

<p>COLORADO COURT OF APPEALS 2 E. 14<sup>th</sup> Avenue, Denver, CO 80203</p>	<p>DATE FILED: July 11, 2019 2:20 PM FILING ID: 2DA5F63CFC88C CASE NUMBER: 2019CA34</p>
<p>Appeal from: 18<sup>th</sup> Judicial District Douglas County District Court Honorable Shay K. Whitaker Case No. 2018CV30050</p>	
<p><b>Plaintiffs/Appellants:</b> IRONSTONE CONDOMINIUMS AT STROH RANCH OWNERS ASSOCIATION, INC. and STROH RANCH COMMUNITY ASSOCIATION, INC.</p> <p><b>v.</b></p> <p><b>Defendants/Appellees:</b> TOWN OF PARKER PLANNING COMMISSION, TOWN OF PARKER, DOMINIUM DEVELOPMENT AND ACQUISITION, LLC a/k/a DOMINIUM DEVELOPMENT, and STROH RANCH DEVELOPMENT, LLC</p>	<p>▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;"><b>AMENDED ANSWER BRIEF</b></p>	

Appellees, the Town of Parker and the Town of Parker Planning Commission (collectively, the "Town" or "Appellees"), by its undersigned counsel, respectfully submit its Amended Answer Brief:

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with **all** requirements of C.A.R. 28 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 C.A.R. 28(g). It contains 9,468 words.

Additionally, the brief complies with the standard of review requirements set forth in C.A.R. 28(b). For each issue, the brief contains under a separate heading before the discussion of the issue, a concise statement of whether appellees agree: (1) with the appellant's statement concerning the applicable standard of appellate review with citation to authority; and (2) with the appellant's statement of whether the issue was preserved, 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 and C.A.R. 32.

**HOFFMANN, PARKER, WILSON &  
CARBERRY, P.C.**

By:   
Corey Y. Hoffmann

**ATTORNEYS FOR APPELLEES**

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## I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

Appellants characterize this case as containing six (6) issues presented for review. While Appellees are not "dissatisfied" with Appellants' statement within the meaning of C.A.R. 28(b), a careful review of the issues presented by Appellants shows that Appellants' Statement of Issues for Review can be greatly simplified.

Ultimately, this case is about whether there is an adequate factual and legal basis within the meaning of C.R.C.P. 106(a)(4) supporting the Town's decision to approve, with conditions, a land use application filed by Defendant Dominion Development and Acquisition, LLC ("**Dominium**") seeking a site plan amendment for Stroh Ranch Filing No. 1, Lot 5 (the "Application" or "SP16-108").

Pursuant to C.R.C.P. 106(a)(4), the only issue properly presented for review to this court is whether the Town exceeded its jurisdiction or abused its discretion when acting in a quasi-judicial capacity to conditionally approve SP16-108. The Town's decision in this matter was consistent with well-settled law regarding how Ironstone Way is and remains a public street providing access to the Project, and factually the Town's conditional approval of SP16-108 is supported by overwhelming evidence in the Record.

## **II. CONCISE STATEMENT OF THE CASE**

Because Appellants did not separate the various components of the Statement of the Case as required by C.A.R. 28(a)(5), the following is presented for this Court's consideration in compliance with the Colorado Appellate Rules.

### **A. Nature of the Case**

This case commenced on January 11, 2018, when Ironstone Condominiums at Stroh Ranch Owners Association, Inc. and Stroh Ranch Community Association, Inc. ("Appellants") filed a Complaint against the Town seeking review of the Town's Planning Commission's decision to conditionally approve a land use application; specifically, a site plan amendment for Stroh Ranch Filing No. 1, Lot 5, generally identified in this brief as a review of an application known as SP16-108. The Complaint alleged this single claim for review under C.R.C.P. 106(a)(4).

### **B. Relevant Facts and Procedural History**

#### **1. Relevant Facts**

The Town's decision at issue in this case is the approval by the Town of Parker Planning Commission on December 14, 2017, of Case No. SP16-108 with

twelve (12) conditions. R00780; Tr. 120417, pps. 32-33.<sup>1</sup> The twelve (12) conditions of approval appear in the certified record (the "**Record**") at R00445 – R00446.<sup>2</sup>

Dominium sought Town approval of a site plan amendment to begin construction of two hundred four (204) deed-restricted, affordable, multi-family residential units, along with the associated parking spaces and community amenities (the "**Project**") on currently vacant land within Stroh Ranch Filing No. 1, Lot 5. (the "**Dominium Property**"). R00027; 00029.

Since 1984, the Dominium Property has been zoned for multi-family residential use, and Dominium's proposed density of residential use had been approved since at least 1997. R00029. In 1986, the Town approved the first final plat for Stroh Ranch. Tr. 110917, p. 18; R00472-R00474. In 1997, Stroh Ranch Development sought and received approval for a site plan for Lot 5 (the "**1997 Site Plan**"). The 1997 Site Plan anticipated development of Lot 5 in three (3) phases of apartments, and, as provided by the contemporaneous amendment to the first final

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<sup>1</sup> Citations to the Record are referred to (R. p. #); citations to the certified transcripts, also part of the Record, are referred to by date of hearing and transcript page number (Tr. 110917, p. #).

<sup>2</sup> Conditions of approval also appear at R00445-R00446 and R00452-R00453.

plat, the size of Lot 5 was increased by reallocating land within the development. Tr. 110917, pps. 19-20; R00534-R00535. The 1997 Site Plan is the first approved plan to show Ironstone Way, the much-contested roadway at issue here, as access to Lot 5 off J. Morgan Boulevard and directly opposite Nate Drive. R00534-R00535.

The Record in this case indicates that as of the 1997 Site Plan and until more recent changes in title that were imposed by operation of law after a loan default in 2000, the Dominion Property did not exist independently of the remainder of property generally known as Stroh Ranch Filing No. 1. Tr. 110917, p. 23-24; R00464-000465. Rather, the Dominion Property was part of Stroh Ranch Filing No. 1's original and larger Lot 5, portions of which had already been developed into what are now properties occupied by the members of the Appellants' homeowners' associations. *Id.*<sup>3</sup>

The 1997 Site Plan approval encompassed the entirety of Lot 5, originally 30.41 acres in size, and authorized five hundred seventy-six (576) multi-family

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<sup>3</sup> In 2004, Appellants' predecessor, Bayview Ironstone, LLC, applied to split Lot 5, which allowed the change in ownership of the properties from apartments to owner-occupied condominiums. Tr. 110917, p. 24. As originally planned and approved, the multi-family residential portion of Stroh Ranch was all apartments. *Id.*

units on Lot 5. R00029. In completing Phases I and III, three hundred seventy-two (372) of the five hundred seventy-six (576) permitted multi-family units have been built on nearly 20 acres. *Id.* What remains of Lot 5, the development at issue here, is the Dominion Property, also known as Lot 5A or Phase II of the Stroh Ranch multi-family development. This case involves Dominion's efforts to construct the remaining two hundred four (204) multi-family units already approved in 1997.

Dominium's site plan application at issue here did not seek a change in use or a change in density to the residential development already permitted on the Dominion Property. R00027.<sup>4</sup> Rather, SP16-108 is simply a site plan amendment to allow Dominion to build a different style and configuration of the units than was conceptualized and planned for by the prior lot owners in 1997. By voluntarily filing the site plan amendment for approval of these layout and design changes, Dominion and the Project became subject to all of the Town's current land development requirements as set forth in Title 13 of the Parker Municipal Code (the "**Code**"). R00031-00036; Tr. 110917, pps. 28-54. As is discussed below, the Project meets or exceeds all such requirements. *Id.*

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<sup>4</sup> Dominion could have simply pulled a building permit to construct what was already approved.

The three-phase, nearly six hundred (600) unit, multi-family residential development is part of the six (6) lots that comprise Stroh Ranch Filing No. 1, approved in 1986, which lots are part of the larger, more than 2,000-acre, Stroh Ranch planned development which was approved in 1984. Tr. 110917, p. 18-19. As part of the comprehensive Stroh Ranch planned development, these six (6) separate lots consisted of three phases of apartments on Lot 5, single-family homes on Lots 1 through 4 and a commercial and retail shopping center on Lot 6. *Id.* Stroh Ranch Filing No. 1 shares a localized access and transportation network of six (6) roads to support this filing's planned and approved uses, which network is part of a much larger transportation network for the Stroh Ranch planned development. Tr. 110917, p. 25.

Ironstone Way, of significance to Appellants here, is one of the six (6) roads that locally serves Stroh Ranch Filing No. 1. *Id.* (reciting J. Morgan Boulevard, Ironstone Way, Stroh Ranch Way, Stroh Ranch Place, Stroh Ranch Court and Stroh Ranch Drive as making up the Stroh Ranch transportation network); *see also* R00473-00474; R00534-00535. No portion of the Stroh Ranch access and transportation network was planned, approved or constructed for the exclusive benefit of any lot, but rather for the use, benefit, and enjoyment of the owners,

occupants, tenants, invitees and guests of the entire Stroh Ranch planned development. *Id.*

Thus, when the Town approved SP16-1 on December 14, 2017, the Town acted as it was compelled to do. The Town evaluated SP16-018 against the applicable land use standards, and the Town's conditional approval of SP16-108 is well-supported by evidence in the Record. In its conditional approval of SP16-108, the Town neither exceeded its jurisdiction nor abused its discretion.

## **2. Procedural History**

This case commenced on January 11, 2018, when Appellants filed a Complaint seeking review pursuant to C.R.C.P. 106(a)(4) of the Town's Planning Commission's decision to conditionally approve SP16-108.

Following briefing in accordance with C.R.C.P. 106(a)(4), District Court Judge Shay K. Whitaker heard oral argument on August 23, 2018, and on November 28, 2018, Judge Whitaker entered an Order affirming the Town's decision.

Appellants filed their Notice of Appeal on January 4, 2019, seeking this Court's review of the decision.



### **III. SUMMARY OF THE ARGUMENT**

This case is about Appellants' homeowners' association seeking to preserve the status quo, by attempting to stop development of the property at issue in this case, while the developer is seeking to develop the Project consistent with its rights and in accordance with the Town's land use standards and previous approvals.

While Appellants raise various issues regarding the approval of SP16-108 by the Town of Parker Planning Commission, Appellants' primary argument relates to restricting public access to and use of Ironstone Way, but Appellants raise this issue about two (2) decades too late. Development of the entirety of the Stroh Ranch subdivision based on the existing transportation network has already been approved, including the development of the specific property at issue in this case with two hundred four (204) multi-family units. Thus, this case is really about Appellants' objection to previously approved densities.

The Town's review and approval of the Project could have been accomplished without the public process that occurred here. Site plans and developments are processed on an application basis according to legislatively adopted standards. Code, Secs. 13.06.010; 13.10.010. A site plan amendment application such as SP16-108 was eligible for administrative review and approval by the Town's Planning Director. Code, Section 13.06.040(g). Nonetheless, out of

deference to the public interest in Stroh Ranch, largely raised by Appellants and their constituent residents at the time the application was filed, the Town opted to consider the Project at a public hearing before the Planning Commission. Tr. 110917, p. 13. The public was thoroughly engaged and heard for more than three (3) hours at the public hearing on this matter. *Id.* at pps. 168; 170.

After being given this extraordinary opportunity to make its case, Appellants assert the Town's process and decision to approve SP16-108 was flawed. Appellants' focus now is largely the same as its focus in the trial court – that Ironstone Way is a private street and as a result, the Town did not have the authority to approve the Project, which relies on and uses Ironstone Way for access.

To the contrary, the Town's approval in this case reflects deference to private property interests that arose as many as thirty-three years (33) ago regarding the manner in which public access within Stroh Ranch planned development is accomplished. As set forth below, current and future property owners must be able to rely on the previously approved Stroh Ranch site plan, including its transportation network as approved decades ago. The decision of the Town and the decision of the trial court must therefore be affirmed as a matter of law.

For ease of this Court's review, the Town's Answer Brief first addresses the legal issue of the status of Ironstone Way as providing access to the Project, and then addresses the overwhelming evidence supporting the Town's decision in this case within the meaning of C.R.C.P. 106(a)(4).

#### IV. ARGUMENT

##### A. **The Town's Determination to Conditionally Approve SP16-108 is Supported by the Law and the Record**

###### 1. **Standard of Review Pursuant and Preservation of Issue on Appeal**

The Town's initial approval of the Stroh Ranch site plan decades ago was a legislative act, but its subsequent land use approvals pursuant to the approved site plan are quasi-judicial in nature. *South Creek Assoc. v. Bixby & Assoc., Inc.*, 781 P.2d 1027, 1039, fn. 8 (Colo. 1989); *citing Dillon Companies, Inc. v. City of Boulder*, 515 P.2d 627, 630 (Colo. 1973).

The Town agrees that Appellants preserved the issue for appeal. However, Appellants' statement of the standard of review fails to specify whether this Court is reviewing the decision of the trial court, or the decision of the Town. Such specificity is critical to the standard of review, and this Court's review is of the decision of the Town of Parker Planning Commission, not the trial court. *See*

*Board of County Comm'rs of Routt County v. O'Dell*, 920 P.2d 48, 50 (Colo. 1996).<sup>5</sup>

Moreover, while Appellants purport to raise several separate issues, because this case was brought pursuant to C.R.C.P. 106(a)(4), the standard of review is effectively the same for all issues raised by Appellants. The rules governing the standard of review of the Town's decision pursuant to C.R.C.P. 106(a)(4) are as follows:

***Review of a governmental body's decision pursuant to C.R.C.P. 106(a)(4) calls into question the decision of the body itself, not the district court's determination on review.*** ... Our review is based solely on the record that was before the board, and the decision must be affirmed unless there is no competent evidence in the record to support it such that it was arbitrary or capricious. *See Krupp v. Breckenridge Sanitation District*, 1 P.3d 178 (Colo.App.1999), *aff'd*, 19 P.3d 687 (Colo.2001).

*City and County of Denver v. Board of Adjustment for City and County of Denver*, 55 P.3d 252, 254 (Colo. App. 2002) (emphasis added). Or, as the Colorado Supreme Court similarly indicated,

***Review of a governmental body's decision pursuant to Rule 106(a)(4) requires an appellate court to review the decision of the governmental body itself rather than the district court's determination regarding the***

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<sup>5</sup> Accordingly, Appellants' reference on page 36 of its Second Amended Opening Brief to what Appellants characterize as insufficient findings of the district court in this case is misplaced and improper.

**governmental body's decision.** See *Ross v. Fire and Police Pension Ass'n*, 713 P.2d 1304, 1309 (Colo.1986).

*Board of County Comm'rs of Routt County v. O'Dell*, 920 P.2d at 50 (emphasis added).

Thus, the Town's good faith exercise of quasi-judicial authority, if well-supported by evidence in the Record, is entitled to a presumption of validity and must be affirmed. *Hadley v. Moffat County School Dist. RE-1*, 681 P.2d 938, 944 (Colo.1984).

This Court's review under C.R.C.P. 106(a)(4) is limited to review of the Record of prior proceedings to determine whether the governmental body "exceeded its jurisdiction or abused its discretion." *Widder v. Durango School Dist. No. 9-R*, 85 P.3d 518, 526 (Colo. 2004); see also *Norby v. City of Boulder*, 577 P.2d 277, 280 (Colo. 1978). A court may reverse a decision of an inferior tribunal **only if** there is no competent evidence in the record to support the decision. *Ross v. Fire and Police Pension Ass'n*, 713 P.2d 1304, 1308-09 (Colo. 1986) (emphasis added). Review is based solely on the Record; there is no *de novo* evidentiary hearing and a court may not make independent findings. *Orchard Court Development Co v. City of Boulder*, 367, 513 P.2d 199, 202 (1973).

When being reviewed, quasi-judicial proceedings are given a presumption of validity and all reasonable doubts as to the correctness of such decisions must be

resolved in favor of the governmental body. *Van Sickle v. Boyes*, 797 P.2d 1267, 1272 (Colo. 1990); *City & County of Denver v. Bd. of Adjustment for City & County of Denver*, 55 P.3d at 254.

With such a presumption of validity, "it is presumed that such [bodies] have properly discharged their official duties." *Hadley v. Moffat County School Dist. RE-1*, 681 P.2d at 944. When proceedings are quasi-judicial in nature, "the [ ] officials should be treated as the equivalent of judges." *Id.* The Colorado Supreme Court has summarized the applicable standard of review as follows:

Abuse of discretion means that the decision under review is not reasonably supported by any competent evidence in the record. A record lacking any competent evidence means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.

*Widder v. Durango School Dist. No. 9-R*, 85 P.3d at 526-27; *see also Van Sickle v. Boyes*, 797 P.2d at 1272.

A body's decision is arbitrary or capricious when a "reasonable person, considering all of the evidence in the record, would fairly and honestly be compelled to reach a different conclusion." *Colorado State Bd. of Medical Examiners v. Johnson*, 68 P.3d 500, 502 (Colo. App. 2002); *Wildwood Child and Adult Day Care Program, Inc. v. Colorado Dept. of Public Health and Environment*, 985 P.2d 654, 658 (Colo. App. 1999).

In determining whether the governmental body abused its discretion, courts may also consider whether the body misinterpreted or misapplied the applicable law. *Droste v. Board of County Comm'rs of County of Pitkin*, 85 P.3d 585, 590 (Colo. App. 2003). However, interpretation by the body charged with enforcement of the applicable law is generally entitled to great deference and is to be accepted if the interpretation has a reasonable basis in law and is warranted by the record.

*Regents of the University of Colorado v. City and County of Denver by and Through Bd. of Water Comm'rs*, 929 P.2d 58, 61(Colo. App. 1996); *see also Nicholas v. North Colorado Medical Center, Inc.*, 902 P.2d 462 (Colo. App. 1995).

Thus, the Town's application and interpretation of its own land use codes, as well as its application and interpretation of its previously approved land use documents, are entitled to deference.

**2. The Town's determination that the use of Ironstone Way for public access is supported by law and the Record.**

The Town's determination that Ironstone Way is for public access is fundamental to the Town's approval of SP16-108, is correct as a matter of Colorado law, and is supported by facts in the Record. More specifically, at least as of adoption of the 1997 Site Plan, Stroh Ranch had an approved planned unit development that is binding on subsequent purchasers. Tr. 110917, pps. 19-20; R00534-R00535. As such, the 1997 Site Plan's road configuration, showing

Ironstone Way as an access route for all of Lot 5, including what would later become the Dominion Property, is binding on Appellants and the public generally. *South Creek Assoc. v. Bixby & Assoc., Inc.*, 781 P.2d at 1033-34.

In this regard, the Record contains all of the legal arguments and supporting documents set forth below regarding public access, which were presented to and considered by the Planning Commission at the November 9, 2017, public hearing before rendering a decision in SP16-108. Tr. 110917, pps. 16-27; R00463 – R00468 (and supporting Exhibits).

*i. Approved planned unit developments constitute a form of rezoning binding on subsequent purchasers and members of the public.*

Consistent with *South Creek Assoc. v. Bixby & Assoc., Inc.*, the Stroh Ranch roadway and street network, established in 1986 and updated by the 1997 Site Plan, is enforceable against subsequent purchasers and by the public. In *Bixby*, the court considered whether a planned unit development ("**PUD**") that included shared parking obligations among separate lots within the PUD, as approved by the City of Boulder - but not recorded in Boulder County property records - was binding against subsequent purchasers of the property who tried to disavow the shared parking obligations. *Id.* at 1030. Just as is the case here, the PUD at issue in *Bixby* was approved as part of a public process prescribed in the municipal code's legislative enabling enactments.



Despite the lack of recording, and dispositive of the Ironstone Way dispute here, the court found, as follows:

...the PUD plan provisions here are binding upon all members of the public because the PUD plan approval was obtained pursuant to a PUD ordinance adopted as a valid exercise of Boulder's police power through its zoning authority...

Because the PUD plan is equivalent to a rezoning provision approved pursuant to the public process prescribed by Boulder's PUD ordinance, subsequent purchasers as well as other members of the public are bound by the plan provisions...

...the PUD plan was approved at a public hearing and the approved plan was a matter of public record available from the City of Boulder. These characteristics of the approved PUD plan, together with its nature as a revision of the previously applicable zoning, are sufficient to persuade us that the recording act should not apply in this case. The public nature of the PUD approval and Boulder's PUD authority provides an adequate safeguard against the problem of secret conveyances that recording acts have been adopted to remedy.

*Id.* at 1033-1034.

The access for Lot 5, established by the 1997 Site Plan, created Ironstone Way. As provided by the 1997 Site Plan, Ironstone Way has been used for public access as part of the approved transportation plan for Stroh Ranch planned development to provide public access for all six (6) lots contained within Stroh Ranch Filing No.1.

Under *Bixby*, the 1997 Site Plan approval, occurring as part of a public process with notice and hearing, remains valid and binding today. *South Creek*

*Assoc. v. Bixby & Assoc., Inc.*, 781 P.2d at 1033-34. All landowners, including Appellants (purporting to represent landowners) and the public, have had notice of and are bound by these requirements. Section IV.A.3, below, reviews in more detail how the Project satisfies the Town's access requirements as set out in the Code, Sec. 13.10.020, which adopts the Town of Parker Roadway Design and Construction Criteria Manual.

The following other legal theories, each set out in the alternative, demonstrate that Ironstone Way is a public street open for public use, regardless of the conveyance of the property rights associated with the public access.<sup>6</sup>

***ii. Ironstone Way is a public road created by twenty (20) years or more of prescriptive, public use.***

Section 43-2-201(1)(c), C.R.S., states, in relevant part: "The following are declared to be public highways: ... (c) All roads over private lands that have been used adversely without interruption or objection on the part of the owners of such lands for twenty consecutive years..."

This statute codifies the common law method by which the public can obtain title to a roadway by adverse use. *Simon v. Pettit*, 687 P. 2d 1299, 1302 (Colo.

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<sup>6</sup> Moreover, reference to each alternative legal theory was presented to the Planning Commission, and is part of the Record.

1984). The required elements are as follows: "Continuous, open, notorious, and adverse use by the public, along a well-defined path across plaintiffs' property for a period in excess of twenty years or more." *Lovvorn v. Salisbury*, 701 P. 2d 142, 143 (Colo. App. 1985).

For the public use to be "open and notorious," some "overt act" on the part of the public entity responsible for public roads in the jurisdiction is sufficient to give notice of the public's claim of right. *McIntyre v. Board of County Comm'rs of Gunnison County*, 86 P.3d 402, 409 (Colo. 2004). The "overt act" indicating status as a public street can be as simple as including the street on a map of the city or town's street system. *Simon v. Pettit*, 687 P. 2d at 1302. The "overt act" may also be "using the road for mail delivery or school buses..." *Bockstiegel v. Board of County Comm'rs of Lake County*, 97 P.3d 324, 329 (Colo. App. 2004). There is a presumption of adverse use when the use has continued for twenty (20) years or more. *McIntyre v. Board of County Comm'rs of Gunnison Cty*, 86 P.3d at 409; *Bockstiegel v. Board of County Comm'rs of Lake County*, 97 P.3d at 329.

Here, if not earlier, beginning in 1997 with the 1997 Site Plan, Town maps began showing Ironstone Way as part of the Town's street system. R00534-R00535. This initial overt act, among others, started the prescriptive period, which has been satisfied and completed twenty (20) years later, in 2017.

***iii. The public obtained a prescriptive easement for use of Ironstone Way.***

A prescriptive easement for public use can be obtained with open and notorious use that is permitted or allowed by the owner for the statutory period set out at C.R.S. § 38-41-101 of eighteen (18) years. Adversity of use, meaning use without the owner's permission, is not required to establish a prescriptive easement if the owner intended to grant access rights but that grant of right was imperfectly executed. *Lobato v. Taylor*, 71 P. 3d 938, 954 (Colo. 2002).

Here, in 1986 with Town approval of the first final plat for Stroh Ranch, or at the latest, upon approval of the 1997 Site Plan, the Lot 5 property owner, then Stroh Ranch Development Limited Partnership, intended to grant the public use of Ironstone Way. Tr. 110917, p. 18; R00472-R00474; R00534-R00535. Even if imperfectly granted, the owner's intent to allow public use is clear and sufficient to establish a prescriptive easement.

As for the other element of a prescriptive easement, open and notorious use began in 1997 with approval of the 1997 Site Plan, at which time Town maps began showing Ironstone Way as access for Lot 5. R00534-R00535. The first building permit for development of Phase I of Lot 5's multi-family housing was issued July 17, 1998, Tr. 110917, p. 22-23, meaning at least since that date, construction traffic has been using Ironstone Way to access building sites. The

first certificate of occupancy for Phase I of Lot 5's multi-family housing was issued October 15, 1999, *Id.* at p. 23; thus, at least since that date, there has been open and notorious public use of Ironstone Way to accomplish public mail delivery, school bus service, and the like. In fact, there is no evidence in the Record showing public access to Ironstone Way being denied, blocked or prevented at any time in the road's history. Ironstone Way is and has been ungated and open for general and unrestricted pedestrian, bicycle and vehicle traffic. These uses, among others, started the prescriptive period, which was satisfied and completed eighteen (18) years later, in 2015.

*iv. Dominium's predecessor in interest took title to the Dominium Property with an implied easement for use of Ironstone Way.*

As briefly referenced above, until 2000, the original and larger Lot 5 was owned by one (1) entity, but was subject to financing by two (2) entities. The division of Lot 5 by operation of law occurred as a result of a loan default, and is reflected on Town documents dated from January through April of 2000 and contained in the Record at R00580-R00601; Tr. 110917, pps. 23-24. The land use application contained in these Town documents, although never finalized, was referred to as Stroh Ranch Filing No. 1, 2<sup>nd</sup> Amendment, and reflects the split of Lot 5 into Lots 5A and 5B by operation of law. Despite the lack of formal approval and recording, the depictions of Lots 5A and 5B in these documents

remain as accurate representations of intended public access and public use of Ironstone Way. The documents contemporaneous to the division of Lot 5 into Lots 5A and 5B by operation of law, and contemporaneous to several changes in ownership, evince an implied easement for Lot 5A's use of Ironstone Way. As stated in the Restatement (Third) of Property (Servitudes), § 2.13, an easement may be implied from documents describing the land that contain reference to the easement as follows:

In a conveyance or contract to convey an estate in land, description of the land conveyed by reference to a map or boundary may imply the creation of a servitude, if the grantor has the power to create the servitude, and if a different intent is not expressed or implied by the circumstances:

(1) A description of the land conveyed that refers to a plat or map showing streets, ways, parks, open space, beaches, or other areas for common use or benefit, implies creation of a servitude restricting use of the land shown on the map to the indicated uses.

(2) A description of the land conveyed that uses a street, or other way, as a boundary implies that the conveyance includes an easement to use the street or other way.

Restatement, § 2.13. Comment (a) to Restatement, § 2.13 is instructive here:

"When a developer conveys land by reference to a plat or map which shows streets, the conveyance is normally held to include an easement to use the streets."

This type of implied easement has been recognized in Colorado by *Precious Offerings Mineral Exchange, Inc. v. McLain*, 194 P.3d 455, 458 (Colo. App. 2008).

The documents in the Record dating from 2000 through 2004 relate to Lot 5's division, ownership changes, and incomplete prior land use applications. R00580-R00630; Tr. 110917, pps. 23-24. They show Ironstone Way bordering the east side of Lot 5A, include reference to Ironstone Way being for the "non-exclusive benefit and use of both Lots 5A and 5B," and show an intent for maintenance costs of Ironstone Way to be "borne equally by the owners of Lots 5A and 5B." R00627-R00630; Agreement Affecting Real Property<sup>7</sup>; Sections 2 and 3, R00628. These documents taken together, grant Lot 5A, the Dominion Property, an implied easement for use of Ironstone Way.

***v. The Dominion Property includes an easement for use of Ironstone Way implied by the general plan of development.***

The division of Lot 5 into Lots 5A and 5B by operation of law, R00580; R00596-R00598; Tr. 110917, pps. 23-24, included an implied easement by general plan for Lot 5A, the Dominion Property, to use Ironstone Way. As stated in the Restatement (Third) of Property (Servitudes), § 2.14, an easement may be implied by a general plan of development as follows:

Conveyance of land pursuant to a general plan of development implies the creation of servitudes as follows:

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<sup>7</sup> The Agreement Affecting Real Property never took effect; yet, it remains useful evidence of the intended public use of Ironstone Way.

(1) Implied Benefits: Each lot included within the general plan is the implied beneficiary of all express and implied servitudes imposed to carry out the general plan.

(2) Implied Burdens:

(a) Language of condition that creates a restriction or other obligation, in order to implement the general plan, creates an implied servitude imposing the same restriction or other obligation.

(b) A conveyance by a developer that imposes a servitude on the land conveyed to implement a general plan creates an implied reciprocal servitude burdening all the developer's remaining land included in the general plan, if injustice can be avoided only by implying the reciprocal servitude.

Restatement, § 2.14. According to comment (f), Restatement, § 2.14, the existence of a general plan is a question of fact determined by the particular circumstances:

...in most cases, the existence of the general plan is clear. If land is subdivided according to a recorded plat and servitudes are imposed on each lot, whether by declaration, restrictions in the plat, or substantially similar restrictions in each deed, the conclusion that the development occurred pursuant to a general plan is easily reached.

An easement implied by general plan is recognized in Colorado, and a plat for a subdivision showing a common development plan or a PUD can give rise to an express easement of dedication for private or public use. *Bolinger v. Neal*, 259 P. 3d 1259, 1264 (Colo. App. 2010) (internal quotes omitted).

Here, beginning in 1997 with approval and recording of the 1997 Site Plan, the general plan of development for Stroh Ranch Filing No. 1 implied an easement,



Ironstone Way, for use of all owners in Lots 5A and 5B. Tr. 110917, pps. 19-20; R00533-R00535. The servitude on Lot 5A imposed by Ironstone Way for the benefit of Lot 5B, is necessary to implement the general plan, and creates an implied reciprocal servitude burdening Lot 5B that, in turn, allows use of Ironstone Way for the benefit of Lot 5A.

Under the Parker Land Development Ordinance, a planned development is a parcel of land controlled by one or more owners developed under a single development plan. Code, Section 13.04.150(b). The property at issue here, the Dominion Property, has been under a single development plan since at least 1984, and every land use approval since then has recognized and contributed to this general plan. This general plan of development relies on Ironstone Way as a means of access through Lot 5 to Lot 6's commercial, office and retail uses. Thus, public access is accomplished through this general plan of development.

***vi. The Dominion Property includes an implied easement of necessity for use of Ironstone Way.***

In 2000, Lot 5 was owned by one (1) entity, Signature-Ironstone, LLC, but subject to financing by two (2) entities. The division of Lot 5 by financing is shown in the Record at R00580-R00630. Despite the lack of recording of this proposed 2<sup>nd</sup> Amendment to Stroh Ranch Filing No. 1, the depictions of Lots 5A and 5B in these documents are accurate divisions and are useful to this analysis.

As a result of financial defaults, ownership of Lot 5 was divided by operation of law into Lot 5A, the Dominion Property, and Lot 5B, where the existing Ironstone Condominiums are located. R00580; R00596-R00598; Tr. 110917, pps. 23-24. Bayview Ironstone, LLC, acquired ownership of Lot 5B, Tr. 110917, pps. 23-24, ownership of which has since been condominium-ized, *Id.*, meaning the common areas are jointly owned by all condominium owners as undivided partial interests. Lot 5A was acquired by Citywide Bank and subsequently reacquired by Stroh Ranch Development, which has led to proposed development of the Project by Dominion. *Id.*

The division of Lot 5 into Lots 5A and 5B by operation of law included an implied easement by necessity for Lot 5A's use of Ironstone Way. As stated in the Restatement (Third) of Property (Servitudes), § 2.15, an easement may be implied by necessity as follows:

A conveyance that would otherwise deprive the land conveyed to the grantee, or land retained by the grantor, of rights necessary to reasonable enjoyment of the land implies the creation of a servitude granting or reserving such rights, unless the language or circumstances of the conveyance clearly indicate that the parties intend to deprive the property of those rights.

Restatement, § 2.15. Comment (b) to Restatement, § 2.15, is also instructive here:

Access rights are almost always necessary to the enjoyment of property. In a conveyance that would otherwise deprive the owner of access to property, access rights will always be implied, unless the

parties clearly indicate they intended a contrary result. The most commonly implied access rights are those to connect property with a public road, but there are others.

Colorado law recognizes an easement by necessity as being proven by three elements:

- 1) unity of ownership of the entire tract prior to division;
- 2) necessity for the easement must exist at the time of severance; and
- 3) necessity for the particular easement must be great.

*Thompson v. Whinnery*, 895 P.2d 537, 540 (Colo.1995). In addition, implying an easement of necessity can include considering the purpose for which the property was conveyed and what "the parties reasonably might have expected based on normal development of the...parcel." *Id.* at 541.

Here, Lot 5 was of united ownership before 2000, the necessity of Ironstone Way was already established at the time of Lot 5's division by operation of law, and the need for access to Ironstone Way is apparent for the successful development of Lot 5A. R00580; R00596-R00598; Tr. 110917, pps. 23-24. When Lot 5 was divided by operation of law, division without granting Lot 5A access to Ironstone Way would have denied the new owners (Citywide Bank and subsequently Stroh Ranch Development) reasonable enjoyment of the land for development as intended. As such, an easement for use of Ironstone Way is implied by necessity. Thus, under this additional legal theory, an implied easement of necessity for use of Ironstone Way exists for the benefit of the Project.

***vii. Public use of Ironstone Way has been ongoing since at least 1997 and Appellants are barred from alleging Ironstone Way is a private street by the doctrine of laches.***

Appellants, as the purported representatives of the owners of Lot 5B or as the purported representatives of the successors in interest to Lot 5B, have been aware of the public use of Ironstone Way, as well as the long-term plans for development of the Dominion Property, and are prevented by the doctrine of laches from asserting their alleged private rights so late.

"Laches implies an unconscionable delay in enforcing a claimed right that results in a prejudicial effect on the person asserting the defense. It generally requires a change of position relative to the subject matter of the litigation, rendering it inequitable for the party asserting his or her rights to succeed." *Minto v. Lambert*, 870 P.2d 572, 577 (Colo. App. 1993); see also *Calhan Chamber of Commerce v. Town of Calhan*, 166 P.3d 200, 204 (Colo. App. 2007).

Dominium reasonably relied on access to and use of Ironstone Way in making plans to purchase and develop the Project, and has incorporated use of Ironstone Way in the development plans for the Project. It is inequitable for Appellants, as purported representatives of the owners of Lot 5B, to raise these arguments now, and they are prevented by laches from doing so.

*viii. Conclusion regarding Ironstone Way.*

Both factually and legally, the Town's determination that Ironstone Way provides the necessary public access is supported by law and the Record. This case is a review of the record of a land use decision, and is not a title curative action. The Town approved Ironstone Way as part of the transportation plan for the entire Stroh Ranch development beginning in 1986, including access to a three-phase apartment project approved in 1997. Ample evidence therefor exists in the record supporting the Town's land use decision approving SP16-108 based on the use of Ironstone Way for public access.

**3. With Ironstone Way as Public Access for the Project, the Town's Approval of SP16-108 is Supported by Overwhelming Evidence in the Record**

A straight forward way to confirm support in the Record for the Town's decision is to set out the applicable Code requirements for approval of a site plan amendment and to confirm, line by line, that the Project meets these requirements.

All applicable requirements are contained within the Parker Land Development Ordinance and include:

- Town of Parker Commercial, Industrial and Multi-Family Design Standards; Code, Sec. 13.10.200;
- Town of Parker Storm Drainage and Environmental Criteria Manual; Code, Sec. 13.10.170;

- Town of Parker Roadway, Design, and Construction Criteria manual; Code, Sec. 13.10.020;
- Town of Parker Lighting Standards; Code, Sec. 13.10.140;
- Town of Parker Landscaping Standards; Code, Sec. 13.06.070; and
- Town of Parker Off-Street Parking Standards; Code, Sec. 13.06.050.

Tr. 110917, p. 26.

The Record reflects specific compliance with all of these standards. In presenting their recommendation for conditional approval of SP16-108 to the Planning Commission, Town staff prepared a thorough staff report appearing at R00027 through R00037 (excluding attachments) (the "**Staff Report**"). Part IV of the Staff Report, R00031, includes a table that compares the Code's land development ordinance requirements with SP16-108. This table shows how SP16-108 is "consistent" with the Code's requirement for setbacks, density, height, landscaping, off-street parking, and parks. *Id.* The concluding staff analysis to Part IV of the Staff Report states: "This site plan meets or exceeds the zoning and Land Development Ordinance requirement mentioned above." *Id.*

In other portions of the Staff Report, staff reviewed the Project's design and concluded as follows: "After review and analysis, Staff has determined that all elements of the Multiple-family design guidelines have been met." Staff Report,

Part V, R00032-R00034. The Staff Report also addresses the Project's access, circulation and traffic with the following conclusions: "The Town has determined that the three access points proposed for the development are sufficient to provide vehicular access to the site," and "[t]he traffic study has been reviewed and approved by the Town of Parker Public Works/Engineering Department to be in conformance with the Town of Parker's Roadway Design and Construction Criteria Manual." Staff Report, Part V, R00034. The Staff Report concludes, in part, as follows: "After careful review and analysis, staff has determined the proposed application has satisfied all requirements for a Site Plan Amendment within the Town of Parker." Staff Report, R00036.

The plans and submittals reviewed by Town staff for SP16-108, which led to the conclusions contained in the Staff Report and formed the basis for Town staff's recommendations, are also in the Record. A complete set of approved plans for the Project are in the Record at R1367-R1394 for the site plan and at R2499-2547 for construction plans.

The Staff Report conclusions were reiterated at the public hearings on SP16-108, at which time Town staff explained exactly how SP16-108 satisfied all applicable Town requirements. For example, Town staff members presented specific information regarding compliance with the Town standards as summarized

by the excerpts set forth below taken from what is transcribed at Tr. 110917, pps.

28-54:

- The application is subject to the town of Parker's commercial industrial and multi-family design guidelines...All requirements outlined within the multiple-family design guidelines have been satisfied. *Id.* at pps. 29-30.
- The drainage infrastructure associated with this site was required to be designed in accordance with the town's storm drainage and environmental criterial manual. *Id.* at p. 31.
- The site's infrastructure was also required to be designed in accordance with the town's roadway design and construction criteria manual. *Id.* at p. 32.
- [T]he site plan amendment has been designed in conformance with the town's storm water and roadway design criteria. *Id.* at p. 36.
- All lighting proposed for this site meets the requirements within the town's lighting standards. *Id.* at pps. 36-37.
- All requirements outlined within the town of Parker land development ordinance as it relates to site plans have been satisfied. *Id.* at p. 37.

The Staff Report was part of the Planning Commission meeting agenda for November 9, 2017. R0001. When the public hearing on SP16-108 was continued to December 14, 2017, a new staff report was prepared for that meeting to respond to specific requests for clarification made by the Planning Commission following



public comment made at the November 9, 2017 Planning Commission meeting.

*See* R00445 through R00451.<sup>8</sup>

Of the Staff Report's twelve (12) conditions for approval, which were adopted by the Planning Commission by motion on December 14, 2017 (Tr. 120417, pps. 32-33), two (2) specifically establish Dominion's on-going obligations, down to very fine details, in developing the Project. The first condition locks in the site plan exhibit, building elevations and landscape plans dated October 16, 2017, as the Project's standards. R00445; cross-referencing R1367-R1394. The second condition locks in the full set of construction plans that apply to the Project. *Id.*; cross-referencing R2499-R2547. Review of these final plans confirms compliance with all Town requirements.

Thus, contrary to Appellants' general contentions, the determination by the Planning Commission that satisfied all applicable Town requirements is supported by not only competent, but overwhelming evidence in the Record. In addition, this Answer Brief will attempt to address what Appellants try to characterize as specific shortcomings in the Town's findings.

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<sup>8</sup> The Staff Report was included again in the December 14, 2017, Planning Commission agenda at R00452 through R00462.

*i. The Town made specific findings regarding compliance with the Town's access criteria.*

Appellants suggest on p. 13 of their Opening Brief that the Town did not adequately determine that the Project satisfied the requirement of having one public street or private drive continuous through a site. As described in more detail above, this standard is satisfied by the internal roadway through the Dominion Property connecting Ironstone Way with J. Morgan Boulevard. The internal roadway is depicted on several plans and is visible at R2542, the final adopted paving plan for the Project, which shows "heavy duty asphalt pavement" connecting all proposed buildings, parking areas, amenities, and pedestrian trails.

The internal roadway features guardrails over Stroh Gulch and entry points to the community with monument or directional signs from Ironstone Way and J. Morgan Boulevard. *See also* R2505. As such, two points of public access are satisfied by Ironstone Way and J. Morgan Boulevard because both provide public access.

*ii. The Project's parking conforms to Town standards.*

The Record contains considerable evidence that many of Appellants' other allegations are simply wrong as well. As to allegations related to Project parking,

the Project complies with the relevant parking requirements. Section

13.06.050(g)(1) of the Code requires as follows:

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.

The Town found that this requirement was met by Ironstone Way, which functions as a public right-of-way regardless of its designation as "private" on any map, plat or plan.

Further, and contrary to Appellants' assertion, the Project's parking will occur on the Dominion Property. The Record contains the following exchange between Planning Commissioner Nelson and Dominion's representative:

Commissioner Nelson: The parking spaces that are along Ironstone Way, will those be impinging on where Ironstone Way currently is or are those built into your property?

Mr. Mehl: They're built into our property...in fact, they're a little bit farther back than originally designed...

Tr. 110917, p. 68. The approved site plan in the Record also confirms this to be true. For instance, see R1368, part of the approved site plan amendment, where the dashed property line illustrates the boundary of the Dominion Property, including parking stalls, are outside of and set back from Ironstone Way. Other

views of parking stalls within the Dominion Property can be seen at R1373 and R1393. These are the binding construction documents for the Project, and they establish parking stalls within the Dominion Property. R00445; cross-referencing R1367-R1394.

Further, these approved Project plans are consistent with Sec. 13.06.050(i) of the Code as to parking layout and design when considering the multi-family portion of Stroh Ranch as one unit (all of Lot 5) as a whole, as opposed to viewing the Dominion Property (Lot 5A) in isolation. Stroh Ranch's development history supports the concept that Lot 5, including its three (3) phases of apartments, is one comprehensive multi-family residential site. R00029. It is within the Town's discretion, as the land use authority, to apply parking requirements across Lot 5 as a whole. Because the Town is the body tasked with interpreting and applying its street and parking requirements as part of its general land use and development requirements, when doing so, as it did here, it is entitled to deference. *Regents of the University of Colorado v. City and County of Denver by and Through Bd. of Water Comm'rs*, 929 P.2d at 61; *Nicholas v. North Colorado Medical Center, Inc.*, 902 P.2d at 470.

*iii. The Project's public access and roadway design conform to Town standards.*

Appellants' arguments alleging the Project's inadequate public access and roadway design starting on page 16 of their Opening Brief are similarly flawed. The Code provides 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." Code, Sec. 13.10.020.

The Record shows as follows: "The site plan proposes three access points. Two are located on Ironstone Way, aligned with existing access points to the east, and one is located on J. Morgan Boulevard to align with Custer Avenue." Tr. 110917, p. 32; R00034; R00459. The Town found this requirement to be satisfied, in part because Ironstone Way provides public access. Ironstone Way was approved and constructed to provide access between the Dominion Property and the rest of Stroh Ranch, including the property whose interests Appellants purport to represent.

The Town did consider "existing and planned streets" as required by the Code, Sec. 13.10.020 as follows. Mr. Mestdagh, in evaluating roadway design and traffic study, stated:

"The surrounding network of public and private roadways were designed to handle the traffic generated by the development of all of Stroh Ranch including the multi-family parcels that include this site [the Dominion Property]." Tr. 110917, p. 33.

\* \* \*

"These private roads were originally designed to accommodate the traffic of the entire multi-family development." *Id.* at p. 34.

Similarly, a representative of Dominion, also stated: "...this site has always been designed for 204 units with the roadway that surrounds it...", *Id.* at p. 64, and:

Ironstone Way would be constructed, and that would be for the future development of what is being referred to here as the Dominion site, whenever that occurred. And I think that's an important point to continue to remember...from the very beginning, that's been intended for use for the entire site out here. So please continue to remember that, that all future development was conditioned on Ironstone Way being used for public use. And what I think we'll find out here is that all subsequent owners of those sites and the property out here, they've taken their title subject to an agreement in 1998 that the buyer and seller of the land entered into [regarding how] Ironstone Way will be continued to be used for the benefit of the phase three property...

*Id.* at 56 -57.

The 1998 agreement referenced by Dominion is at R00541-R00550 and states, in relevant part as follows: "Buyer acknowledges and agrees that the Private Road to be constructed by Buyer [Ironstone Way] on the Phase I and Phase

II property is for the benefit and use of the Phase III<sup>9</sup> property (as well as the Phase I and Phase II property), and that the Private Road shall be available for use by the Phase III property however and whenever the Phase III property is eventually developed." R00543. Reference to the Dominion Property's chain of title as it became separated from the rest of Lot 5 is set out in the Record at Tr. 110917, pps. 20-25.

Ultimately, the Town's standards require one (1) public street or private drive continuous through a site. This standard is satisfied by the internal roadway through the Dominion Property connecting Ironstone Way with J. Morgan Boulevard. As set forth above, the internal roadway features guardrails over Stroh Gulch and entry points to the community with monument or directional signs from Ironstone Way and J. Morgan Boulevard. *See also* R2505. As such, two points of public access are satisfied by Ironstone Way and J. Morgan Boulevard because Ironstone Way is a public street within the meaning of the Town's standards.

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<sup>9</sup> The 1998 agreement relabeled the phases of the development from what is expressed in the 1997 Site Plan. R00542. In the quote above, "Phase III" refers to the Dominion Property.

*iv. Dominion's construction access to the Project has been limited and will not impact Ironstone Way.*

Once more, starting at page 18 of the Opening Brief, Appellants misapprehend the Town's approval of SP16-018 by asserting the Town disregarded Section 9.1.9 of the Roadway Design and Construction Manual, adopted by Section 13.10.020 of the Code. Within the Project's approved construction plans, adopted as a condition of approval by the Planning Commission on December 14, 2017 (Tr. 120417, pps. 32-33; R00445; cross-referencing R2499-R2547), the initial construction management best practices ("**CMBP**") plan requires construction access to be taken from two (2) specific points from J. Morgan Boulevard, shown as "vehicle tracking control" locations. *See* R2514. Limiting construction vehicle access to these locations means there will be no construction vehicle traffic on Ironstone Way.

Further support in the Record for this restriction includes an engineering memorandum dated February 23, 2017, at R3518-R3526, showing the Town's confirmation of this requirement, which is ultimately reflected in the approved construction plans. As stated in the engineering memorandum, "Per discussion with the applicant, no construction access can be taken from Ironstone Way. Access shall be taken from J Morgan Boulevard as shown in the CBMP plans."



R3519. Further, the Record states: "The town will require that all construction access be taken from J. Morgan Boulevard via formalized entrance points rather than from Ironstone Way." Tr. 110917, p. 32.

***v. Appellants erroneously suggest the Town's findings are not adequate.***

Notwithstanding the detail set forth above, Appellants repeatedly suggest the Town's findings were somehow inadequate. Appellants are simply wrong as a matter of fact and law. Preliminarily, the Town's Planning Commission agenda material, including staff reports, contain and incorporate evidence supporting approval of SP16-108. The findings of the Planning Commission as set forth above explicitly incorporate such information.

However, perhaps more fundamentally, Appellants are simply mistaken in their suggestion that the Planning Commission is required to make separate explicit findings on each and every issue when rendering a decision. *See Code, Sec. 13.06.040(g)*. As a matter of law, a lay agency's findings may be both implicit and explicit. *Nicholas v. North Colorado Medical Center, Inc.*, 902 P.2d at 468. "The absence of express findings by a lay board does not affect the validity of the decision where the necessary findings are implicit in the action taken." *Hudspeth v. Board of County Comm'rs of Routt County*, 667 P.2d 775, 778 (Colo. App. 1983).

Appellants argue at page 12 of their Opening brief that the Town "failed to follow multiple (11 or more) mandatory provisions..." However, there is simply no evidence in the Record as a matter of fact to support Appellants' argument. To the contrary, the Record shows in the December 14, 2017, staff report as follows: "The Town of Parker has issued no waivers or variances for the proposed project. The project is required to satisfy all requirements outlined in the Land Development Code." R00447. This simple statement is concise evidence that the Town applied all of the applicable criteria and that SP16-108 meets all of them.

The Record also contains, in the minutes of the December 14, 2017 Planning Commission meeting, at which approval of the Project was granted, the Commissioners' statements supporting the basis for its five (5) to two (2) vote of approval of the Project. R00775-R00781. For example, Commissioner Richard Foerster stated that "...he found the proposed development either meets or exceeds all town requirements and [is] consistent with previously approved multi-family developments." R00777. Commissioner John Howe similarly stated that the Project should be approved as "...a good, solid multi-family development that finishes out a project that has been approved for the last 20 years and has not yet been completed due to the state of the economy that has affected the entire surrounding metropolitan area." R00778. Finally, the minutes show Planning

Commission Chairman Gary Poole closed out discussion of the matter stating "...he believed the testimony proves that the applicant has met the criteria as set by the Town and he supported recommending approval." R00780.

**B. Conclusion**

Appellants suggest, without true reference to the substantial record in this case, that the Town somehow misconstrued its own Code provisions and that the Record does not support the Town's decision. To the contrary, the Town's interpretation of its Municipal Code provisions is entitled to great deference and must be accepted if the interpretation has a reasonable basis in law. As set forth above, the Town's interpretation of its regulations is both warranted by and consistent with the Record. Moreover, in terms of competent evidence supporting the decision of the Town, the Record in this case consists of literally thousands of pages of documents developed through the Town's land use approval process, culminating in a robust public hearing including more than three (3) hours of testimony with verbal findings of fact made by Planning Commissioners memorialized in the minutes. As set forth above, there is overwhelming evidence supporting the Town's decision in this case, and therefore the decision of the trial court should be affirmed.

Dated this 11<sup>th</sup> day of July, 2019.

**HOFFMANN, PARKER, WILSON &  
CARBERRY**

By: /s/ Corey Y. Hoffmann  
Corey Y. Hoffmann, #24920

**ATTORNEYS FOR  
DEFENDANTS/APPELLEES TOWN OF  
PARKER AND TOWN OF PARKER  
PLANNING COMMISSION**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 11<sup>th</sup> day of July, 2019, a true and correct copy of the within **AMENDED ANSWER BRIEF** was served via the Colorado Courts E-Filing System, electronic mail and/or U.S. Mail on the following:

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