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MEMORANDUM

TO: Ms. Catherine, Trotter, Fraser Town Planner

FROM: THE WHITMER LAW FIRM

DATE: February 17, 2022

RE: Alpenglow Subdivision FDPD Legal Review

Catherine,

We have reviewed the following documents from the Alpenglow Subdivision submittal:

1. Title Commitment No. 0303426-C1 dated March 10, 2021
2. Alpenglow at Grand Park Final Plan – Amendment 2 dated November 16, 2021
3. Final Plats for Alpenglow Phases 1, 2 and 3
4. Alpenglow Final Plat Application and Narrative
5. Estimated Time Schedule for Development

From our review, we have the following comments and concerns. Please let us know if you would like to discuss anything in more detail.

1. The submitted checklist says that a phasing plan is not applicable, but under Code § 19-3-230(d) each phase should include anticipated recording dates of each plat, a development schedule for each phase, and a “list” of “the public improvements necessary to fully support each phase in the event subsequent phases are delayed or do not occur.” The Town also “may condition a phasing plan on the submission of an agreement to dedicate easements or rights-of-way.” The phasing plan will also necessitate findings from the PC and BOT that “the final plat phasing plan will not impede the orderly growth of public services and infrastructure necessary to efficiently serve each individual phased plat and the entire land area included within the preliminary plat approval.” None of these requirements has been fulfilled (estimated development scheduled submitted is only for Phase 1).
2. The submitted title commitment is outdated under Town Code § 19-1-410. Its legal includes Willows Filing Nos 1-3, and is for “WILLOW APARTMENTS AT GRAND PARK.” The legal

does not describe the subject parcel in the same way as the plat or plan, if it describes it at all. A new title commitment will be needed with legal descriptions matching those on the plats.

3. Also under Code § 19-3-230(d), “The final plat shall include a plat note, in form approved by the Town Attorney, which advises purchasers and owners of any lot, parcel or tract shown thereon that, while building permits may be issued prior to final completion of subdivision improvements, no certificate of occupancy may be issued for a structure on any lot, parcel or tract until all such improvements, as required by the SIA, have been completed and preliminarily accepted by the Town pursuant to Section 19-3-445.” The plats do not include such a note.
4. The checklist also says that the HOA documents are inapplicable, even though applicant has submitted Condominium Declarations. Missing from the submittal are Articles of Incorporation and Bylaws of the Association as well as deeds of conveyance to the Association.
5. Plan Note 9 states that proposed open space will be owned and maintained by Grand Park Development, LLC, its successors and assigns. Code § 19-4-165 (f)(2) requires that open space be publicly dedicated or conveyed to an association that will be responsible for future maintenance. Applicant has submitted Declarations for the Alpenglow Condominium Association, Inc., a Colorado nonprofit corporation, so that entity should be substituted in Note 9.
6. The “Transit Plan” on Plan Page 12 is missing (Page 13 was included twice), but under Code § 19-4-175(d), “[w]here appropriate, covered loading and unloading access points for public transit may be required by the Planning Commission.” Page 12 should be reviewed to ensure compliance.
7. Code § 19-4-170 requires dedication of any trails to the Town by easement. Existing trails are depicted on the Plan without mention of such an easement dedication.
8. Plan Note 8 states that all drives other than American Willow Drive, Mountain Willow Drive, and Old Victory Road will be private. Code § 19-4-175(a)(3) suggests that all private streets should be conveyed to an association. Plan Note 8 should reflect road ownership by the Alpenglow Condominium Association.
9. The submitted Subdivision Improvements Agreement does not include its Exhibits, which will need to be reviewed to ensure compliance with applicable regulations.
10. Under Annexation Agreement § 4.2, “Densities may be transferred between Planning Areas up to 30% of the receiving Planning Area with a transfer application if sufficient roadway capacity and water and sewer capacity is available, and subject to amendment of the PDD Ordinance. . . . Any density transfer to a Planning Area with an approved FPDP will require an amendment to the FPDP under the provisions of the PDD Ordinance.” Although the 2005 PDD states that no plan amendment is required if a density transfer does not exceed 30%, the First Amendment to the Annexation Agreement states that any conflicting provision found in “written documents approved as part of the” PDD is trumped by the terms of the Annexation Agreement. There-

fore, references to density transfers for an additional 66 units need to be removed from the application documents until a transfer application is submitted and approved with sufficient showing of roadway, water, and sewer capacity, along with amendments to the PDD Ordinance and the FPDPs of The Willows at Grand Park.

11. Annexation Agreement § 10.6 states that Fraser may designate and require the conveyance of a five-acre site for a public purpose. Fraser has requested the conveyance of this site pursuant a letter from the Town Attorney dated May 29, 2015. The requested site is adjacent to Old Victory Road between the existing Cozens Meadow subdivision and Highway 40. The conveyance of this site should be a condition of approval of the FPDP.