shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment of not more than one (1) year, or by both such fine and imprisonment. (Ord. 2006-780 §2)

Secs. 17-268—17-280. Reserved.