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COLORADO COURT OF APPEALS
Court Address: 2 East 14th Avenue
Denver, CO 80203

Appeal from:
18th Judicial District
Douglas County District Court
Honorable Shay K. Whitaker
Case Number 2018CV30050

Plaintiffs/Appellants:

IRONSTONE CONDOMINIUMS AT STROH RANCH OWNERS ASSOCIATION, INC. AND STROH RANCH COMMUNITY ASSOCIATION, INC.

vs.

Defendants/Appellees:

TOWN OF PARKER PLANNING COMMISSION, TOWN OF PARKER, DOMINIUM DEVELOPMENT AND ACQUISITION, LLC a/k/a DOMINIUM DEVELOPMENT, AND STROH RANCH DEVELOPMENT, LLC

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Court of Appeals
Case Number: 2019CA34

APPELLANTS' SECOND AMENDED OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the applicable word limits set forth in the C.A.R. 28(g) or C.A.R. 28.1(g).

☒ It contains 9,391 words (principal brief does not exceed 9,500 words; reply brief does not exceed 5,700 words).

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

☒ **For each issue raised by the appellant**, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

☐ **In response to each issue raised, the appellee** must provide under a separate heading before the discussion of the issue, a statement indicating whether appellee agrees with the appellant's statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ M. Stuart Anderson

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STATEMENT OF THE CASE

This appeal stems from factual and legal controversies surrounding the Town of Parker's ("Town") approval of a development which would directly affect and impact Appellants' rights and the rights of the owners and residents they represent.

Appellants are non-profit homeowners' associations ("HOAs") for their respective covenant-controlled communities. Ironstone Condominiums at Stroh Ranch Owners Association, Inc. ("Ironstone") is the HOA for the Ironstone Condominiums at Stroh Ranch. Stroh Ranch Community Association, Inc. ("Stroh Ranch") is the HOA for Stroh Ranch. (Uncontested by the parties, See also [CF p. 362, p.381-382, EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Ironstone HOA Comments (3527-3529) p. 1-3 (3527-29)[1], ii. TRAKiT file #SP16-108 attachments\South Parker Preservation Committee Dominium Referral Response - final3 (3775-3787) p.1-13 (3775-3787)]. Appellants will collectively be referred to as "the Stroh Ranch HOAs". The District Court found that the Stroh Ranch HOA's had standing to bring their C.R.C.P. 106 claim based on the facts in the record and law as referenced by the District Court's order incorporated herein by reference [CF, p. 387].

[1] Exhibit Envelopes contained flash drives with multiple files and long file pathways. In addition to providing the file pathway and name, all Exhibit documents are cross referenced with the corresponding bate stamps. Bate stamp numbers appear in parentheses after the relevant page number citation.

In 1986, the Town approved the first plat for the Stroh Ranch development which would later include the two Stroh Ranch HOAs in this case [EX Env. 1, Table of Contents\1. Documentary Evidence\B. Notebook from Nov 9, 2017 PC mtg\Public Hearing_SP16-018 Stroh Ranch Filing No. 1, Amend No. 2, Lot 5 Site Plan Amend_Docs of Record (463-747) p. 11-12 (473-474)]. That plat did not depict or include any reference to Ironstone Way (the private drive at issue in this case). In 1997, the Town approved a site plan for Lot 5 [id. p. 72-73 (534-35)]. That 1997 site plan did not reference an "Ironstone Way". It did depict a maintenance access easement, expressly limited to that purpose only [id. p. 71-73 (534-35)]. running over the general area where Ironstone Way would later be approved on the 2004 Plat. Lot 5 was approved by the Town as being 30.41 acres. Later, when the Stroh Ranch developer defaulted on its loans Lot 5 was partitioned by operation of law into Lots 5A and 5B [id. p. 171 (633)]. Lot 5B was developed as the Ironstone Condominiums and Lot 5A remained vacant. Lot 5A consists of 11 acres. In 2004, the Town accepted and approved a Plat for Stroh Ranch that expressly referenced Ironstone Way and it established Ironstone Way as a "private drive".

Ironstone Way is a private drive that runs within the Ironstone covenanted community as delineated on the 2004 plat ("Ironstone Plat"). [CF p. 166-205]. Ironstone Way is a common element of the Ironstone community and it is maintained

by Ironstone for the use and benefit of its residents. [Town Planning Commission Staff Report dated 11/9/17, EX Env 2, ii. TRAKiT file #SP16-108 attachments\Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733) p. 15 (4730), See also CF p.356-57].

Dominium Development and Acquisition, LLC a/k/a Dominium Development ("Dominium") and Stroh Ranch Development LLC ("Stroh Ranch Development") were the co-applicants (collectively "Developers") for a real estate development project on Lot 5 [CF p. 167].

The Developers sought to place a development on Lot 5A which included three-story apartment buildings consisting of 204 multi-family dwelling units, a one story clubhouse with an outdoor pool, a playground, a one story pool equipment/restroom building, a dog bath, bike stalls, mail kiosk, bus drop off shelter, and detached garages and carports (the "Development"). The Development is identified in the Town of Parker's records as #SP16-108 and was submitted in the form of an amended site plan (the "Site Plan") [EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Narrative (3537) p. 1 (3537)]. The Town of Parker acts through the Town of Parker Planning Commission in regard to the approvals at issue in this action [the Town admitted this in its Answer, CF p.43 ¶9]. For the sake of brevity,

the Town of Parker and its Planning Commission will be referred collectively as the "Town" except where a distinction is made herein.

Because the Developers' existing rights to Lot 5 were insufficient to proceed with their new development plans, the Developers were legally required to submit an amended Site Plan for approval by the Town. The Developers' choice to seek approval for its new development plan for Lot 5A subjected the development to the Town's Municipal Code (the "Code"), Design Criteria, and other laws that were in effect at the time the amended Site Plan was submitted on or about December 27, 2016. Within the newly proposed development, the Developers sought to appropriate Ironstone Way to service the needs of their project in the limited context of a governmental land use approval rather than a district court action wherein the district court would have jurisdiction to fully adjudicate the underlying issues such as easements, the scope of easements, trespass, and other issues.

The Stroh Ranch HOAs, the Village of the Green HOA and the surrounding community all voiced continued and strenuous objections to the new development [Town Planning Comm. Staff Report dated 11/9/17 EX Env 2, ii. TRAKiT file #SP16-108 attachments\Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733) p. 16-17 (4731-4732); See also Order dated 11/28/18 CF, p.382]. Said objections included objections regarding the expanded use of Ironstone Way, the failure of the Town to adhere to mandatory

provision of its Design Criteria, Code, and other laws, increased vehicular traffic, the Developers' imposition and transfer of the increased maintenance costs for the Developers' use of Ironstone Way onto the existing homeowners for Ironstone communities, and other issues as raised in the Town's meetings and the pleadings in the C.R.C.P. 106 action [CF p. 146-151].

On December 14, 2017, the Town approved the Development. The Town acted without making any specific material findings of fact or conclusions on the contested issues. Ironstone timely filed an action under C.R.C.P. 106(a)(4). The trial court conducted oral arguments on the parties' briefs on 08/23/18. On 11/28/18, the trial court entered an order upholding the decision of the Town to approve the Developers' application [Order dated 11/28/18 CF p. 351-363].

In its order of 11/28/18, the District Court applied a purely abuse of discretion standard of review for the issues presented in the action. The District Court rejected the Ironstone HOA's suggestion that some of the issues presented for review were subject to a *de novo* review [CF p. 362 – Order of 11/28/18].

This appeal was brought by the Stroh Ranch HOAs. There is no cross-appeal.

SUMMARY OF ARGUMENTS

The Town's Planning Commission, a lower body of limited authority, acted in arbitrary and capricious manner when it approved a development that did not comply

with Mandatory Code provisions such as through access requirements, parking requirements, and sidewalk requirements. Because the Commission was acting outside of the limited authority afforded it under the Town Code, the Commission acted outside its jurisdiction by misapplying and misconstruing the pertinent and mandatory Code requirements. The lack of any specific findings on mandatory issues in the Code coupled with missing and necessary facts in the record meant that there was no or insufficient findings in the record or references to competent evidence in the record to approve the Development with regard to the Town Code.

There was insufficient competent evidence in the record to support a finding that Ironstone Way was a public street or that it constituted an easement for the public or the Developers' property. Further, the forum for adjudicating disputes concerning easements is the province of the courts.

The Town, based on its approval of the Development, would have had to misconstrue the law and misapply the law including the failure to employ the proper legal standard. This District Court did not employ the correct legal standard of review because it rejected that any portion of its review could be done under a de novo review because of the inapplicability of the Administrative Procedure Act. The District Court did not make sufficient findings as what implied findings the Town made or was permitted to make under the law and facts in the record including the legal standards construction, and application of the law to the facts that would have

been legally required to find compliance with Code and findings of a common law prescriptive or other easement.

ARGUMENT

A. THE TOWN ABUSED ITS DISCRETION, ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, AND EXCEEDED ITS JURISDICTION IN THE APPROVAL OF THE DEVELOPMENT.

i. Standards of Review Applicable to Issue "A(ii-ix)" and the preservation of issue "A(ii-ix)" with references to the record.

C.R.C.P. 106(a)(4) states that governmental body decisions taken in the course of the exercise of that body's judicial or quasi-judicial functions are reviewed for a "**determination of whether the body or officer has exceeded its jurisdiction or abused its discretion based on the record before the defendant body or officer.**" C.R.C.P.(a)(4)(I).

In the context of a challenge to the sufficiency of the record, the record must demonstrate some competent evidence to reasonably support the decision else the governmental body may be found to have acted in an arbitrary and capricious manner.

> "**An abuse of discretion occurs when a governmental body issues a decision that is not reasonably supported by any competent evidence in the record.** ***Van Sickle v. Boyes,*** **797 P.2d 1267 (Colo.1990);** ***Carney v. Civil Serv. Comm'n,*** **30 P.3d 861 (Colo.App.2001). "No competent evidence" means that the governmental body's decision is "so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority."** ***Bd. of County Comm'rs v. O'Dell,*** **920 P.2d 48, 50**

(Colo.1996)(quoting *Ross v. Fire & Police Pension Ass'n*, 713 P.2d 1304, 1309 (Colo.1986))." Canyon Area Residents for the Env't v. Bd. of Cty. Comm'rs of Jefferson Cty., 172 P.3d 905, 907 (Colo. App. 2006), as modified on denial of reh'g (Nov. 9, 2006)

In the context of a claim that the government body abused its discretion or exceeded its jurisdiction by misconstruing or misapplying the law, "…. **a court must affirm unless the governmental entity abused its discretion or exceeded its jurisdiction. *Id.* Such an entity exceeds its jurisdiction or abuses its discretion only if it either misapplies the law or no competent record evidence supports its decision. *Bd. of County Comm'rs v. Conder*, 927 P.2d 1339, 1343 (Colo.1996).**" Alpenhof, LLC v. City of Ouray, 297 P.3d 1052, 1055 (COA 2013). Further, when the law in question is part of the governing body's own laws, such as a municipal code, "**in determining whether the governmental agency abused its discretion or exceeded its jurisdiction, the reviewing court in a C.R.C.P. 106(a)(4) proceeding considers whether the governmental body misconstrued or misapplied the law. *See Giuliani*, ¶ 39, 303 P.3d 131. In doing so, the reviewing court reviews questions of law, such as the interpretation of a statute, de novo. *Stevinson*, 143 P.3d at 1101.**" Friends of the Black Forest Pres. Plan, Inc. v. Bd. of Cty. Commissioners of El Paso Cty., 2016 COA 54, ¶ 15, 381 P.3d 396, 400 (de novo review applied to board of county commissioner's interpretation and application of law in its land use decision); Alpenhof, LLC v. City of Ouray, 297 P.3d 1052, 1055 (COA 2013)("**Interpretation of a city code is reviewed *de novo*,**

applying ordinary rules of statutory construction"); Commerce City v. Enclave West, Inc., 185 P.3d 174, 178 (Colo. 2008) (a court may defer to a governmental body's statutory construction, but is not bound by that construction because review is de novo; courts look to rules of statutory construction and common sense meaning").

Issue A(ii-ix) was preserved in the record. [CF p. 22-29, ¶¶19-47 – Complaint; CF p. 141-222 – Opening Brief in the District Court, ¶¶7-20 under "Statement of Facts", ¶¶1-6 under "Summary of Argument", and Sections A-F under "Argument"; CF p.312-320,¶3-6 - Reply Brief to Dominion; CF 1, p.322-326 ¶ 2-10 - Reply Brief to Stroh Ranch Development; CF p.330-350, ¶28-38 – Reply Brief to Town; TR 08/23/18, p.12-14, 35-37 – Oral arguments of Briefs to the District Court].

ii. The Town Code, including the Town's Design Criteria, was mandatory.

Municipal codes are the self-imposed laws that towns are obligated to follow. Such codes promote the equal treatment of all persons, consistency, and the rule of law. This is especially true when the drafters of such codes, the towns themselves acting in their legislative capacity, impose mandatory requirements on themselves or their lower bodies by using such terms as "shall", "must", or "all" in their codes. When a town disregards its own self-imposed laws, it departs the safe harbor of the rule of law for other shores.

Governing bodies may self-impose mandatory requirements, including on their lower bodies such as planning commissions, through their enactments in the exercise of their legislative making authority thereby limiting their, or their planning commission's, jurisdiction and discretion to approve land use decisions. See Nixon v. City & County of Denver, 343 P.3d 1051, 1054 (Colo. App. 2014); Rags Over Ark. River v. Parks & Wildlife Bd., 360 P.3d 186, 191(Colo. App. 2015); Beaver Meadows v. Bd. of Cty. Comm'rs of Larimer Cty., State of Colo., 709 P.2d 928, 936 (Colo. 1985)(governing body may self-impose limits to its discretion and the jurisdiction of itself and its lower bodies through enactments).

The Developers' request to amend their Site Plan subjected their Development to mandatory provisions that were binding on both the Developer and the Town. In approving the new development plans, the Town failed to follow multiple (11 or more) mandatory provisions in the Town's Code and Design Criteria.

The Town, acting in its legislative capacity, made its design criteria mandatory both for itself and developers in regard to the class of developments like the one at issue in this case. The Code Section provides that the Town's Architectural and Design Standards for Commercial, Industrial and Multiple-Family Projects are "**adopted by reference as if set forth herein**" and that the Design Standards "**shall govern all site plans and architectural plans for**" multiple-family projects within the Town, such as SP16-108. **"Design Standards are mandatory and must be**

satisfied by the applicant prior to receiving any approval related to a commercial, industrial or multiple-family project located within the Town [Underlines added]." Code Section 13.10.200(b) [CF p.217].

In enacting Code Section 13.10.200(b), the Town purposefully and expressly limited the scope of its discretion in applying its Design Criteria for developments and it limited the jurisdiction and the scope of the authority delegated to its Planning Commission to approving only Developments which meet the mandatory provision of its Code inclusive of its Design Criteria.

iii. There was no finding by the Planning Commission that satisfied the mandatory requirements imposed by the Town under Code Section V.1.D.4 for a "through access drive", the Commission did not identify the laws it applied to the missing finding, and the Commission did not set forth how the Commission construed any law(s) it may have applied in order to reach the absent finding.

The Town mandated in its Code that a development "shall" have a through access drive that connects to a public street on both ends: **"Multi-family development sites between 5 and 15 acres shall include a minimum of one public street or private drive, with detached sidewalks and tree lawns, that is continuous through the site and connects to a public street on both ends (referred to as a through access drive** [Underlines added]." Code Section V.1.D.4 [CF p. 219]. Lot 5, at the time of application, consisted of 11 acres [EX Env. 2, ii. TRAKiT file #SP16-108 attachments\Land Use and Development Application (3530-3531) p. 1-2 (3530-3531) – Site Plan Application].

The Developers had one access point for ingress and egress to Lot 5A off J. Morgan Boulevard. However, because the Developers were submitting an amended site plan, the Town Code required two access points. Because the Code required that the Development have at least two points of access over a "through access drive" that connected to a public street on both ends, the Developers proposed to use a private road, Ironstone Way, as the second access point [EX, Env. 2, ii. TRAKiT file #SP16-108 attachments\ 2017.10.16 -Final SDP_final_1 (1367-1394) p.3 (1369), p. 7-9 (1373-75), p. 21 (1387), Site Plan] This would require a finding by the Town that Ironstone Way was a public street and that the Developers have some sort of easement over Ironstone Way to access the proposed development on Lot 5.

The Town expressly found that Ironstone Way was a private drive located within the Ironstone covenanted property [EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733), p. 15 (4730)]. The record is devoid of the Town actually making an express finding that Ironstone Way is a "public street" or that it has a public use. Assuming arguendo that the Town's non-finding could be implied from the record, the record tells us nothing about what laws the Town found relevant, the laws it actually applied as opposed to those suggested by others, how it construed the laws, or how it applied any laws including its Code. In other words, the record is devoid of the required mandatory elements found in the Town's own Code. The lack of any meaningful

findings and conclusions on the specific mandatory points required by the Code and the law of easements supports a finding that the Town acted in an arbitrary and capricious manner. Such decisions, especially where the Town has limited the scope of the discretion, authority, and jurisdiction granted to its Planning Commission through mandatory language in the Code, require proof in the record as to what the Town found and how it got there. Without showing its answers and how it got to its answers on the pertinent mandatory requirements in the Code, the Town has left it to the public and the courts to guess, speculate, and fill in the blanks. Governmental bodies should not place courts in the position of composing their decisions for them *ex post facto*. If governmental bodies are to be rewarded for a lack of transparency and a lack of specificity in the body's quasi-judicial decisions, then the judiciary will be rendered little more than conscripted planning staff for towns who dutifully fill in the blanks by divining what the town really meant.

iv. There was no finding by the Planning Commission that satisfied the mandatory requirements imposed the Town in regard to Code Section 13.06.050(g)(1), the Commission did not identify any laws or facts it may have applied to the missing findings and there is no record of how the Commission construed any law(s) it may have applied in order to reach the absent finding.

The Town mandated that "**All parking areas shall be provided with ingress and egress to an improved public right-of-way, shall be located so as to promote safety and minimize traffic congestion, and shall be provided with necessary**

internal circulation drives and aisles to create through-traffic patterns. Code Section 13.06.050(g)(1) [CF p.214-215].

There are no specific findings by the Commission that the Development satisfied the requirements found in this section of the Town Code, only a general statement of approval. The Project lacks the necessary internal circulation drives and aisles to create through traffic patterns. Moreover, the Project sought to satisfy its parking requirements by parking vehicles on Ironstone Way. [EX Env. 2, ii. TRAKiT file #SP16-108 attachments\ 2017.10.16 -Final SDP_final_1 (1367-1394) p. 4 (1368), p. 7-9 (1373-75), Site plan; TR 11/9/2017, p. 47].

v. There was no finding by the Planning Commission that satisfies the mandatory requirements imposed by the Town in regard to Code Section 13.10.020, the Commission did not identify any laws it may have applied to the missing findings and there is no record of how the Commission construed any law(s) it may have applied in order to reach the absent finding.

Code Section 13.10.020 mandated that **"The arrangement, character, extent and location of all streets shall conform to the Town of Parker Roadway Design and Construction Criteria Manual and transportation plans. Due consideration shall be given to their relation to existing and other planned streets, to topographical conditions, to drainage, to public convenience and safety, and to the uses of land served by such streets. [underlines added]"** Code Section 13.10.020 [CF p. 216]

The record is bereft of any findings or conclusions on Code Section 13.10.020. Where is the evidence that any due consideration was given as to whether the streets satisfied the foregoing requirement that Ironstone Way constitutes a "planned street"? Ironstone Way is a private drive. The mandatory portions of the Town Code constrained the scope of what the Commission was authorized to approve (its jurisdiction). Nothing in the Code would have permitted the Developers to access their development via Ironstone Way, dump the Project's end-user vehicular through traffic onto the private property of Ironstone Condominiums (Ironstone Way), and then allow the Development's vehicles to park on Ironstone Way. The Town presumably mandated certain Code requirements to safeguard against exactly what the Developers were seeking to do to the Stroh Ranch HOAs in this case. The fact that the record is absent, imprecise, and goes fuzzy on precisely those portions of the Code that cannot be squared with the Developers' plan screams "arbitrary and capricious". The Town should not be permitted to create a black box for the public or the courts in regard to its decision making. This is especially true in regard to the sections of the Code that the town found significant enough to self-impose mandatory conditions on its Planning Commission and itself.

vi. There is no finding by the Planning Commission that satisfies the mandatory requirements imposed by the Town in regard to Code Section 9.1.9, the Commission did not identify any laws it may have applied to the missing findings and there is no record of how the Commission construed any law(s) it may have applied in order to reach the absent finding.

Code Section 9.1.9 of the Code states **"The developer/permittee shall confine its equipment, apparatus, storage of materials, and operations of their workers to limits indicated by law, ordinances, permits, easements, and/or the direction of the Town. The developer/permittee and its contractor(s) shall not use any vacant lot or private land for access, as a plant site, depository for materials, or as a spoil site without the written authorization of the owner of the land and the Town. A copy of such written authorization with the owner of the land shall be provided to the Town."** [CF p. 222].

The Town found that Ironstone Way was a private road [EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733) p. 15 (4730)]. Yet, the Developers' amended Site Plan relied on the use of private land, Ironstone Way, and unestablished easements for both access and development operations, and the Site Plan permitted the Developers to shift their vehicular parking requirements off their land and onto Ironstone Way. [EX, Env. 2, ii. TRAKiT file #SP16-108 attachments\ 2017.10.16 -Final SDP_final_1 (1367-1394) p. 3 (1369), p. 7-9 (1373-75), p. 21 (1387), Site Plan; TR. 11/9/2017, p.47]. There was no record that the Developers

either sought "the written authorization" of Ironstone and there is no record of any written authorization as required by Code Section 9.1.9. The District Court found that no permission was given by the Stroh Ranch HOAs despite the Town's and the Developers' assertion that the land records, including the Closing Agreement, supplied the necessary permission mandated by the Code. (CF p. 295; CF p.381-382)

The Town made no findings establishing how the proposed development was in compliance with the mandatory provisions of Code Section 9.1.9, the actual law the Commission applied, or how any laws were construed by the Commission. However, the Developers' burden shifting and non-compliance did not stop there.

The Development's approval will impose on Ironstone Way a massive increase in both construction and residential traffic over that Way. This private drive will sustain increased wear and tear. The increased maintenance and repair costs for Ironstone Way constitute an involuntary obligation and cost imposed upon Ironstone, and thus upon Ironstone's unit owners. [EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Stroh Ranch Apartments Traffic Study (4369-4386) p. 1-18 (4369-4386), traffic study analysis, "An estimated "1,357 new vehicle trips on the average weekday, with about half entering and half exiting the site during a 24-hour period."].

While the future residents of the new Development will benefit from using Ironstone Way, those same residents may have no obligation to contribute to the necessary maintenance and repair costs for Ironstone Way. Ironstone will be saddled with funding the maintenance and repair costs, while the Developers and the future residents of the new Development may avoid all costs arising from their uses and activities. [EX Env. 2 ii. TRAKiT file #SP16-108 attachments\ Community Comments (2640-3252) p. 287 (2926), p. 488 (3127), p. 498 (3137), p. 503 (3142), p. 507 (3146), p. 515 (3154), p. 519 (3158), p. 525 (3164), Ironstone Way objections; Id. p. 1-614 (2640-3252), numerous complaints; EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Ironstone HOA Comments (3527-3529) p. 1-2 (3527-29), letters from Board president raising Ironstone objections)]. The Developer's imposition of costs onto the private land of others is violative of the mandatory requirements in Code Section 9.1.9 (no use of private land for access), Code Section 10.10.020 (due consideration for existing street and their uses), and Code Section 13.06.050(g)(1) (parking and access requirements).

The Stroh Ranch HOAs have been greatly prejudiced by the approval of the Development. The appropriation of Ironstone Way for the approval of the Development, violations of private property rights, increased traffic, parking, a change in the character and use of Ironstone Way, cost shifting, and all of the other matters of record create exactly the kind of hardships on the Stroh Ranch HOAs and

the public that the pertinent mandatory Code provisions were designed to guard against. The Town voluntarily imposed mandatory conditions on its Planning Commission. The Commission acted outside of its authority and it, without question, did not make articulable findings that demonstrate compliance with the Code by the Developers.

vii. Assuming arguendo that the Town had actually made findings in the record on the pertinent mandatory sections of the Code, nonetheless the Town's decision should be overturned because there is no competent evidence to support each and every of the mandatory sections of the Code.

The failure of the Developers to meet any one of the mandatory Code provisions raised in the record and herein, including the Design Criteria, would be fatal to the approval of the Development because each of those provisions were made compulsory by the Town both as to its lower body, the Planning Commission, and the Developers. This was acknowledged by the Town in its Planning Commission Staff Report dated 12/14/17 [EX, Env. 2, ii. TRAKiT file #SP16-108 attachments\ Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733) p. 1-7 (4716-4722). "**The Town of Parker has issued no waivers or variances for the proposed project. The project must satisfy all the requirements outlined in the Land Use Development Ordinance"** (Id. p. 3 (4718)].

viii. The Town misconstrued and misapplied its Code and other laws and exceeded its jurisdiction.

Commissioner Ruth Ann Nelson acknowledged in her denial vote, the

Code requires that developments, such as the one in this case, must include sidewalk placements along all public streets pursuant to Code Section V.I.C.(2) ("**Sidewalks shall be provided along all public streets** (Emphasis added)." [CF p. 219; TR 12/14/17, p. 29-30]. Instead of placing sidewalks along the portion of Ironstone Way that runs adjacent to the property line of the Development as would be required by the Code if Ironstone were a "public street" under the Code, the Developers' Site Plan placed parking spaces in the place of the required sidewalks [id. p.29:13-17]. This set up an irreconcilable conflict between any implied finding by the Town that Ironstone Way was a public street for purposes of satisfying the "through access drive" requirement under Code Section V.1.D.4 [CF p. 219] and the corresponding requirement that a development plan must include a sidewalk along all public streets under Code Section V.I.C.2. For the sake of argument, even if you assume that the Town actually considered the internal contradictions of its decision, any reasonable interpretation of the Code would have resulted in the denial of the Site Plan. Alpenhof, LLC v. City of Ouray, 297 P.3d 1052, 1055 (COA 2013)("**Interpretation of a city code is reviewed *de novo*, applying ordinary rules of statutory construction**").

Another alleged "implied" finding or legal interpretation was in regard to the binary distinction expressly drawn in Code Section V.1.D.4 between public streets and private drives was actually a trinary distinction.

> **"Multi-family development sites between 5 and 15 acres shall include a minimum of one public street or private drive, with detached sidewalks and tree lawns, that is continuous through the site and connects to a public street on both ends (referred to as a through access drive.** Code Section V.1.D.4 [CF p. 219].

The Town took the position in the C.R.C.P. 106 action that when the Code said "public streets or private drives" it actually meant (1) public streets and (2) private drives with a public use or (3) private drives." This is not a reasonable interpretation of the plain language in the Code. Commerce City v. Enclave West, Inc., 185 P.3d 174, 178 (Colo. 2008) (**"court may defer to agency's statutory construction, but is not bound by that construction because review is de novo; court looks to rules of statutory construction and common sense meaning"**). Further, there was no competent evidence upon which the Town could have concluded that Ironstone Way was a public street. For a full discussion of the status of Ironstone Way as a private drive see infra, Section "B"

Finally, the Stroh Ranch HOAs have identified the specific mandatory provisions of the Code that the Town failed to follow and for which it failed to provide a basis in law and fact for the Development's approval. No reasonable construction or application of the identified portions of the Code would have resulted in a finding of compliance with the Code and approval of the Development. Failure as to even one such mandatory condition would have and should have resulted in the denial of the Development as submitted in the amended Site Plan. Further, the

Town's Planning Commission's failure to act within the Code resulted in the Commission acting outside the limited jurisdiction granted to it in regard to the pertinent and mandatory Code requirements.

If the Town's Planning Commission had followed the Code mandates and correctly construed and applied the pertinent Code and other laws, then the Development would have been denied. There was no harmless error in the approval of the development by the Town's Planning Commission.

ix. The Stroh Ranch HOAs and the effected members of the community raised multiple and vociferous objections.

Neither Plaintiff has granted any permission, license or easement to anyone to allow persons who are not owners in the community, or the owners' guests or authorized visitors, to use Ironstone Way. Neither Plaintiff has granted any permission, license or easement to anyone to use Ironstone Way for construction traffic, nor to use Ironstone Way for ingress and egress to other property. [EX Env. 2 ii. TRAKiT file #SP16-108 attachments\ Community Comments (2640-3252) p. 287 (2926), p. 488 (3127), p. 498 (3137), p. 503 (3142), p. 507 (3146), p. 515 (3154), p. 519 (3158), p. 525 (3164), Ironstone Way objections; Id. p. 1-614 (2640-3252), numerous complaints; EX Env 2, ii. TRAKiT file #SP16-108 attachments\ Ironstone HOA Comments (3527-3529) p. 1-2 (3527-29), letters from Board president raising Ironstone objections)].

B. THE TOWN EXCEEDED ITS JURISDICTION, ABUSED ITS DISCRETION, AND ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER WHEN IT APPROVED THE DEVELOPMENT'S USE OF IRONSTONE WAY AS PUBLIC STREET FOR PURPOSES OF APPROVAL OF THE DEVELOPMENT.

i. Standards of Review Applicable to Issue "B(ii-v)" and the preservation of issue "B(ii-v)" with references to the record.

C.R.C.P. 106(a)(4) states that governmental body decisions taken in the course of the exercise of that body's judicial or quasi-judicial functions are reviewed for a "**determination of whether the body or officer has exceeded its jurisdiction or abused its discretion based on the record before the defendant body or officer.**" C.R.C.P. 106(a)(4)(I).

In the context of a challenge to the sufficiency of the record or competency of evidence, the record must demonstrate some competent evidence to reasonably support the decision else the governmental body may be found to have acted in an arbitrary and capricious manner.

> "**An abuse of discretion occurs when a governmental body issues a decision that is not reasonably supported by any competent evidence in the record.** ***Van Sickle v. Boyes,*** **797 P.2d 1267 (Colo.1990);** ***Carney v. Civil Serv. Comm'n,*** **30 P.3d 861 (Colo.App.2001). "No competent evidence" means that the governmental body's decision is "so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority."** ***Bd. of County Comm'rs v. O'Dell,*** **920 P.2d 48, 50 (Colo.1996)(quoting** ***Ross v. Fire & Police Pension Ass'n,*** **713 P.2d 1304, 1309 (Colo.1986)).**" Canyon Area Residents for the Env't v. Bd. of Cty. Comm'rs of Jefferson Cty., 172 P.3d 905, 907 (Colo. App. 2006), as modified on denial of reh'g (Nov. 9, 2006)

In the context of a claim that the government body abused its discretion or exceeded its jurisdiction by misconstruing or misapplying the law, "…. **a court must affirm unless the governmental entity abused its discretion or exceeded its jurisdiction.** ***Id.*** **Such an entity exceeds its jurisdiction or abuses its discretion only if it either misapplies the law or no competent record evidence supports its decision.** ***Bd. of County Comm'rs v. Conder,*** **927 P.2d 1339, 1343 (Colo.1996).**" Alpenhof, LLC v. City of Ouray, 297 P.3d 1052, 1055 (COA 2013). Further, when the law in question is part of the governing body's own laws, such as a municipal code, "**in determining whether the governmental agency abused its discretion or exceeded its jurisdiction, the reviewing court in a C.R.C.P. 106(a)(4) proceeding considers whether the governmental body misconstrued or misapplied the law.** ***See Giuliani,*** **¶ 39, 303 P.3d 131. In doing so, the reviewing court reviews questions of law, such as the interpretation of a statute, de novo.** ***Stevinson*****, 143 P.3d at 1101."** Friends of the Black Forest Pres. Plan, Inc. v. Bd. of Cty. Commissioners of El Paso Cty., 2016 COA 54, ¶ 15, 381 P.3d 396, 400 (de novo review applied to board of county commissioner's interpretation and application of law in its land use decision); Alpenhof, LLC v. City of Ouray, 297 P.3d 1052, 1055 (COA 2013)("**Interpretation of a city code is reviewed** ***de novo*****, applying ordinary rules of statutory construction"); Commerce City v. Enclave West, Inc., 185 P.3d 174, 178 (Colo. 2008) (a court may defer to a governmental

body's statutory construction, but is not bound by that construction because review is de novo; courts look to rules of statutory construction and common sense meaning").

These issues were raised in the proceedings below including the following: [CF p. 22-29, ¶¶37-43 – Complaint; CF p. 141-222, Sections "B, C, D" – Opening Brief in the District Court, ¶¶7-20 under "Statement of Facts", ¶¶1-6 under "Summary of Argument", and Sections A-F under "Argument"; CF p.312-320,¶3-12 - Reply Brief to Dominion; CF 1, p.322-326 ¶ 2-10 - Reply Brief to Stroh Ranch Development; CF p.330-350, ¶4-38 – Reply Brief to Town; TR 08/23/18, p.12-14, 35-37 – Oral arguments of Briefs to the District Court].

ii. Ironstone Way is a private drive not a public right of way.

The 2004 Plat Map accepted and approved by the Town identified Ironstone Way as a "private drive" [CF Vol. 1, p. 167]. Remember, under plain language of Code Section 13.06.050(g)(1) a road is either a "public street" or private drive", not both. There is no hybrid third category of a private drive with a public use in the Code.

Echoing the official 2004 Plat Map, the Developers' proposed 2017 Plat for the updated Development also stated that Ironstone Way was a "private drive". In addition, the 2017 Plat went further by stating that Ironstone Way is "not a dedicated

Public R.O.W." [right of way] [Env. 2, ii. TRAKiT file #SP16-108 attachments\ Stroh Ranch F1 - Amd 2 - 092617 (4396-4399), p. 3-4 (4398-99) - Proposed Plat identifying Ironstone Way as "Ironside" [sic] Way). The Town, in its final Staff Report, stated that "**Ironstone Way is a private road which is owned and maintained by Ironstone Condominiums**" [EX Env. 2, ii. TRAKiT file #SP16-108 attachments\ Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733) p. 15 (4730)].

iii. There was no competent evidence upon which the Town could reasonably conclude that Ironstone Way was a public street or that an easement existed which would satisfy the Code for the approval of the Development.

Because the Town's actual findings and conclusions at the time of the approval of the Development are so lacking in detail on the key factual and legal points, the Town has offered, post-litigation, multiple theories on how the Town could have determined that Ironstone Way was a public street for purposes of approval of the Site Plan for the Development. The Town and the Developers suggested that Ironstone Way became a public road and/or an access easement for Lot 5 by reference to land records such as the plats. Nothing in the land record was sufficient for the Town to comply with the mandatory provisions in its Code. One plat offered was the 1987 Plat Map of the Stroh Ranch Development [EX Env 1, Table of Contents\1. Documentary Evidence\B. Notebook from Nov 9, 2017 PC mtg\Public Hearing_SP16-018 Stroh Ranch Filing No. 1, Amend No. 2, Lot 5 Site

Plan Amend_Docs of Record (463-747) p. 10-13 (472-75)]. The problem with using the 1987 plat is that it does not depict "Ironstone Way" at all. Hornsilver Circle, Ltd. v. Trope, 904 P.2d 1353, 1357 (Colo. App. 1995)(instrument purported to create an easement must identify with reasonable certainty the easement to be created). Any argument that the 1987 Plat Map created a public street out of Ironstone Way is nothing more than a request for the courts to re-draw that Plat Map to include a road that is not there. Any argument that relies on the creation of an access easement by reason of the 1987 Plat Map, for the purposes of approval of the Development in this case, is futile.

The Developers sought to make Ironstone Way a public access based on 20 years of prescriptive use by reference to C.R.S. §43-2-201(c). The Developers pointed to the 1997 Site Plan for the Stroh Ranch Development [EX Env. 1, Table of Contents\1. Documentary Evidence\B. Notebook from Nov 9, 2017 PC mtg\Public Hearing_SP16-018 Stroh Ranch Filing No. 1, Amend No. 2, Lot 5 Site Plan Amend_Docs of Record (463-747) p. 72-73 (534-535)]. The Town did not make any recorded findings in regard to C.R.S. 43-2-201(c) in support of the Developer's argument. The 1997 Site Plan was merely a planning document with imprecise and vague references. That Site Plan did not identify Ironstone Way, it did not identify Ironstone Way as a public road, and it did not identify an easement for ingress of egress over a road identified as Ironstone Way. While no reference to

Ironstone Way was included by the drafters of the 1997 Site Plan, the drafters of that 1997 Site Plan did identify J. Morgan Blvd. and Stroh Road. [id. p. 72 (534)]. The 1997 Site Plan is insufficient as matter of law to establish a public use or easement over Ironstone Way for ingress and egress for the Development for purposes of satisfying the mandatory Code provisions for public street or other access for Lot 5 or in regard to C.R.S. 43-2-201(c). See Bolinger v. Neal, 259 P.3d 1259, 1263-64 (Colo. App. 2010) ("[T]he instrument must identify with reasonable certainty the easement created and the dominant and servient tenements.").

In addition, the McIntyre case, makes it clear " ... **that the public entity responsible for maintaining public roads in the jurisdiction must take some action, formal or informal, indicating its intention to treat the right of way as a public road."** McIntyre v. Bd. of Cty. Comm'rs, Gunnison Cty., 86 P.3d 402, 407 (Colo. 2004). There is no evidence that the Town, or any other public entity, took any required action. If anything, the overt action taken by the Town was that it approved the designation of Ironstone Way as a "private drive" on its plats.

There was no continuous and adverse use, as defined by C.R.S. §43-2-201(c) (public easement by prescription) or C.R.S §38-41-101 (private easement by prescription) for Ironstone Way for the prescriptive periods (18 or 20 years) as required by the statutes and common law. Ironstone Way was designated a private drive. Any prescriptive periods would not have begun to run because no trespassing

traffic (adverse use) on Ironstone Way related to the Development on the adjoining property has commenced. LR Smith Investments v. Butler, 378 P.3d 743,746 (Colo. App. 2014)("A prescriptive easement is a non-exclusive right to use the of another for a specified purpose for the period specified by the law" [emphasis added]). The specified purpose in this case would be the use of Ironstone Way to access the Development which has yet to begin.

In addition, the 2004 Plat, approved by the Town, established Ironstone Condominiums right to use Ironstone Way [EX Env 2, ii. TRAKiT file #SP16-108 attachments/ Stroh Ranch F1 AMD2 L5 PC Staff Report_11.09.17_Complete (4400-4715) p.4 (4403) and EX Env 2, ii. TRAKiT file #SP16-108 attachments/ Stroh Ranch F1 AMD2 L5 PC Staff Report_12.14.17_Complete (4716-4733) p. 11 (4726): CF p. 166-205]. Accordingly, until 2004 there was no entity against which the prescriptive period could run.

To the extent that the 1997 Site Plan can be said to have created any easement, the easement created was merely a utility easement with access only for that purpose [EX Env 1, Table of Contents\1. Documentary Evidence\B. Notebook from Nov 9, 2017 PC mtg\Public Hearing_SP16-018 Stroh Ranch Filing No. 1, Amend No. 2, Lot 5 Site Plan Amend_Docs of Record (463-747) p. 72 (534)]. It is well established that an easement accepted by a municipality is limited in use to the purposes set forth in the plat. Turnbaugh v. Chapman, 68 P.3d 570, 573 (Colo. App. 2003).

The 1997 Site Plan states, in pertinent part, as follows:

> "**The portions of real property that are labelled as utility easements or access and utility easements on this Plat are for the installation of maintenance and utilities and drainage facilities including, but not limited to, electric lines, gas lines, telephone lines, together with a perpetual right of ingress and egress for installation, maintenance, and replacement of such units; said easements and rights are to be utilized in a responsible and prudent manner.**" [EX Env. 1, Table of Contents\1. Documentary Evidence\B. Notebook from Nov 9, 2017 PC mtg\Public Hearing_SP16-018 Stroh Ranch Filing No. 1, Amend No. 2, Lot 5 Site Plan Amend_Docs of Record (463-747) p. 73 (535)]. Plat Map [CF p. 166-205].

Another record forwarded to create a putative public road and/or private easement, pursuant to C.R.S. §38-41-101, for purposes of the Town's approval of the Development was the 1998 "Closing Agreement Affecting Real Property" ("Closing Agreement") [EX Env. 1, Table of Contents\1. Documentary Evidence\B. Notebook from Nov 9, 2017 PC mtg\Public Hearing_SP16-018 Stroh Ranch Filing No. 1, Amend No. 2, Lot 5 Site Plan Amend_Docs of Record (463-747) p. 79-88 (541-50)]. The Closing Agreement makes no reference to Ironstone Way. Additionally, the Closing Agreement at Section C.8 & 9 further provides that the private road will be conveyed to a homeowner's association that is governed by the Declaration of Covenants, Conditions and Restrictions for Stroh Ranch Business Circle, recorded in the Douglas County real property records at Book 1535 at page 915. [id. p. 83 (545)]. That homeowners association referenced in the Closing Agreement, Stroh Ranch Circle Business, Inc., is an entirely different homeowners

association than the Stroh Ranch HOAs in this case Accordingly, that Closing Agreement does not pertain to Ironstone Way, rather it applies to a future road to be constructed in a different phase of development which was to be conveyed to different homeowners association altogether.

The Developers argued that there was an implied easement citing several historical events involving the Lot 5 and Lot 5A. First, the Town never made a finding that the there was an implied easement nor was there competent evidence introduced of an implied easement. The Developers did not put on competent evidence upon which the Town or the Court could have concluded there was an implied easement under any theory forwarded by the Developers. The requirements for an implied easement are that (1) unity and subsequent separation of title; (2) obvious benefit to the dominant tenement and a burden to the servient tenement which existed at the time of the conveyance; (3) evidence that the common owner used the premises in an altered condition long enough before the conveyance to show that the change was intended to be permanent; and (4) necessity for the easement . See e.g. Lee v. School District No. R-1, 164 Colo. 326, 435 P.2d 232, 235-36 (1967).

The Developers could not show the second element because there was no then-existing burden at the time of the conveyances. The third element cannot be met because a common owner did not use the premises in an altered condition long

enough before the conveyance to show that a change was intended to be permanent. Finally, the Developers cannot show that the fourth element because the Lot in question has access off J. Morgan Boulevard. The whole purpose of implied easements is to prevent a parcel of land from being landlocked. This is obviously not the case here.

Based on the record, the Town never made a finding that there was any prescriptive easements, public or private. The Town never found there was an implied easement. The Town never found there was an easement created by any of the case law or statutes forwarded by the Developers. In any C.R.C.P. 106 action, the reviewing Court is limited to the record of the findings made by the governmental body (the Town). See Sheep Mountain Alliance v. Bd. of County Comm'rs, Montrose County, 271 P.3d 597, 601 (Colo. App. 2011) (judicial review under C.R.C.P. 106(a)(4) is solely a review of "the decision of the administrative body").

The Town and the Developers seek to have the courts re-write the Town's findings and conclusions to fill in the blanks. Not only was evidence required for the creation of a prescriptive easement, clear and convincing evidence was required for the Town to conclude that there was a prescriptive easement. See Auslaender v. MacMillan, 696 P.2d 836, 837 (Colo. App. 1994). Here, there was no evidence, and certainly no clear and convincing evidence, of a prescriptive easement. Further,

there is no indication in the record that the Town applied the required heightened standard of proof even if the courts are inclined to imply findings by the Town for which there is no record.

iv. The Town exceeded its jurisdiction in regard to the status of Ironstone Way as a public street or other public easement because it misconstrued or misapplied the law.

It is not within the Town's power or jurisdiction to create prescriptive or other Easements or to appropriate a private drive without going through compulsory condemnation or other proceedings in a District Court. The Colorado Constitution, General Assembly and the Colorado Supreme Court have reserved such authority to the District Courts. C.R.S. § 13-51-101 *et seq.* (declaratory judgment actions); C.R.C.P. 105 (quiet title actions); see also Stevens v. Mannix, 77 P.3d 931, 932 (Colo. App. 2003) ("the parties may mutually agree on the location of the easement; otherwise, its location will be determined by a court."). The Town has no authority to make adjudications concerning valuable property rights. Any contested easement, especially a prescriptive easement, requires a district court determination. Allowing developers to circumvent the district court's exclusive authority to adjudicate easement disputes by employing municipal authorities should be resisted.

v. In the alternative, the District Court did not make sufficient findings and conclusions to permit any meaningful review of its decision because the District Court did not identify which of the implied findings that were at issue were relied upon by the court's in its ruling, what law applied to any implied findings, and the standards of proof employed to determine the implied findings.

The trial did not make any specific findings on the affirmative defenses raised by the Defendants nor would the evidence or law have supported those defenses. The Town did not plead the issue of prescriptive easement as an affirmative defense in its Answer to the Complaint. The Order of the District Court makes two brief references to "prescriptive easement" but the Court did not indicate if it was allowing the argument. Further, the District Court did not make any necessary findings on the factual and legal issues that the Town would have had to come to in order justify any affirmative defenses in regard to statutory easements, prescriptive easements, laches, or even an "implied" finding that a Ironstone Way was a private road with a public use or that an easement was actually available to the Town or Developers to justify the approval of the Development. Laches requires an unconscionable delay. Minto v. Lambert, 870 P.2d 572,577 (Col. App.1993). There could be no unconscionable delay because the Developers plans to use Ironstone Way as part of their project did not materialize until December of 2016 when it submitted its plans. The Town did not make specific findings on the crucial issues underpinning the Town's approvals. The District Court's decision did not yield any additional clarity. The district courts, through C.R.C.P. 106 actions, are the only avenue afforded

aggrieved parties who seek relief from unlawful governmental decisions. Municipal decisions that will have the constructive effect of taking property rights and shifting development burdens onto adjoining landowners require some minimal level of explanation as to the law and facts that the Town and the District Court actually, versus hypothetically, employed to reach their decisions. Such lack of transparency creates a Kafkaesque situation where citizens are not even permitted to know how or why the government has acted against them. It's one thing for the judiciary to be deferential to the quasi-judicial authority exercised by towns. However, it's quite another thing to be deferential to the point of creating a black box of decision making all the way through the process.

CONCLUSION

This appeal, at its core, is about the rule of law. The rule of law in this case is the intersection between executive bodies acting in quasi-judiciary capacities and the courts. It is at the intersection between competing private and public interests. It is at the intersection between the deference afforded to political bodies and the judicial checks and balances which safeguard the people against the arbitrary, capricious, and sometimes tyrannical acts of those who act in the name of the majorities who elected them.

The law places restraints on the power of elected governing bodies to act as they please. In addition, a governing body can self-impose restraints on its

discretion and the jurisdiction it grants to its lower bodies in the exercise of their delegated powers. The Town of Parker self-imposed such restraints on itself and its Planning Commission. This narrowing of discretion has the concurrent effect of expanding the potential for abuse of discretion and for acting in arbitrary and capricious manner. This is evident in the sheer number of mandatory Code requirements implicated by the Town's approval of the Development.

The Town did not follow its own law, the Town Code. The Town did not make the necessary findings to demonstrate compliance with the mandatory Code provisions. The Town would have had to misconstrue and misapply its Code to determine that a public street could be both a private drive and public street at the same time when its Code created two, and only two, separate classes of roadways (Public streets or private roads). It acted arbitrarily and capriciously when, after "impliedly" finding that Ironstone Way was a public street for purposes of a mandatory through access drive, it then treated Ironstone Way as private drive for purposes relieving the Developers of the mandatory sidewalk requirements in the Code. That is in addition to its acceptance of Ironstone Way as a "private drive" in its approval of the 2004 Plat only to ignore that same designation later in its implied finding that Ironstone Way was not a private drive for purposes of the Code. Again, this case is about the rule of law.

The Stroh Ranch HOAs, not to mention the other members of the surrounding community, will be greatly prejudiced by the Development. If the Commission had stayed within the limited authority granted to it by the Town, if the rule of law had been followed, this Development would not have been approved. There is no harmless error here.

The question remaining is the extent and scope of any meaningful judicial review that will be afforded the Stroh Ranch HOAs and the owners and residents they represent under the facts and circumstances in this case by the judiciary in exercise of its constitutional and statutory duties to act as a check and balance on the power of governing bodies. Perhaps the greatest danger inherent in this case is a ruling that will be interpreted by the governing bodies as "less is more". The less detail in the decisions of governing bodies, the more they will be shielded from judicial review. The less transparency in their decision-making process, the more parts of the actual decision-making process will be kept hidden. The approval of the Town for this Development should be overturned.

WHEREFORE, The Appellants respectfully move this Honorable Court of Appeals to find and order as follows:

A. To answer the Issues Presented (I-V) in the affirmative;

B. To remand this case back to the District Court with instructions to enter judgment in favor of the Appellants;

C. In the alternative, to answer Issue Presented (VI) in the negative and remand this case back to the District Court for further findings; and

D. For such other and further relief as this Court deems just and proper.

Respectfully submitted this 14th day of June, 2019.

Original Signature on File at

ANDERSON & HUGHES, P.C.

/s/ M. Stuart Anderson
M. Stuart Anderson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 14th day of June, 2019, a true and correct copy of the foregoing Amended Opening Brief was served via Colorado Courts E-Filing to the following:

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