

Minturn Planning Department
Minturn Town Center
302 Pine Street
Minturn, Colorado 81645



Minturn Planning Commission
Chair – Lynn Teach
Jeff Armistead
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February 24, 2021

Miners Base Camp LLC
Attn: Jena Skinner
P.O. Box
Minturn, CO. 81645

Sent via email: jsdesigns@outlook.com

Re: Belden Place PUD Preliminary Plan Application – Town Staff Referral Comments

Jena:

The Belden Place Planned Unit Development Preliminary Plan application was sent out on a 21-day referral starting on February 1, 2021 and ending on February 22, 2021. You should have received a Dropbox link containing all referral agency comments received by the Town to date; the following letter summarizes the Town of Minturn Planning Department's, as well as the Town Attorney's comments.

Planning Department:

1. PUD Plan and Preliminary Plat – General Comments:

- The land plan and draft preliminary (final) plat are based, in-part, on subdividing duplex, tri-plex and townhome lots prior to construction. As a result, some of the PUD Guide regulatory items addressing setbacks and lot coverage may be overly complicated or confusing. Also, this approach does not follow the processes established in the subdivision regulations of the Minturn Municipal Code. Typically, lots or tracts of land are created (first subdivision filing) followed by construction of duplex, tri-plex and/or townhome units, which are then re-subdivided as foundations and party walls are constructed. Staff respectfully suggests that you consider revising the preliminary plat document to create duplex, tri-plex and townhome lots and tracts that 1) are larger; 2) are sized to accommodate a multi-unit structure; and 3) which allow can be further subdivided following construction. This may also serve to ensure that lot (building) coverage and impervious coverage limitations are calculated based on a larger "parent" parcel in accordance with the Minturn Municipal Code, thus reducing the total number of lots in the "Setbacks" Table or the "Building Coverages" Table as well as the total number of different cover limits.
- Staff supports the land plan, particularly the variation in lot sizes, unit sizes and types permissible using the PUD process. Staff also notes that, overall, the proposed number and layout of lots has not changed significantly from Concept

Plan for PUD review in spring 2020. However, one observation is that, similar to the complexity noted (above) with regard to the number of different lot and impervious coverage limits depending on lot size, the various setbacks – tailored to each lot – presented on the plat and in the “Setbacks” Table may make enforcement more complicated than necessary. Staff respectfully requests that you consider establishing building envelopes on the plat – essentially where the setbacks are shown currently on the draft plat (and which correspond to the placement of homes as depicted on the Site Plan C.110) – and eliminate the need for setback standards in the PUD Guide document.

2. PUD Guide – General Comments:

- Overall, the PUD Guide is well written and provides the type of information needed to properly administer and enforce the PUD. That said, please consider adding the following sections to the Guide:
 - Applicability
 - Conflicts (between the PUD Guide and Minturn Municipal Code/other regulations).
 - Parking Requirements
 - Major and Minor Amendments
- If a new section is added for Major and Minor PUD Amendments, suggest that this section also include language – introducing the section - from the Minturn Municipal Code describing what constitutes a “major” amendment and what the process will be:

“Changes in use resulting in more intensity of development, major rearrangement of lots into areas not previously containing development, overall increases in development intensity or density, and decreases in the area or provisions for open space will require approval by the Town Council following the procedures of this Article for the submittal of a PUD preliminary plan; however, certain submittal requirements shall be waived if determined by the Planning Director and deemed unnecessary given the information already on file with the Planning Department. At a minimum, a revised development plan shall be submitted showing the proposed changes to the plan. An amendment to a PUD may be filed by any owner within the PUD, subject to any homeowner association rules and regulations.”
- Suggest that definitions (Section III) of the PUD Guide document not include regulatory language (i.e., define the term or word, but place associated regulatory language elsewhere in the document).

3. PUD Guide – Specific Revisions/Comments (by page):

- Page 1 – “Accessory Dwelling Unit”: Suggest removing “and is only permitted in single-family homes if parking is available for this additional use; or, if the occupant declares to the Association that they neither own or will own a vehicle (e.g. dependent family member not able to operate a vehicle).”
- Page 1-2 – “Building Height (Definitions): Suggest revising the building height definition to remove weighted average calculation methods. Because the Developer appears to already know what the maximum building height of any structure on the property will be at this juncture (the Developer is controlling the

design, sourcing and on-site installation/construction of the structures), you may, instead, consider increasing the maximum proposed building heights (shown in the Building Height Table on page 7) as needed (as a variation to Town standards) and prescribe the same or similar building height calculation method that is used by the Town (a non-weighted average calculation) whereby structure height is measured to the mid-point of sloping roof elements.

- Page 3 – “Duplex” (Definitions): Suggest the definition, second full paragraph, be revised to read “For purposes of dwelling unit definition each duplex residence counts as a dwelling unit, with a maximum of two dwelling units per duplex structure.” (This may address prohibition of ADUs in duplex structures.)
- Page 4 – “Habitable Space” (Definitions): Suggest removing this definition because the Town does not regulate or restrict habitable space, generally, and the PUD does not seek to regulate maximum or minimum floor area or habitable space.
- Page 5 – Building Placement and Setbacks: Suggest revising this section to accomplish the following:
 - Eliminate reference to setbacks or discuss setbacks as synonymous with the establishment of building envelopes.
 - Eliminate reference to primary lot lines and the ability to subdivide using lot lines that follow the shape of structures; this (subdividing or creation of primary lot lines) in irregular shapes that follow structures is not reflected on the Preliminary Plat and is also something that would be more akin to “secondary” property lines established during the minor subdivision process to split duplex, tri-plex or other multi-family (townhome or condominium) units.
 - For setback (building envelope) encroachments, suggest specifying the maximum number of inches or feet proposed to allow for minor encroachments; also, suggest you consider defining “minor” and “major” encroachments and what happens if a proposed encroachment doesn’t meet the definition of “minor” (will major amendments to building envelopes be permitted?)
 - Suggest the following revision: instead of “...patios and landings less than 30” at ground level,” consider revising to read: “...patios and landings less than 30” above the surrounding natural or finished grade,” and consider providing a graphic showing how this would be measured.
 - Will other utility installations or equipment (alternative energy improvements, utility boxes or similar) be permitted to encroach outside building envelopes/setback areas?
- Page 7 – Setback Notes Table: Note 1 states that if a sidewalk is present on a lot, the setback is measured to “back of curb of Silver Loop ROW” but in other sections (Building Placement and Setbacks, page 5) the document states that setbacks are measured to the property line (which for practical purpose is the same as ROW lines) or that front setbacks are measured from the “internal edge of sidewalk” to account for required parking space dimensions. This (ensuring that minimum space is provided for parking of vehicles) is supported by staff; however, it will be helpful to clarify and be consistent with regard to how setbacks will be measured. This is perhaps another reason to consider creation of

building envelopes – taking into account minimum separation distances between structures as well adequate parking stall dimensions at the front of structures – rather than typical setbacks. Last, consider adding requirements and illustrations to ensure that patios and other improvements permitted to encroach into setbacks/outside of building envelopes allow for the proper installation of utilities as well as proper drainage.

- Page 7 – Setback Notes Table: Notes 2 & 3 may be removed if you choose to create building envelopes.
- Page 7 – Setback Notes Table: Note 4 regarding Christiansan Residence. Staff suggests that because this home does comply with underlying zoning (South Town Residential) but is now being proposed as part of the PUD, you may consider creating a building envelope to reflect the setbacks used when the home was constructed and which will be used to regulate any future development or additions/improvements on that lot; and, therefore, that you remove reference to “AS BUILT.”
- Page 7 - Building Height: Suggest revising or eliminating statement about “Zero degree flat roofs” or provide illustrations showing how flat roof elements can be successfully used. This information may be better positioned under the “Architectural Design Controls” starting on page 8. Also, please consider adding a description of what the minimum acceptable roof pitch will be (2:12, 4:12?) in the PUD.
- Page 7 – Building Coverages Table: Note 1 specifies that sidewalks constructed on private lots will not count toward impervious coverage for individual lots. Where in the PUD Guide or other documents will impervious surface for the development be quantified? Also suggest that you consider revising the Preliminary Plat document to ensure that property lines are established inboard or to the interior of right-of-way lines created for roads, sidewalks (to avoid a situation where some property owners own property to the street - including sidewalks – and others do not). Additionally, suggest removing Note 2 – if Lot 17 is being included within the PUD, staff suggests that this lot should be similarly regulated; that deferring to the Minturn Municipal Code may complicate administration and enforcement.
- Page 8 – Permitted Uses: General comment to consider breaking this section up by lot types, rather than by structure types. In other words, consider organizing this as “Single Family Lots,” and “Duplex/Tri-plex/Multi-family Lots” rather than structures; then, provide a listing of which lots are designated for each type of residential use.
- Page 8 – Permitted Uses: General comment to consider inclusion/listing of “alternative energy” or even specifically “solar energy installation” to the list of allowed uses; this may require discussion of standards or size limitations (i.e, “small scale” verses “large scale” installations; or, “architecturally integrated” installations) elsewhere in the PUD Guide or Design Guidelines.
- Page 8 – Permitted Uses Single-Family Table: Request that reference to ADU on Lot 17 not being considered as a dwelling unit be removed. Also, the definition of ADU within the PUD Guide defines ADUs as dwelling units whether integrated within a structure or not. (Note: ADUs will count toward density per the Minturn Municipal Code particularly for the calculation of water taps, water system improvement fees and fees-in-lieu of water rights (if applicable). Also, could

ADUs be accommodated on other single-family lots if parking requirements are met? Last, please be advised that the Town will not enforce private covenants requiring Association approval for day care home uses; suggest removing this statement from the PUD Guide.

- Page 8 – Permitted Uses Tracts A, B, C Table: Request that the note is revised to only list what the permissible uses are; remove suggested parking restrictions or references to the development plan; or, add a graphic depicting the parking arrangement (to be updated upon final approval of development plans). Please note: parking use within open space areas pursuant to Sec. 16-15-140.(b)(3)(a) – *Areas that do not count as open space*, of the Minturn Municipal Code, will negatively affect open space calculations.
- Page 8 – Architectural Design Controls: Suggest revising “See also PUD Design Standards” to “See also Belden Place Design + Use Guidelines.”
- Page 8 – Architectural Design Controls: Under (1), a. (2) Staff supports your approach to ensure architectural interest throughout the neighborhood. Staff respectfully asks that you consider revising this statement “Each residence shall have at least two (2) elevations...” to read “Each unit model shall have...” or “Each residential structure type shall have...” to reflect what staff believes you are proposing – predetermined model types that need to be differentiated through elevation architecture? (This same revision should be made for “Duplex/Tri-plex or Multifamily Structures” on page 9).
- Page 9 – Architectural Design Controls: Under (1) b., (2) and (2) b. (2) please ensure that this sentence is consistent in both sections – “Zero degree flat roofs are prohibited. Roofs shall be sized and pitched accordingly in consideration of solar technology and/or drainage.” (Note: “...and/or drainage” appears in (2)b(2), but not in (1)b(2)).
- Page 9 – Materials: please consider adding language for roofing and/or siding materials (or specific to metal roofing materials) that restricts the use of reflective finishes; or, which encourages non-reflective or flat finishes.
- Page 10 – Landscaping: Suggest revising minimum planting requirement to meet or exceed the minimums prescribed in the Minturn Municipal Code (e.g., 1 tree per 1,000 sq. ft. of lot area; this would in most instances in the PUD mean that lots would receive two to three trees). Staff also appreciates the requirement for minimum of two shrubs per lot (something not required by the MMC).
- Page 10 – Signs: Suggest revisions to include:
 - Illustration of proposed temporary signs and showing dimensions/measurement methods.
 - Temporary Subdivision Sign – suggest this be limited to one (1) “Site Development Sign” per the Minturn Municipal Code sign regulations. Such signs will also require approval by the Town via sign permit application. Maximum height shall not exceed ten (10’) feet above grade per MMC.
 - Please provide information if possible regarding the proposed location of Permanent Subdivision Sign(s). (Note: the MMC permits one such sign per residential subdivisions but do provide a process to gain approval for multiple signs if there are multiple access drives).
 - Any lighting associated with temporary or permanent subdivision signage will be required to be indirect; no spot lighting will be

permitted unless the fixture is full cutoff, and no uplighting will be permitted.

- Post-construction signage will be subject to Town of Minturn regulations; please note this in this section.
- Pages 10-11 – Lighting: Please review Section 16-17-180 of the Minturn Municipal Code to ensure the language in the code is consistent with the PUD standards particularly with regard to uplighting of flags and/or model homes. Suggest that the MMC permits lighting of the United States flag but with limitations. As a reminder, the Town will not enforce private covenants (in instances where PUD states that lighting can be approved by the Association).
- Page 11 – Storage: Staff supports the intent of this section and applauds the applicant for providing controls on storage and trash containers in the PUD Guide. Suggest the following revisions or considerations:
 - Will trash containers for residential use be required to be stored in a garage or similar enclosure when not put out for collection?
 - Suggest clarifying language related to the removal of temporary construction uses 90 days following completion of construction of the final building; may want to tie this to within 90 days of receipt of a Temporary Certificate of Occupancy, or prior to Certificate of Occupancy, whichever occurs first.
 - In paragraph 2 suggest removing “Miners Base Camp” and replacing with “Belden Place Planned Unit Development.”
- Page 11 – Other Provisions: Suggest removing statement that “at no time shall there be relief from its governance.” PUD zoning could change or be eliminated in the future; suggest either removing this statement or supplementing by stating that it can only be relieved through rezoning action by the Town or something to that effect.
- Page 12 – Other Provisions: Please revise the statement (first sentence of the third paragraph from the top of page) and/or paragraph regarding enforcement; the Town will be the entity enforcing the PUD while the Association will enforce any private covenants.
- Page 14 – Other: Staff may have further comments after conferring with Eagle County (Housing and Development Authority) on this provision to exempt Miner’s Base Camp LLC from housing program requirements. Initially, this does not appear to support the goals of the Town unless the developer is required to provide required deed restricted housing to meet the overall requirement prior to the developer purchasing and exempting units.
- Page 14 – Other: staff is not in support of the buyout provisions primarily as the Town does not currently have a “housing fund” and will have no practical use for buyout fees if paid.

4. Design Guidelines:

- General Comment: The guidelines are well thought out and drafted in a manner that future residents or builders wanting to build in Minturn North will understand the design intentions and process for gaining approval. That said, the Town has historically not encouraged separate, HOA controlled architectural/design review boards or processes independent of the Town of Minturn Design Review Board.

- General Comment: Will the Design Guidelines provide a process for major and minor deviations to setbacks or building envelopes?
- General Comment: Creation of a separate architectural control committee within PUDs in the Town has historically been met with concern over loss of control (by the Planning Commission/Town of Minturn DRB) over design of projects. This (formation of a separate ACC) may be of concern to the Planning Commission and/or Town Council during the review of the application. Also, please note that the Town will not enforce private covenants or architectural requirements.

5. Declaration of Covenants:

- Section 10.14 – Restriction on Signs and Advertising Devices: Suggest this section be revised to include reference to Town approval of signage where applicable; also, this section references election sign restrictions or guidelines but the Design Guidelines do not address election signage. Suggest this section be revised to defer to the provisions of the Minturn Municipal Code.
- Section 10.15 – Outbuildings: Suggest that outbuildings be addressed in the PUD Guide and/or Design Guidelines to ensure that any outbuildings (particularly those not requiring a building permit) count toward overall lot coverage for individual lots.
- Section 10.16 – Trash Removal Restriction: suggest that all garbage cans, trash cans or receptacles shall be maintained and stored in an enclosed area such as a garage, trash enclosure or fenced/screened area.

6. Housing Plan:

- Although the Town has not yet received referral comments from the Eagle County Housing and Development Authority, staff believes the County may have comments aimed at ensuring that the proposed deed restrictions and overall housing plan comply with the Town's housing guidelines and administrative provisions.
- Housing Plan should include restrictions (or a reference to Article 26 restrictions) on short-term rental for any deed restricted or designated local's housing.
- This section (Attainable Housing Program) states that the selection of deed restricted units will be at the discretion of the developer. Staff respectfully suggests that the type and location of deed restricted units reflect the Applicant's stated goals of developing the PUD to provide variety and opportunity – at different price points – for home ownership in the Belden Place neighborhood. Likewise, details regarding the timing of the provision of required deed restricted units should also be considered prior to public hearings before the Planning Commission.
- As a further community benefit and to offset proposed density (and variations in lot coverage, open space provisions) consider a commitment to deed restrict a percentage of units of varying types and sizes/price points as "Locals Only" or resident occupied.
- Please provide explanation or rationale behind the proposed allowance for Miners Base Camp LLC to purchase units and be exempt from the housing program.
- Regarding Selling of Properties (Tier Sales) on page 14, does this section need to specify that these provisions apply to the initial sales and all subsequent sales?

- Item ‘d’ on page 14 references a sunset provision; the Town is not aware of any intent via the Town’s housing guidelines or administrative procedures to sunset any housing related regulations or requirements. Please remove reference to sunset provisions.

7. Landscape Plan:

- As noted earlier, the landscape standards (minimums) specific to tree plantings listed in the PUD Guide and as reflected on the proposed landscape plan (Sheet C.120) appear to be below the minimum requirements for residential developments pursuant to the Minturn Municipal Code. Suggest revising the landscape plan to ensure that minimums are met or request a variation to standards.

8. Open Space Plan:

- The Open Space Plan (Sheet C.132) shows several open space areas totaling 20,633 sq. ft. of open space. Of note, the area running along the south side of Silver Loop and to the north of the multi-family structures, as well as the area located between Silver Loop and the tot-lot include areas for parking. According to the Minturn Municipal Code, such areas for parking do not count as open space.
- The Open Space Plan does not appear to meet the minimum required for a PUD. Section 16-15-160. - *PUD/preliminary development plan; Planning Commission review*, subsection (1) (n) states the following:

“A minimum of twenty-five percent (25%) of the gross land area shall be reserved for common recreation and usable open space. Parking areas, street rights-of-way and minimum yard setbacks shall not be counted when determining usable open space. Water bodies, lands within critical wildlife habitat, riparian ecosystems and one-hundred-year floodplains that are preserved as open space shall count towards this minimum standard, even when they are not usable by or accessible to the residents of the PUD.”

Staff suggests that subsection (h) of the same section of the MMC also states that additional density (over that permitted by underlying zoning) may be offset by increased land dedication for open space, recreation or other public amenities.

At 20,633 sq. ft. of open space (which may, actually, be less considering reductions for areas shown as parking), the PUD offers approximately 17.5% of the required open space dedication. Understanding that you have proposed this project as a locals “attainable” housing project; and, acknowledging the inherent tension between dedication of open space and density when attempting to deliver a project that may be affordable or attainable, staff still suggests that it is likely not sufficient to rely on nearby public lands (USFS or Conservation Easements) to satisfy the open space requirement.

This was an issue during the Conceptual Review before the Planning Commission and staff respectfully suggests that it may well remain an issue

with respect to the Planning Commission and/or Town Council making positive findings of Preliminary Plan for PUD standards.

One alternative would be to reduce the total number of lots. The most impactful revision in this regard would be to eliminate Lots 26 and 27 to increase the size of the tot-lot and to provide more improvements within this recreation area.

Unless revised to show a minimum of 25% usable open space, this (open space dedication) should be listed as a variation to Town standards in a separate document listing all proposed variations of the PUD.

9. Environmental Impact Report:

- Page 3 of the report by Wynn Ecological Consulting LLC states that “A Stormwater Management Plan will be prepared according to Best Management Practices (BMP) guidelines as required by Article 4, Division 4 of the Natural Resource Protection Standards of Eagle County.” Such standards may be above and beyond the Town’s own standards which may be appropriate. However, staff suggests that the Minturn Municipal Code also includes stormwater design requirements and standards (Appendix C – Engineering Standards of the MMC) and these should be consulted and referenced in any management plans and reports as well.

10. Will Serve Letters:

- Please confirm that the letter by Mick Woodworth, FM, Eagle River Fire Protection District dated May 18, 2020 is still valid. Specifically, Mr. Woodworth’s letter and declaration that the District can and will serve Belden Place PUD is predicated on the plans reviewed at that time; that if the plans change the letter is void. Please verify that Mr. Woodworth has reviewed the plans submitted to the Town for Preliminary Plan.

Town Engineer:

1. Comments from Town Engineer, Jeff Spanel, Intermountain Engineering, are attached and have been provided to the Applicant on February 23, 2021.

Town Public Works:

1. Would like to try to loop the water line.
2. Central open space should be a snow dump in the winter.
3. Individual lots snow storage isn’t quite feasible.
4. Detention ponds in corners of development are great.
5. Curb stops for water service should be in a relatively same spot relative to the lot for easy finding.
6. Isolation valves should be considered at two places on the loop so that not every homeowner is affected should there be a leak and water needs to be shut off.

Town Attorney:

1. Final Plat:

- Certificate of Dedication and Ownership
 - Roads and Open Space should be dedicated to the HOA, and dedicated for the purpose of Public Access and Use. Any other common elements should be dedicated to the HOA.
 - All new easements (see specific feedback below) should be contained in the CDO and dedicated to specific entities (i.e. the Town, the HOA, ERWSD, etc.), not only described in Easement Notes.
- Additional Necessary Certificates
 - Lienholder Certificate: ANB Bank
 - DOT recorded December 19, 2018 as Reception No. 201821567
 - Assignment of Leases and Rents recorded December 19, 2018 at Reception No. 201821568.
 - Eagle River Water and Sanitation District Certificate to accept new and vacate existing sewer easements. Please confer with ERWSD as to form.
- General Notes
 - 1) (iii) Reference to Lots 29 through 32 includes Lot 30, which no longer exists but is described in Duran Subdivision lots.
 - 5) easement should be in Notes for Created Easements and in Certificate of Dedication and Ownership. Dedicate to HOA.
 - 6) Strike (III) HOA By-laws and (IV) HOA Articles of Incorporation – neither should be recorded; if recorded, plat cannot be made subject to these documents.
 - 7) Change “exempt from” to “not subject to” side building setbacks.
 - 8) Town code requires resurvey and administrative replat at time of foundation. Strike note.
- Notes for Created Easements
 - These easements should be dedicated in the Certificate of Dedication and Ownership
 - 9) Sewer easement should be dedicated to Eagle River Water and Sanitation District
 - Notes 10 and 11 are redundant and unclear as to purpose for each.
 - Blanket easement is not permissible.
 - Need to be clearly depicted on plat sheets.
 - Permanent maintenance and access type rights should be dedicated to the HOA as developers often forget to convey the easement later.
 - More temporary installation, construction access and improvement rights can be addressed in “Developer Rights” provision of HOA Covenants.
 - Note 11 reference to an unrecorded Site Plan is not acceptable.
- Additional Easements to be Vacated or Depicted
 - ERWSD easement on Lot 31 recorded November 18, 2011 at Reception No. 201121532.
 - Apparent overhead utility line easements as may be depicted on Improvement Location Certificate by Archibeque Land Consulting Ltd., dated 5-18-18, No.

14190. Please confer with Xcel regarding these overhead lines and any recorded or unrecorded easements they may claim.

- Additional Lots to be Created
 - Lots 7 and 17 should be subdivided further to provide for additional open space parcels to be dedicated to the HOA, as depicted on C.132.
 - Note: Christiansan residence appears to encroach into 50 foot “no build” setback depicted on Plat Sheet 3, Lot 17.

2. Title Commitments:

- Must be updated within 30 days of execution.

3. Subdivision Improvements Agreement and other legal matters:

The Town has a form Subdivision Improvements Agreement that we will provide shortly. We have reviewed your narrative and civil engineering sheets with an eye towards certain commitments being made that should be memorialized in a SIA in addition to the items contained in the Town’s form. These additional commitments and legal issues are discussed in the following section.

- Phasing. The Applicant needs to contemplate its phasing plan, not only as it relates to the sequencing of residential construction, but also to the construction of improvements. The narrative states at various points that this is a single phase project, but being constructed in three phases. We acknowledge that due to the limitation on water taps, phasing of residential construction will be necessary. But, if the Applicant intends to construct all improvements in a single phase, then it must secure all improvements until constructed and accepted by the Town. Developing an infrastructure phasing plan for improvements that tracks residential construction may limit the Applicant’s risk and better order the construction of improvements. An additional SIA would be necessary for the second phase of development.
- Stormwater Drainage. We will need to further discuss cost sharing, dedication, maintenance, and ownership of any off-site drainage facilities, in addition to any cost-sharing. Further, it appears that the stormwater diversion facility being proposed from the stormwater impoundment located on OS1 crossing Highway 24 will pass through the Town’s Boneyard property to reach the river. The Boneyard Property is subject to a conservation easement with the Eagle Valley Land Trust, and for which Eagle County has certain rights. As such, EVLT has a right of notification and approval for any easements and holds all development rights upon the property. The Town can approach EVLT at the appropriate time to start discussions regarding this improvement and how it conforms with the purpose of the conservation easement.
- Stormwater Retention Ponds. Because most of these do not drain, but instead will evaporate or percolate, the HOA will need to be responsible for maintenance and cleaning out silt accumulations.
- Sidewalks. The discussion of sidewalks is of great interest to the Town as these amenities will need to meet Town standards and fit into the pedestrian network. This will be incorporated into the SIA. Additional discussions will be necessary

to discuss the development's contribution to the Highway 24 sidewalk project along the property's frontage.

- Bus Shelter. The Town supports the Applicant's offer to assist with construction of a bus shelter. ECO Transit will need to be brought in to discuss its timeline for such work, engineering standards, and other matters.
- Crosswalk. The Town shares the Applicant's desire to locate a crosswalk within close proximity to such residential density. The process for obtaining Colorado Department of Transportation approval can be challenging. The Town and Applicant would need to work closely to accomplish this goal, as will be provided in the SIA.
- Public Land Access. The Town supports the Applicant's suggestion to provide public access onto neighboring federal public lands. This will require further discussion with the U.S. Forest Service regarding potential recreational impacts on the subject lands.
- Open Space and Recreational Amenities. Please refer to notes regarding creation of additional open space parcels not depicted on the plat. Applicant should consider the phasing plan in the dedication of all open space parcels and construction of recreational amenities. Deeds should refer to public use of the open space parcels as the Town does not support the creation of private parks. Deeds must have restriction on further subdivision, development, conveyance. Further discussion regarding any possible variance for open space dedication amounts.
- Construction Materials. FireWise construction materials use will be incorporated into the SIA.
- CDOT Access Permit. The Applicant needs to discuss its process for obtaining a CDOT Access Permit, which is required at Final Plat.
- Restrictive Covenants. A restrictive covenant should be recorded that limits the amount and timing of outdoor irrigation.
- Affordable Housing. A deed restriction will be necessary to enforce the community housing ordinance.

4. Belden Place Declaration and Bylaw Review:

Declaration of Covenants, Conditions and Restrictions for Belden Place (the "Declaration") and the Bylaws of Belden Place Owners Association, Inc. (the "Bylaws")

1. THE DECLARATION.

Recitals: ***OK***

§1.4(f): Definition of "Attached Residential Unit" → This definition read with the Plat and the other lot, unit, and building definitions may be confusing. Plat identifies Lots as "Single Family" "Duplex" "Tri-plex" and "Multi-Family". Either the Declaration or the Plat should be revised to use the same defined terms. At a minimum, clarify whether Condominium Units are included or excluded from this definition.

Unintended confusion may arise from defining different types of Units, Lots and Buildings, consider following alternative definitions:

“Lot” refers to a platted parcel depicted on the Plat, which may be independently owned, whether improved or unimproved. Lot is synonymous with “Unit” as used in CCIOA.

“Unit” means a physical portion of the Community designed for separate ownership or occupancy, the boundaries of which are described in this Declaration or depicted on the Plat. The term shall refer to the land, if any, which is part of the Unit as well as any Improvements thereon. Each dwelling in a multi-dwelling building shall be a separate Unit.

To the extent that §1.4(u) “Improvements” incorporates buildings and all other structures that may be constructed on the Property, it may not be necessary to define the different types of buildings in the Declaration.

§1.4(m): Definition of “Common Expense”, and the Declaration in general, could be more specific as to the costs, expenses and liabilities that are included. For example:

“Common Expenses” means:

- i. any and all of the Association’s costs, expenses and liabilities including, without limitation, costs, expenses and liabilities incurred for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Property and the Common Area; (B) providing facilities, services and other benefits to Owners and their Guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created in the Governing Documents, (D) levying, collecting and enforcing the Assessments; (E) regulating and managing the Community; (F) operating the Association; (G) utilities not separately metered and billed directly to Unit Owners;
- ii. other expenses declared to be Common Expenses pursuant to the Governing Documents or the Act, and expenses agreed upon as Common Expenses by the Association; and
- iii. reserves for any such costs, expenses and liability.

§1.4(n): Definition of “Community” or “Belden Place” is not much different from “Property” and it may conflict with the CCIOA definition of “Community” at CRS 38-33.3-103(8).

§1.4(q): Definition of “Condominium Unit” → See comments on **§1.4(f)** above. May not be necessary to define this separately from Lot or Unit. If it is used, it should be revised to specify that Condo Units are Units with horizontal boundaries.

§1.4(y): Definition of “Multi-Family Building” → See comments on **§1.4(f)** above.

§1.4(z): Definition of “Multi-Family Lot” → See comments on **§1.4(f)** above.

§1.4(hh): Definition of “Single Family Detached Lot” → See comments on **§1.4(f)** above.

§1.4(jj): Definition of “Unit” → See comments on **§1.4(f)** above.

§1.4(jj): Definition of “Vacant Lot” → See comments on **§1.4(f)** above.

§§1.4(##) ADD DEFINITIONS:

“Allocated Interests” means the Association votes assigned to each Unit and the Common Expense liability allocated in Article III § 3.4.

“Guest” means an Owner’s family members, tenants, occupants, invitees, licensees, employees, contractors, or agents.

“Limited Common Elements” means portions of the Common Area allocated by the Declaration, or by operation of C.R.S. § 38-33.3-202(1)(b) or (1)(d), for the exclusive use of one or more Units but fewer than all of the Units.

“Managing Agent” means a person or entity that the Association may engage to perform certain duties, powers or functions as the Board may authorize from time to time.

Should also define: PUD; Mortgage; Mortgagee; First Mortgage; and First Mortgagee.

§2.4 Mechanic’s Liens. Language is fine, just seems misplaced under this Article – seems more of an Association Power or Use Restriction.

§2.5(c) to (j): Language is fine, but again, seems misplaced as these are clearly Association powers.

§2.6 Disclaimer of Liability. See comments to §2.4

ARTICLE 3. THE ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

- Consider inserting Association powers from §§2.4 and 2.5 in this Article.

§3.4 Allocated Interests. In this provision, or in a new provision added to this Article, it would be prudent to address membership classes that exist or may be added so that, when appropriate, owners within a membership class get to vote on matters that only effect their class. For example, it would make some sense to distinguish classes based on type of residential Unit, i.e.: Condo; Duplex; Triplex; or Single Family. Another alternative would be to have a separate class for Condominium Units and another for all other types of ownership.

ARTICLE 4. BOARD OF DIRECTORS

- In addition to the comments on §3.4 above, it may be appropriate to provide for election of 1 Board member by a certain membership class, or each membership class, to ensure that each class is equally represented on the Board. For example, the Condominium Unit Owners’ right to elect at least 1 Board member should be reserved.

§5.3 Annual Assessment. Consider increasing the vote necessary to veto the budget from a majority to 67% or higher.

§5.4 Special Assessment. Clarify that Special Assessments may be levied for maintenance, repair or replacement of existing “Improvements” within the Common Area, or for construction of new capital improvements. Recommend removing

provisions for ratification pursuant to the budget ratification process provided for in CRS 38-33.3-303(4).

- Requiring Owner approval for special assessments is impractical for any Association, more so for Mountain Communities due things like extreme weather and high percentages of disengaged second homeowners, and will impede the Board's ability to efficiently manage the Property. Consider excluding Special Assessments for Common Expenses incurred in emergencies from any Owner approval vote requirement. If Owner approval is going to be required for any Special Assessment, lower the approval requirement to something like a majority of a quorum of Owners, or set a dollar amount limit for special assessments that may be levied without Owner approval. Another alternative would be to require a majority of Owners to approve special assessments for capital improvements, and exclude expenses related to maintenance, repair or replacement of existing "Improvements" within the Common Area from owner approval requirements

§5.7 – specify a minimum amount of interest or late fee to be charged if the Board does not promptly establish those amounts.

§5.10 – Clarify that the Working Capital contributions are due upon any sale of a Unit at any time. Additionally, the working capital fund does not need to be held in a segregated account, it can be held with the Association's reserves or operating funds, and need only be distinguished as a line item in the Association's budget, balance sheet, or other financial records.

§6.4 – The last sentence providing that any request for architectural approval that the ARC does not approve or deny within 30 days is "deemed denied" may be invalid or otherwise unenforceable to the extent a denial without a written explanation conflicts with earlier parts of this provision, and because such a denial would very likely be arbitrary and capricious.

§6.6 – 6 months may be insufficient in an area where the outdoor building season is 3-4 months. It may also unintentionally overburden the ARC if all requests for approval for projects that require warmer temperatures are made in Nov/Dec/Jan.

§6.10 - Anything that purportedly "waives" or "releases" a person's right to sue may be invalid regardless of inclusion in the Declaration. To the extent that indemnity as to the parties and matters addressed in this section is not addressed elsewhere, this provision should be revised to address indemnification. If such indemnification is addressed elsewhere, this could be deleted.

§7.1(b) - Should clarify what additional real or personal property lying outside the Community could the Association assume the obligation to maintain or repair.

§7.3 – Should clarify that the Association may enter a Unit and perform necessary maintenance or repair work to the Unit or Common Area Improvements adjacent thereto, without prior written notice, in the event of an emergency to protect another Unit or Common Area Improvements from damage.

§9.2(a) – See **§7.1(b)** comment, this provision should address any insurance obligation the Association may have for property lying outside of the Community.

§9.13 - See comment to **§6.10** above. It is unclear what the purpose of this section 9.13 is.

§9.18 – See comment to **§5.4**, and note that collection of the expenses addressed in this section are probably already included in **§5.4**. At a minimum, recommend removing provisions for ratification pursuant to the budget ratification process provided for in CRS 38-33.3-303(4).

§10.1 – Recommend removing last 2 sentences to the extent it suggests any right to selectively enforce the Governing Documents, which is prohibited under applicable law. Alternatively, replace the last 2 sentences with the following:

Failure to enforce any provision of this Declaration or other Governing Documents shall not operate as a waiver of any such provision or of any other provision of this Declaration.

§10.1(a) – Revise, restrictions on use of a Unit must be in the Declaration. *See CRS 38-33.3-205.*

§10.1(b) – Revise, the Declaration can only be amended by the Owners in most circumstances. *See CRS 38-33.3-303(3).*

§10.9 – Generally - Unit occupants are permitted to park certain emergency vehicles within the Association if the resident is a member of a volunteer fire department, a law enforcement employee or an emergency service provider employee; parking the emergency vehicle at the residence is a condition of employment; and parking the emergency vehicle does not obstruct emergency access or unreasonably interfere with use of streets, driveways or guest parking. *See C.R.S. § 38-33.3-106.5*

§10.9(g)(h)(i) – These provisions could probably be stated in Rules and Regs rather than the Declaration.

§10.14 – Regulating the display of flags and political signs is restricted by C.R.S. § 38-33.3-106.5

ARTICLE 11. DISPUTE RESOLUTION PROCEDURES

- Suggest providing for Claims to mediated by a mediator mutually agreeable to the parties, then JAG or JAMS if they cannot agree.
- Could limit requirement to use JAG for mediation of Construction Defect Claims.

§11.5(c) – only mandate arbitration for Construction Defect Claims.

OTHER DECLARATION NOTES:

- Add Article/provisions regarding Mortgagee Rights

2. THE BYLAWS

§2.1 – Second sentence: revise because the current language conflicts with language in 2.3(c) which contemplates ownership by more than 1 person. Also state whether there are multiple classes of membership if Declaration is revised accordingly.

§3.5 - This provision is not necessary and may be in conflict with CCIOA and/or Nonprofit Act requirements that Meeting Notices be given to all Owners/Members. Regardless of an Owner/Member's right to vote, which may be suspended, they still have a right to attend and participate in discussion at all meetings.

§3.8 - This is fine, but note that the minimum quorum requirement is 20%.

§3.11 – Suggest revising to state: “A secret ballot is required for all contested Board positions, and also any other vote if requested by 20% or more of Owners. When a vote is conducted by secret ballot neutral third parties, or randomly selected non-candidate Owners, will count ballots. The results of the vote will be reported without reference to names, addresses, or other identifying information.”

§4.1 - Will the initial Board appointed by the Declarant consist of 3 directors? If not, state how many will initially serve during the Declarant Control Period. Suggest revising to make increases or decreases to the number of Board members by amendment of the Bylaws. Include reference to election of specific number of Board members by a specific membership class if appropriate Declaration changes are made.

5. Affordable Housing Deed Restriction

- The developer needs to facilitate referral comments from Eagle County Housing. If the referral indicates that resident/employee occupied housing is the appropriate form of housing mitigation, the Town has a form resident/employee occupied deed restriction.

Jena, this is a well thought out application and is organized in a manner that allowed staff and other referral agencies to review multiple sections and reports. As with any application of this type, the amount of information and levels of detail necessary to ensure proper review and, therefore, good decision making, is incredible and time consuming to fully review. We appreciate your patience as we have done our best to review the application in a timely manner and to provide thorough and thoughtful comments aimed at making sure the PUD can be developed and regulated in the best possible manner if ultimately approved by the Town.

As you review these comments and make necessary revisions to the PUD Preliminary Plan, PUD Guide, or Declarations of Covenants, please keep in mind that these documents will provide the backbone for the Town's and the HOA's ability to implement and enforce the terms of the PUD. Our comments are provided in this spirit to ensure clear interpretation and enforcement of the documents and, therefore, the practical application of the design and regulatory intent of the PUD.

Last, as staff and the Planning Commission continue to review the plans, additional comments from staff may be offered as suggestions or requirements to be addressed prior to or during any final plan application, Final Plat and/or Subdivision Improvements Agreement review.

Please contact me at (970) 827-5645 or at (970) 343-2161 if you have questions or require further assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to be 'SH' followed by a stylized flourish.

Scot Hunn, AICP/MPA
Planning Director

Cc: Michelle Metteer
Michael Sawyer
Jeff Spanel
Arnold Martinez
Madison Harris
File