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MEMORANDUM

To: Fraser Board of Trustees

cc: Mr. Jeff Durbin, Town Manager;
Antoinette McVeigh, Town Clerk

From: Rod McGowan, Town Attorney

Date: October 1, 2020

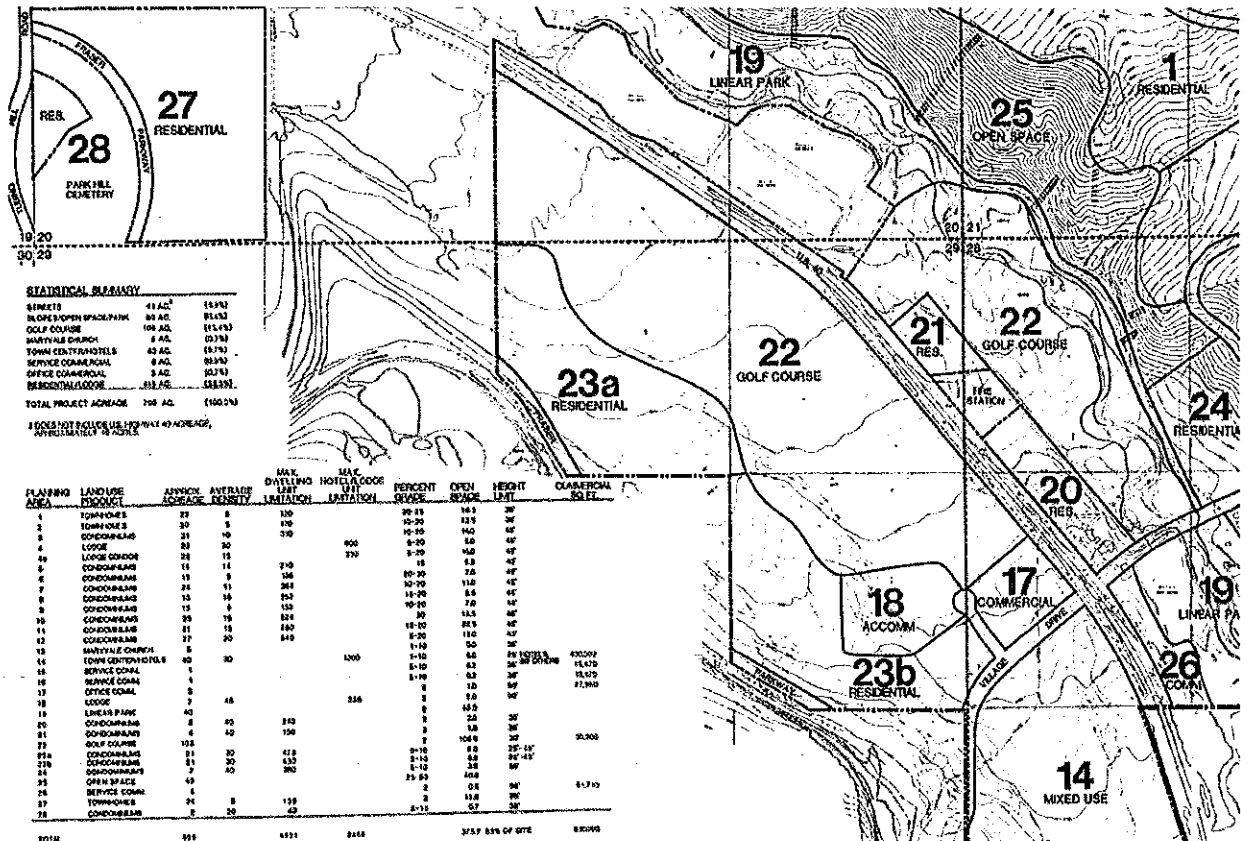
Subject: Grand Park Open Space Discussion

This Memorandum has been prepared for the Fraser Board of Trustees, and the Board has authorized its release to the public to provide information on issues now being considered by the Board.

The following is a summary of the historical background of Grand Park Planned Development District and the open space requirements included in various development agreements entered into with the Town of Fraser. It is believed this summary is accurate, although some details may be omitted.

1. 1986.
 - a. The original annexation of the property now included in the Rendezvous and Grand Park developments, which includes the “Cozens Meadow” area, occurred in 1986. The property was included in a Planned Development District (“PDD”) with a PDD Plan, as an alternative to traditional zoning. The Elk Creek area and the property west of the railroad were not annexed at that time.
 - b. The 1986 PDD Plan shows a portion of Cozens Meadow included in Planning Area 22, labeled “Golf Course” and encompassing 108 acres.

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c. The 1986 Annexation Agreement entered into between Fraser and Regis-Maryvale, Inc. did not call for dedication of the Cozens Meadow parcel as a park or otherwise provide for its use as public open space.

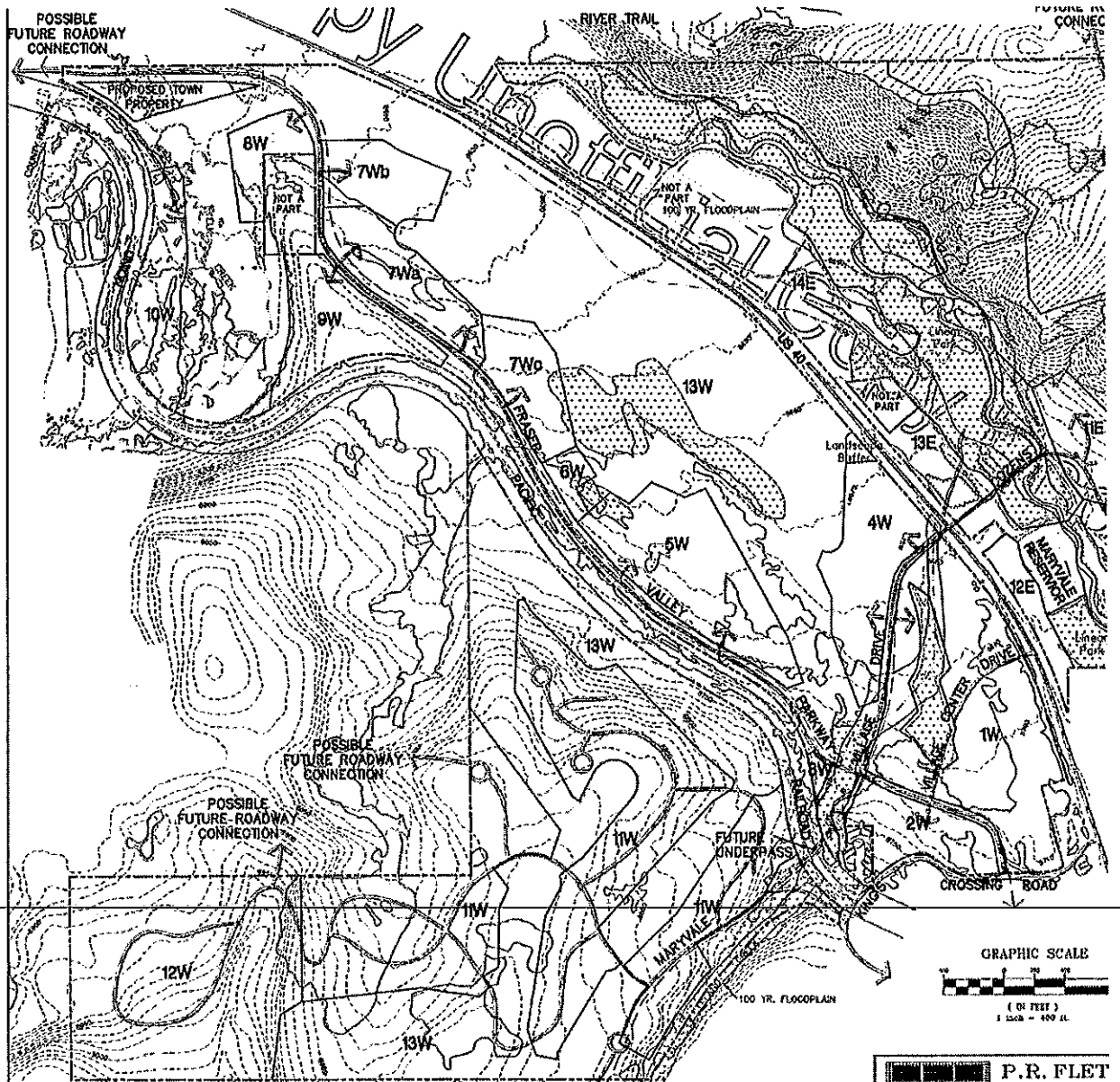
2. 1995

a. An additional 25 acres adjacent to the railroad were annexed to the Town by the then owner, Maryvale LLC, and added to the PDD. The additional acreage was added to existing development parcels and there was no change affecting the Cozens Meadow parcel.

3. 1998

a. Maryvale LLC acquired additional property and annexed it to the Town, resulting in an amended Annexation Agreement and PDD Plan. The additional property generally consisted of the former Forest Meadows property lying south of Bank of the West and a portion of the Denver Water Board property lying west of the railroad.

b. Planning Area 13W in the amended PDD Plan encompassed the Cozens Meadow and Elk Creek areas as well as areas west of the railroad. The following extract from the land use plan included as part of the PDD Plan shows this area.



- c. A note on the PDD Plan stated “Planning Area 13W contains approximately 170 acres. It is intended to consist of on 18-hole golf course and will be subject to the criteria as set forth in the Audubon Signature Status Program for Golf Courses. It is interlaced throughout the planning areas on the west side of US Highway 40. and includes an associated clubhouse.”
- d. The amended Annexation Agreement included provisions for public dedications, including the Linear Park and Planning Area 4E, but there was no provision for the dedication or restriction of the golf course parcels as public open space.

4. 2003

- a. The then owner of the Maryvale property, Rendezvous Colorado LLC, petitioned the Town to annex additional properties known as the “Johns Property” and the “Denver Water Board Property”, aggregating approximately 885 acres. Concurrent with the annexation of this property, a revised PDD Plan was approved and a further amended Annexation Agreement was executed.
- b. The revised PDD Plan included the Cozens and Elk Creek meadow areas and additional areas west of the railroad in Planning Area 23W, encompassing approximately 467 acres.
- c. A note on the Plan stated:

“Planning Area 23W includes approximately 466.8 acres of open space including the planned golf course. Boundaries of planning areas may be adjusted at the time of subdivision or FPDP, however major natural features of the open space system include the Cozens Meadow, Elk Creek Meadow, the Glacier Lake area, and Leland Creek.”

An additional note regarding open space read as follows:

“Designated open space consists of areas like the Fraser River Park, Cozens and Elk Creek meadows (to be placed in a conservation easement) and Leland Creek. Additional open space is required within each planning area (see Development Standards).”

- d. Planning Area 23W was depicted on the land use plan as shown on the following extract from the PDD Plan.

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“Developer agrees to dedicate or convey to Fraser the open space parcel designated as Planning Area 4E on the 2003 PDD, for public use. Developer shall determine the exact location and description of such open space parcel, consistent with the 2003 PDD, and shall complete the dedication or conveyance thereof to Fraser upon approval of a FPDP or subdivision for each of the adjoining Planning Areas, or on or before October 31, 2005. Developer further agrees to place in a conservation easement the open space parcels designated on the 2003 PDD as Elk Creek Meadow and Cozens Meadow, subject to agreement with Fraser regarding the use and maintenance of said areas, the exact location and description of such open space parcels, consistent with the 2003 PDD. The conservation easement shall be completed upon approval of a FPDP or subdivision for each of the adjoining Planning Areas, or before October 31, 2007, whichever comes first.”

- f. These provisions indicate the parties intent that the Cozens and Elk Creek meadow areas and the other parts of Planning Area 23W would be treated as open space, but there was no requirement that it be dedicated as public open space like Planning Area 4E. The fact that major portions of Planning Area 23W were intended for use as a golf course would indicate that those areas would remain in private ownership.

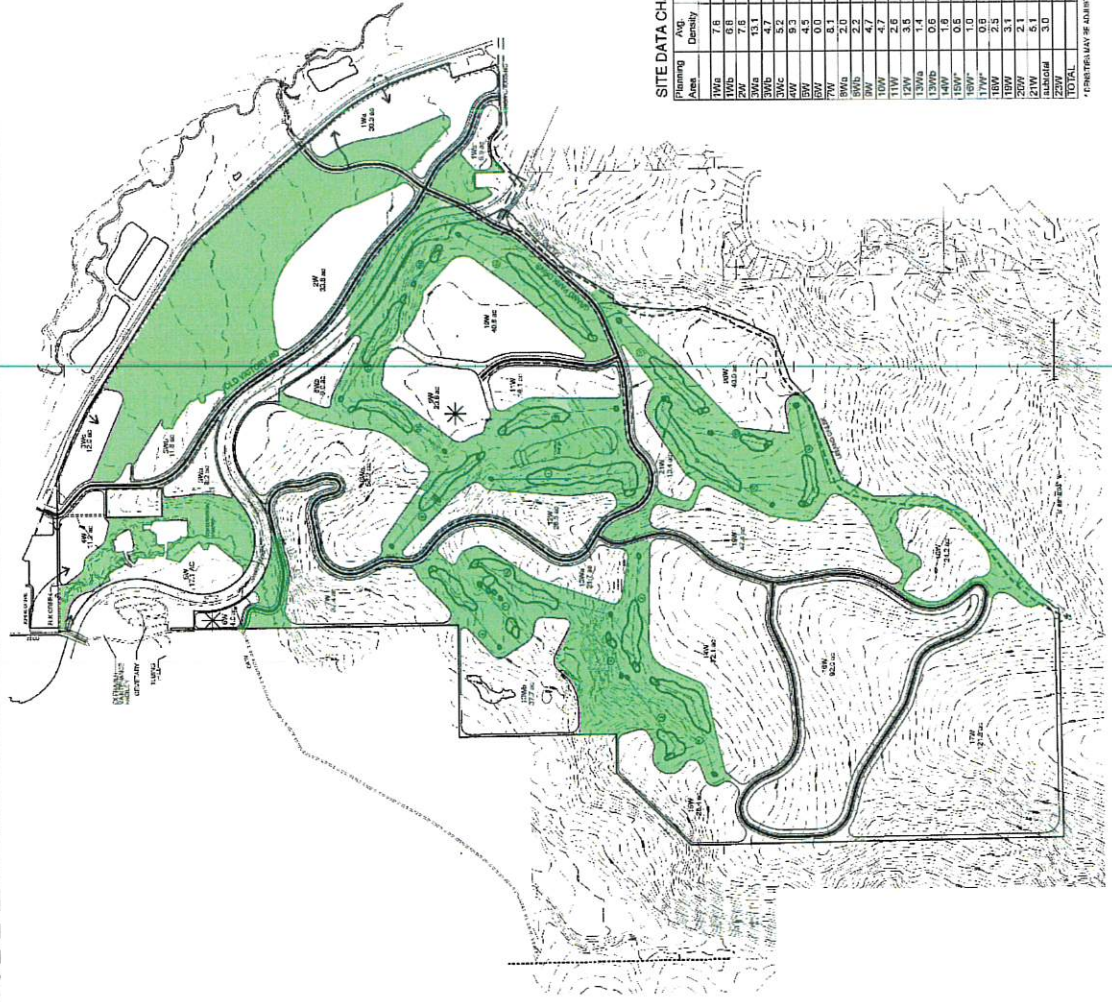
5. 2005

- a. In 2004, the principal developers decided to divide the Rendezvous PDD property between Rendezvous Colorado, LLC, which retained ownership of the property East of Highway 40, and Cornerstone Winter Park Holdings LLC, which took ownership of the property West of Highway 40. The Town of Fraser was not a party to that agreement and found out about it after the fact.
- b. Following the division, Cornerstone applied to Fraser to amend the PDD Plan for the “West Side”, to be known as Grand Park, and to amend the Annexation Agreement. Minor changes to the PDD Plan were approved, primarily relating to adjustments in Planning Area boundaries.
- c. Following is a copy of the Land Use Plan, with the open space areas included in Planning Area 23W shaded in green.

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GRAND PARK

PLANNED DEVELOPMENT DISTRICT PLAN
 A PART OF SECTIONS 20, 28, 29, 30, 31, 32
 TOWNSHIP 1 SOUTH, RANGE 75 WEST OF THE 6TH PM
 COUNTY OF GRAND, STATE OF COLORADO



SITE DATA CHART

Planning Area	Avg. Density	Approx. Acres	% Total Area	Residential Units	Commercial Units	Commercial Sq. Ft.
10W	7.6	30.3	2.3%	200	300	140,000
11W	6.8	53.9	0.5%	40		
2W	7.6	33.8	2.6%	150	279	30,000
3W	13.1	8.2	0.6%	50		
4W	5.2	13.0	0.9%	40		
5W	9.5	11.2	0.8%	100		
6W	4.5	17.1	1.3%	70		
7W	0.0	4.0	0.3%	0		
8W	2.0	34.2	2.6%	65		
9W	2.2	9.0	0.7%	35		
10W	4.7	46.8	3.1%	40	154	50,000
11W	1.1	16.1	1.2%	10		
12W	5.5	26.5	2.0%	10	100	
13W	1.4	21.7	1.7%	40		
14W	0.6	37.7	2.9%	0		
15W	1.9	22.1	1.7%	117		
16W	1.0	52.0	4.0%	50		
17W	0.8	121.8	9.3%	100		
18W	2.5	24.2	1.8%	51		
19W	3.1	47.4	3.6%	50		
20W	5.1	10.1	0.8%	20		
21W	5.1	10.1	0.8%	30		
22W	3.0	842.8	64.9%	1052	1411	
TOTAL		488.1	37.7%	2485	1276	335,000

- LEGEND
- RESIDENTIAL
 - MIXED USE
 - OPEN SPACE (SOIL CONSERVATION)
 - CLIMBHOUSE SITE
 - PROPOSED MAINTENANCE FACILITY
 - ROADWAYS
 - RAILROADS
 - REGIONAL TRAIL
 - COMMUNITY TRAIL
 - ON-ROAD TRAIL

STATE OF COLORADO
 COUNTY OF GRAND
 GRAND PARK
 PLANNED DEVELOPMENT DISTRICT PLAN
 DATE: 01/10/2009
 SCALE: 1"=800'

AN AMENDMENT OF THE RENOVOLUS 2003
 PLANNED DEVELOPMENT DISTRICT PLAN
 2005-013709
 DATE: 01/10/2009

- d. The 2005 PDD Plan note regarding Planning Area 23W was carried forward from the 2003 Plan in substantially similar form:

“Planning Area 23W includes approximately 468.1 acres of open space and development including the planned golf course, Cozens Meadow, Elk Creek Meadow, and Leland Creek. “

The note regarding open space stated:

“Designated open space consists of areas like the portions of the Cozens and Elk Creek meadows; Leland Creek and other appropriate open space. Additional open space is required within each planning area (see Development standards). Minimize development disturbance and maintain hydrologic performance of the east and west fork of Elk Creek.”

- e. The minor amendments to the Annexation Agreement allowed each separate development entity to propose amendments relating to their respective portions of the PDD without approval of the other entity. However, there were no changes to the substantive provisions of the Annexation Agreement, including those in Section 10.10 relating to open space and the required conservation easements.

6. 2015

- a. The conservation easement requirement was discussed sporadically during the period from 2005 to 2015, and the matter came to the forefront during consideration of the subdivision of the Elk Creek Final Development Plan and Filings 1 and 2. Several drafts of the conservation easement for the Elk Creek meadow were exchanged and there were extensive discussions in an effort to reach an agreement. However, no such agreement had been reached by the time the Final Plan and subdivision plats went before the Board of Trustees for approval.
- b. The Board decided to include a condition in Resolution 2015-07-03 approving the Final Plan and Final Plats for Elk Creek Filings 1 and 2, which read:

“The Board of Trustees authorizes the Town Manager and Town Attorney to negotiate the final terms of the conservation easement and to authorize appropriate Town officials to accept and execute such easement upon approval of the terms thereof by the Town Manager and Town Attorney.”

7. 2020

- a. There was further correspondence regarding the conservation easement following the 2015 Resolution and again in late 2019 and early 2020. This culminated in the execution and recording of the Deed of Conservation Easement dated March 3, 2020. That Deed

relates only to the Elk Creek meadow area and does not include Cozens Meadow. The version that was signed was not approved by the Town Attorney, as required by Resolution No. 2015-07-03. Mayor Vandernail was not involved in the negotiations regarding the terms of the Deed of Conservation Easement. He has indicated that, when he signed the Deed, he was unaware that the Town Attorney had not approved its terms or that it would have any affect regarding the conservation easement for Cozens Meadow.

CONCLUSIONS:

The applicable development agreements relating to Grand Park do not specifically require that the Cozens and Elk Creek meadow areas be dedicated to the Town of Fraser for public use or require public access to those areas. They do require that these areas be placed in a conservation easement and be maintained as open space, subject to such terms as may be agreed to by Fraser.