

**DATE:** May 7, 2013  
**STAFF:** Darin Atteberry  
Steve Roy, Laurie Kadrich

**AGENDA ITEM SUMMARY**  
FORT COLLINS CITY COUNCIL

**18**

**SUBJECT**

Resolution 2013-038 Approving the Stipulated Determination of Vested Rights Between the City and Horsetooth Development, LLC.

**EXECUTIVE SUMMARY**

Horsetooth Development, LLC., is the developer of the Maple Hill Subdivision, a 155 acre development, and has completed all but one phase of the development. The plan expired on September 9, 2007. Accordingly, Horsetooth, LLC., has filed an application for a Determination of Vested Rights under Division 2.13 of the Land Use Code (LUC) and the City Manager and City Attorney agree that the application for Determination of Vested Rights should be granted. The proposed Resolution would formalize the determination of vested rights.

**BACKGROUND / DISCUSSION**

Division 2.13 of the LUC establishes a procedure whereby the City can provide relief, where appropriate, to persons who claim that the application of the LUC has interfered with their vested rights to develop property. This procedure has been established to prevent manifest injustice in cases where application of the "lapse" provision of the LUC would work an undue hardship. Vested rights determinations are allowed where:

1. Some authorized act has been performed by the City;
2. There has been reasonable good faith reliance upon such act by the applicant; and
3. There has been a substantial change in position or expenditure by the applicant such that it would be highly inequitable and unjust to destroy the rights acquired.

Horsetooth Development, LLC., as the developer of the Maple Hill Subdivision, has completed all but one phase of the development. Federal regulators prohibited the developer's lending institution from making additional loans or advances to the complete this project. However, the bank is now capable of moving forward and is able to fund the developer in the completion of the subdivision. The subdivision build-out includes a total of 530 dwelling units to which 152 remain to be completed due to the lack of infrastructure. The Development Agreement for the subdivision was approved on August 19, 2003. This development has lapsed due to the incompleteness of this infrastructure, although the developer has continued (following the lapse of the plan) to pay the City for infrastructure improvements to Turnberry Road and for street oversizing improvements beneficial to the City. Because of this lapse, and due to the developer's financial ability to complete the project, Horsetooth Development, LLC., has sought relief under the vested rights determination process set out in Division 2.13 of the LUC.

Section 2.13.5 of the LUC provides that if the Director and the City Attorney agree, based on the review and evaluation of the application, that the application should be granted, then they may enter into a written stipulation with the Applicant, in lieu of the hearing which would otherwise be required under Division 2.13. Any such stipulated determination must be approved by the City Council by resolution and must include findings of fact and conclusion of law upon which the determination is based.

Following annexation to the City in 1983, and in accordance with an approved Final Development Plan, the Applicant continued to pursue the completion of the project as funding was available. The Applicant also continued to sell completed lots to Aspen Homes during the recent recession and could have further continued to sell lots to Aspen Homes but for the financial collapse of the Applicant's lender, Mile High Bank. The Applicant continued to financially support the project by paying over \$750,000 in property taxes and by making payments to the City in accordance with the requirements of the Development Agreement for the project.

The Applicant has expended approximately ~~\$122,104,617~~ **\$12,104,617** in the development of the project, \$367,092 of which was for recent infrastructure improvements to Turnberry Road and \$225,000 of which was for street oversizing improvement, beneficial to the City, and the Applicant has also dedicated 7.16 acres to the City for a park site, which dedication is valued at approximately \$800,000.

From the perspective of the staff and the City Attorney's Office, it appears that the Applicant has incurred substantial expenditures in reliance upon the City's approval of the plans and that the Applicant has been diligent in trying to develop the property to completion and that Horsetooth Development, LLC., should be afforded another period of three (3) years from the date hereof, within which to complete the development of the project in accordance with the previously approved Final Development Plan and related development construction documents.

### **STAFF RECOMMENDATION**

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Staff recommends adoption of the Resolution.

### **ATTACHMENTS**

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1. Application for Determination of Vested Rights, March 25, 2013
2. Exhibit A; Project Costs
3. Vicinity Map

**HORSETOOTH DEVELOPMENT ,  
LLC**

9616 W. Bowles Avenue, Unit 15  
Littleton, CO 80123

**March 25, 2013**

**Attention: Laurie Kadrach, CDND Director**

**APPLICATION FOR VESTED RIGHTS DETERMINATION**

Pursuant to Fort Collins Land Use Code Section 2.13.10, an applicant shall be entitled to a positive Vested Rights Determination if the applicant demonstrates entitlement to complete his or her development without regard to the otherwise applicable provisions of the Land Use Code by reason of: (a) the provisions of Title 24, Article 86, C.R.S. including economic conditions; (b) Section 2.2.11 (Lapse) of this Land Use Code; or (c) the existence of all three (3) of the following requirements:

- (1) Some authorized action of the city;
- (2) Reasonable good faith reliance upon such act by the applicant; and
- (3) Such substantial change in position of expenditure by the application that it would be highly inequitable or unjust to destroy the rights acquired.

Below is the information required by Division 2.13 Vested Rights and Taking Determinations for an Application for a Vested Rights Determination:

**I. Information Required Pursuant to §2.13.3(A) and (B)**

Application Fee (§2.13.3): A check for \$2,500.00 is included herewith.

Owner / Applicant (§2.13.3(A)):

Horsetooth Development, LLC ("Horsetooth Development")  
9116 West Bowles Ave. Unit 15  
Littleton, Colorado, 80123  
Owner Representative, Miles Grant  
303 979 9858 x 113

Horsetooth is the sole owner of the partially developed lots for which this application is seeking to resolve vesting issues. The lender for the lots in question is Mile High Bank.

Property (§2.13.3(B)): A tract of land known as Maple Hill, being a Replat of the 19<sup>th</sup> Green Planned Unit Development – Phase 1, located in the Northwest Quarter of Section 32 Township 8 North, Range 68 West of the P.M., City of Fort Collins, County of Larimer, State of Colorado (the "Maple Hill Plat"), including, those portions of Maple Hill approved as the Maple Hill Replat, the Maple Hill Second Replat, the Maple Hill Third Replat and the Maple Hill Fourth Replat. See Exhibit AA for addresses of partially developed lots. Specifically the lots we are seeking the continuation of the plat and entitlements.

Acreage (§2.13.3(B)): The Maple Hill Plat covers an area of approximately 154.79 acres, of which 130.26 acres are completed, including the Maple Hill Fourth Replat, 18.17 acres of approved single family residential lots are not completed, and 6.36 acres of dedicated public Right of Way associated with those lots not fully completed. See attached map **EXHIBIT A** which shows partially completed streets in red, and **EXHIBIT AA**, the Plat and acreage calculations. Maple Hill 4<sup>th</sup> replat is not in question regarding entitlements for this application. Reference is made only for clarification of lots.

Units (§2.13.3(B)): The recorded Maple Hill Plat (excluding the Fourth Maple Hill Plat) consists of 530 lots, of which, 370 have been improved and 363 have occupied homes, approximately 70% of the lots are improved. Maple Hill has 152 partially completed lots. 59 of the incomplete lots have the water and sanitary sewer infrastructure installed, and another 32 lots have the sanitary sewer installed. Therefore, at this time approximately 87% of the lots have sanitary sewer service and 81% of the lots have water service.

530 lots in Maple Hill made up of;  
363 existing occupied homes

15 lots with full infrastructure without entitlement concerns

152 partially completed lots the subject of this application

Housing type: The remaining 152 lots without completed infrastructure consist of two lot sizes: eleven are 45-foot wide lots and 141 are 49.5-foot wide lots. A portion of the originally approved subdivision that was designed as multi-family housing has been converted to single family lots by the approved Maple Hill Fourth replat and is not part of this application.

Project Dedications: In addition to considerable Right of Way, open space, public easement, and completed infrastructure, Horsetooth Development dedicated 7.16 acres for public park use, and funded certain oversized improvements for future expansion of City services. The recreation center has been constructed at a cost of approximately \$605,000 and is being utilized by City residents. The financing and operating costs for these amenities and dedications were based on the revenue generated by 530 lots, not

370 lots. This includes both existing financing of the uncompleted infrastructure and also future financing of both private and public improvements, including partly completed roadways and public utilities. Deviating from the original 530 home sites will be detrimental to the funding of the local homeowners association ("HOA") and the anticipated annual funding for the pool amenities. Not having the projected 530 homes could cause the HOA dues to be significantly increased in excess of projections.

In addition to onsite public dedications, part of the conditions for the approval of subdivision included expansion and reconstruction of existing City-owned public infrastructure. These improvements included reconstruction of Turnberry Road that was completed in 2012 by the City at a cost of \$367,000 to the project. These offsite improvement requirements imposed on the Maple Hill development as contemplated by the Development Agreement were accepted by the developer in reliance on the development of all 530 units within the Maple Hill project. If the City does not allow the full allotment of home sites, the City will enjoy a prejudicial infrastructure advantage not anticipated by the Development Agreement.

## II. Section 2.13.3(C) – §2.13.10 Criteria for Vested Rights

### 1. Section 2.13.10(A)(1) – "some authorized act of the city"

The City approved and recorded the Maple Hill Plat and allocated certain City infrastructure improvements to Horsetooth Development in the Development Agreement based on Horsetooth Development's ability to allocate these City infrastructure improvements to 530 homesites. Please refer to Development Agreement attached as **EXHIBIT I**. This act of the City induced Horsetooth Development to rely on the fact that the expenditures for the Maple Hill Plat could be absorbed by 530 homesites, not a lesser amount. Fort Collins' denial of vested rights in the ongoing Maple Hill property is an extremely damaging act to Horsetooth Development and the existing residents of the project, in reliance on the Maple Hill Plat, Horsetooth Development has expended significant funds to construct and install completed infrastructure (as described in detail below) to all but 152 lots within Maple Hill, consisting of 530 home sites. The 152 incomplete lots have partial infrastructure and could not be used for any other purpose without loss of the value of the infrastructure improvements installed, and extinguishing such property's financial value and causing a serious detriment to Horsetooth Development. The infrastructure running through Maple Hills' 91 partially completed lots is necessary to service the lots north of Maple Hill Drive and could not be removed or abandoned without extreme detriment to the homes north of Maple Hill Drive. The infrastructure in Maple Hills' 91 partially improved lots was oversized to service all of the lots north of Maple Hill Road placing an additional burden and loss on Maple Hills' partially finished lots if the entitlements are not recognized.

Horsetooth Development has reason to rely on the entitlements at Maple Hill derived from the City of Fort Collins Municipal Code based at least in part on Title 24, Article 68, C.R.S., and specifically §24-68-104(2) related to economic cycles. Horsetooth Development, in conjunction with the City of Fort Collins, has continually improved the Maple Hill development and periodically installed infrastructure as economic conditions allowed in accordance with the Development Agreement,

specifically including the recently constructed required improvements to Turnberry Road. Please refer to **EXHIBIT C**, a 2011 letter from Fort Collins to Miles Grant requiring adherence to Section II.D.6 of the Development Agreement. Turnberry Road has been completed per the City's requirements, and the attached Reimbursement Agreement (**EXHIBIT D**) accepted by the City demonstrates the cost and the amount are directly attributed to the 152 unfinished lots. These actions by Fort Collins establish that the City assumes the Development Agreement is in full effect and enforceable.

2. Section 2.13.10(A)(2) – “reasonable good faith reliance upon such act by the applicant”

Horsetooth Development reasonably relied, in good faith, upon the entitlement relating to Maple Hill approved by Fort Collins. Such reliance is demonstrated by the following:

a. Horsetooth Development relied on the value of the entitlements to its Maple Hill property as part of its continued loan payments and loan extensions with its primary lender, Mile High Banks, on the property. Mile High Banks' loan to Horsetooth Development was fully collateralized by the Maple Hill property. Due to certain regulatory restrictions, federal regulators prohibited Mile High Banks from making additional loans or advances to Horsetooth Development for any development. Horsetooth Development could not obtain infrastructure financing from other commercial banks because of the collateral position held by Mile High Banks. However, Horsetooth Development continued to proceed and fund this project, as cash flow allowed, in reliance on Maple Hills' entitlements and future opportunity for development and sale.

b. Horsetooth Development continued to sell completed lots to Aspen Homes throughout the severe economic collapse and could have continued to sell lots to Aspen if not for Mile High Banks' financial collapse, which prevented Mile High Banks from advancing funds to complete infrastructure.

c. Horsetooth Development has continued to support the project financially by paying over \$300,000 dollars annually in interest and property taxes on Maple Hill. The property taxes are based on the Maple Hill plat recorded in Larimer County.

d. In addition to the above, between 2006, and 2011, Horsetooth Development was required to perform under Section II.D.5 and II.D.6 of the Development Agreement and satisfied those requirements. The last payment under Section 5 was rendered to the City in May of 2010, and the infrastructure under section 6 was installed in mid-2012.

3. Section 2.13.10(A)(3) – “such a substantial change in position or expenditure by the applicant that it would be highly inequitable or unjust to destroy the rights acquired”

Horsetooth Development has substantially changed its position and expended

funds based on the Development Agreement. As a result, it is highly inequitable and unjust to destroy its vested rights in the Development Agreement.

a. Horsetooth Development's total investment in the project to date is equal to \$12,104,617.17. Such investment costs are detailed as follows:

- i. \$367,092.17 for recent infrastructure to improve Turnberry Road;
- ii. Architectural and engineering fees included in land price in iv below;
- iii. \$3,755,000.00 in initial land costs;
- iv. \$1,836,718.00 in finance costs; and
- v. \$253,000.00 for property taxes paid in 2009, 2010, and 2011 based on the individual lot entitlements, not taxed as bulk unentitled property.
- vi. \$5,892,807 in Infrastructure Costs through 7-31 2012

b. Horsetooth Development dedicated a 7.16 acre Park Site, valued at \$800,000 in lot equivalency, to the City of Fort Collins in Maple Hill. In addition, multiple street and right of way dedications have been made.

c. Approximately \$225,000 of additional construction and installations costs were incurred by Horsetooth Development for the installation of oversized infrastructure to accommodate off-site development as required by the Development Plan. This cost was based on 530 units not 370 units, and is included in item 3 (a) vi above.

d. There are existing infrastructure improvements in the 152 partially developed lots, per the attached maps representing the south half of Maple Hill, (south of Maple Hill Drive). These maps (Exhibits 2 and 3) are provided by Boxelder and ELCO metro districts. Also included are the letters of acceptance of the infrastructure in the unfinished lots.

e. The estimate to complete the remaining infrastructure in these 152 lots is \$1,828,500. This is 15% of the total costs expended to date and shown in paragraph 3, a., vi, above.

f. The remaining infrastructure is sized to connect with the infrastructure in the existing 400 homes and should function properly as currently designed.

g. Horsetooth Development agrees that the plans must be reviewed by Boxelder and ELCO to make sure they are compliant with codes regarding health and safety.

h. Given the financial restraints and economic circumstances surrounding the Maple Hill project, Horsetooth Development has worked diligently to continue to develop the project, sold lots as available to assist with the projects development and used its best efforts to maintain the project.

**III. Conclusion 2.13.10, (B)**

(a) The total investment in the project is \$12,104,617.17.

(b) Dedications required in the Development Agreement have been completed.

(c) Installed infrastructure in the 91 partially completed lots is sized to accommodate the lots north of Maple Hill Road.

(d) Maple Hill consists of 154.79 acres. 18.17 of such acres of approved single family residential lots are not constructed, and 6.36 acres of dedicated public Right of Way associated with those lots are also not fully completed.

(e) Completion of the project has been ongoing as economic conditions allow, including the reconstruction of Turnberry Road in 2012. The recent work completed on Turnberry Road is also evidence that the City is operating as if the Development Agreement is in full force and that all of the entitlements are valid.

(f) Based on our lender's collapse and the resulting inability to help Horsetooth Development proceed with infrastructure and the economic collapse of monumental proportion not experienced since the Depression of the 1930's, I submit that our expenditures for carrying costs, Interest and general maintenance of our property is evidence of our intent to continue the project in the character of the community approved by the City.

(g) Mile High Banks has been purchased and refunded as of December 31, 2012. Due to this new capitalization, as of January 1, 2013 Mile High Bank was capable of moving forward as a newly capitalized bank and we were working with them to start new infrastructure and in fact are ready to start construction as soon as possible. Horsetooth has invested in excess of \$300,000 during the last 5 months for property taxes and interest payments in anticipation of our lender finally being able to fund additional infrastructure. Including the \$367,000 of costs for Turnberry Maple Hill has benefited from almost \$700,000 of infrastructure and financial investment during the last 9 months in order to complete the project as envisioned by the City and Horsetooth.

In reliance on the Development Agreement previously approved and accepted by the City of Ft. Collins, Horsetooth Development has made a substantial investment of time and money into the Maple Hill project to from a successfully residential development to the City of Ft. Collins. Due to Horsetooth Development's good faith reliance on the entitlements previously granted for the Maple Hill project and the inequitable and unjust losses which would be sustained by Horsetooth Development is such entitlements are not reaffirmed, Horsetooth Development hereby requests that all entitlements previously granted to the Maple Hill development be restored immediately pursuant to a Determination of Vested Rights by the City of Ft. Collins.

Respectfully,  
Horsetooth Development, LLC

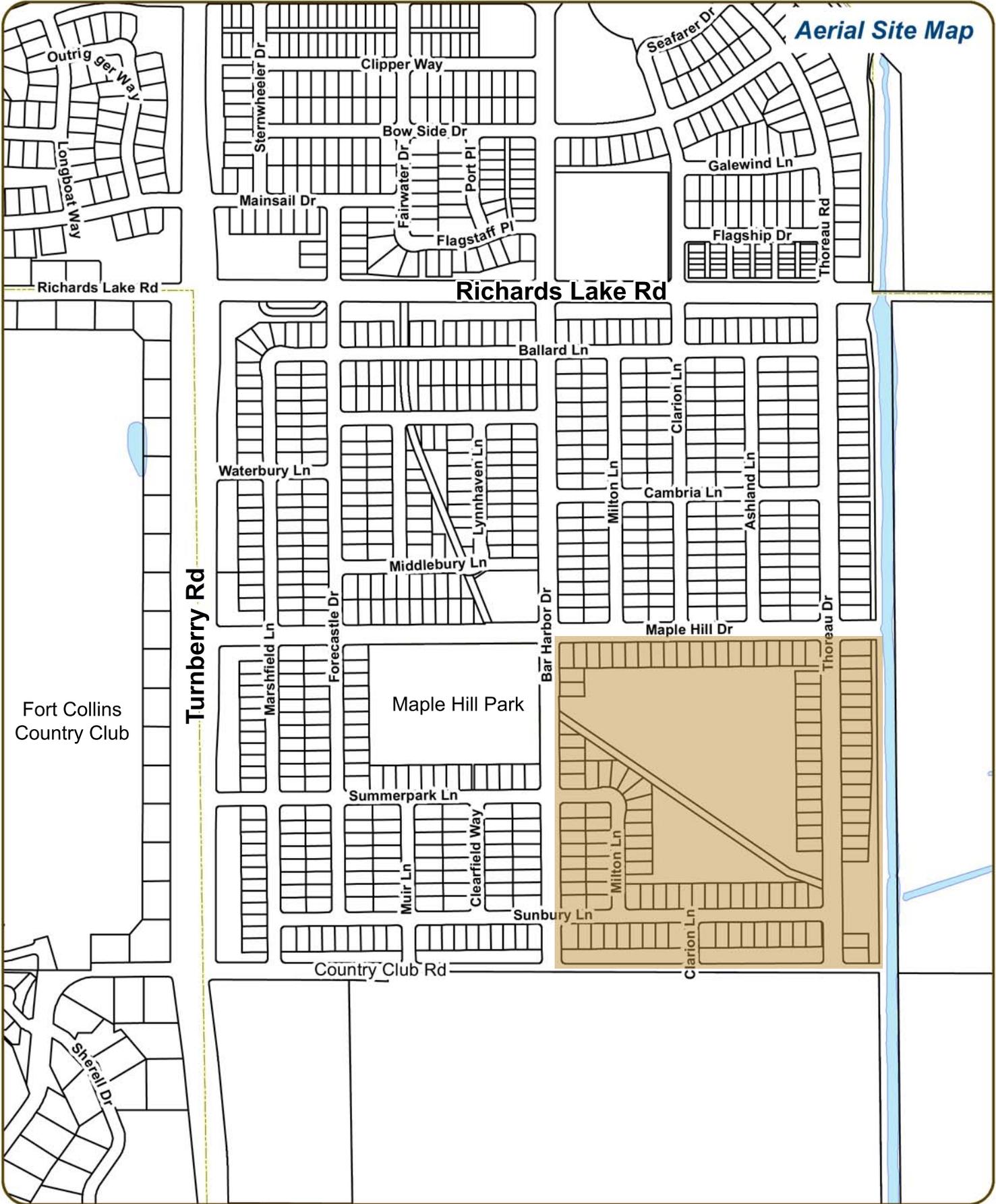


By  
Miles R. Grant  
Manager's Representative

## Exhibit A

<b>MAPLE HILL SUBDIVISION</b>			
PROJECT COSTS	SPENT	TO BE SPENT	
		HARD	SOFT
Acquisition Costs	\$96,269	\$0	
Land purchase price	\$3,755,000	\$0	
Fees and permits	\$38,476		\$9,000
Development agreement expenditures			
Offsite oversizing	\$225,000		
County road 11	\$367,092		
Other	\$88,353		
<b>TOTAL</b>	<b>\$680,445</b>		
Management Consulting	\$234,312		\$65,000
Engineering Construction Services	\$100,378		\$20,000
Surveying	\$81,900		\$29,300
Geotechnical Services	\$42,959		\$23,500
Landscape / Fence	\$504,166		\$317,625
Clearing	\$31,875		\$0
Erosion Control	\$82,094	\$28,112	
Grading	\$348,204	\$18,983	
Sanitary Sewer	\$708,728	\$120,204	
Water distribution	\$585,482	\$201,120	
Irrigation	\$99,380	\$77,986	
Storm Sewer	\$369,211	\$237,989	
Concrete	\$416,612	\$409,323	
Paving	\$564,454	\$508,037	
Reimbursement	-\$32,152	-\$104,532	
Signage	\$20,344	\$21,678	
Dry Utilities	\$306,559	\$309,600	
<b>OVERHEAD</b>			
Legal	\$85,265		\$15,000
Tax service	\$1,629		\$1,500
Insurance	\$246,260		\$85,000
Property Taxes	\$755,664		\$80,000
Other	\$9,085		\$4,000
Contingency	\$21,345		\$20,000
G & A	\$113,955		\$50,000
<b>TOTAL OVERHEAD</b>	<b>\$1,233,203</b>		<b>\$255,500</b>
<b>FINANCING COSTS</b>	<b>\$1,836,718</b>		<b>\$350,000</b>
Remaining Hard Construction Costs		\$1,828,500	
Remaining Soft Costs			\$1,069,925
<b>PROJECT TOTAL</b>	<b>\$12,104,617</b>	<b>\$2,898,425</b>	

Aerial Site Map



Vested Rights  
Maple Hill

1 inch = 500 feet

RESOLUTION 2013-038  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING THE STIPULATED DETERMINATION OF  
VESTED RIGHTS BETWEEN THE CITY  
AND HORSETOOTH DEVELOPMENT, LLC

WHEREAS, Division 2.13 of the Land Use Code contains a vested rights determination procedure in order to prevent manifest injustice by providing a mechanism for identifying certain parcels of real property in the City that should, by reason of general principles of common law vested rights, be exempt from the “lapse” provisions contained in Section 2.2.11 of the Land Use Code; and

WHEREAS, Horsetooth Development, LLC is the owner of a tract of land bounded generally by Turnberry Road, Country Club Road and Maple Hill Drive, which parcel of property has obtained City approval of a Final Plan for Maple Hill, Maple Hill First Replat, Maple Hill Second Replat, Maple Hill Third Replat and Maple Hill Fourth Replat (the “Final Plan”); and

WHEREAS, Horsetooth Development, LLC, in reliance upon the approval by the City of the Final Plan, expended substantial sums of money, made substantial dedications of land to the City and otherwise substantially changed its position in reasonable good faith reliance upon the authorized acts of the City in approving the plan, all as more particularly stated in the Stipulated Determination of Vested Rights attached hereto and incorporated herein by this reference as Exhibit “A”; and

WHEREAS, upon examination of the facts, conclusions of law and determination contained in the Stipulated Determination of Vested Rights, the City Council has determined that it is in the best interest of the City that said Stipulated Determination of Vested Rights should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Stipulated Determination of Vested Rights between the City and Horsetooth Development LLC, dated April 26, 2013, attached hereto and incorporated herein by this reference as Exhibit "A" is hereby approved.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 7th day of May A.D. 2013.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**STIPULATED DETERMINATION OF VESTED RIGHTS**

This stipulated determination of vested rights is executed this <sup>yh</sup>26 day of April, 2013, by the City of Fort Collins ("City") and Horsetooth Development, LLC ("Applicant").

**FINDINGS OF FACT**

1. Applicant is the owner of a tract of land (the "Project") bounded generally by Turnberry Road, Country Club Road and Maple Hill Drive in the City of Fort Collins. The legal description of the Property is as follows:

A tract of land known as Maple Hill, being a Replat of the 19th Green Planned Unit Development - Phase 1, located in the Northwest Quarter of Section 32 Township 8 North, Range 68 West of the P.M., City of Fort Collins, County of Larimer, State of Colorado (the "Maple Hill Plat"), including those portions of Maple Hill approved as the Maple Hill Replat, the Maple Hill Second Replat, the Maple Hill Third Replat and the Maple Hill Fourth Replat.

Said parcel shall hereafter be referred to as the "Project".

2. The property upon which the Project is located was annexed into the City in 1983.

3. Following annexation into the City, a Final Development Plan was approved for the Project. The Project covers approximately 155 acres and includes a total of 530 dwelling unit lots, 152 of which lots are not fully ready for occupancy due to the lack of infrastructure. The Development Agreement for the Project was approved on August 19, 2003.

4. In accordance with the foregoing approved Final Development Plan, the Applicant continued to pursue the completion of the project as funding was available, and continued to sell completed lots to Aspen Homes during the recent recession and could have further continued to sell lots to Aspen Homes but for the financial collapse of the Applicant's lender, Mile High Bank. The Applicant continued to financially support the Project by paying over \$750,000 in property taxes and by making payments to the City in accordance with the requirements of the Development Agreement for the Project. At the heart of the Applicant's difficulties stands Mile High Bank because the loan to the Applicant from Mile High Bank was fully collateralized by the Maple Hill property. Federal regulators prohibited Mile High Bank from making additional loans or advances to the Applicant but, because Mile High Bank has now been purchased and refunded as of December 31, 2012, the bank is now capable of moving forward as a newly capitalized bank and once again is able to fund the Applicant in the development of the Project.

5. The Applicant has expended approximately \$12,104,617 in the development of the Project, \$367,092 of which was for recent infrastructure improvements to Turnberry Road and \$225,000 of which was for street oversizing improvements beneficial to the City, and the

Applicant has also dedicated 7.16 acres to the City for a park site, which dedication is valued at approximately \$800,000.

6. The Applicant estimates that the “hard cost” to complete the remaining infrastructure improvements for the 152 lots which are partially completed and are the subject of this application is \$1,828,500, which constitutes approximately 15% of the total cost expended on the Project. The Applicant has provided a tabulation of all costs, both expended and to be spent, which tabulation is attached hereto as Exhibit “A.”

7. On or about March 25, 2013, the Applicant completed the filing of a request for a vested rights determination with the City. On March 26, 2013, the Director of Community Development and Neighborhood Services determined that the application was complete. The Applicant has requested, through the vested rights determination process, that the Applicant be found to possess a vested right in the Project and its related plan, plat and development construction documents to complete the Project in accordance with the previously approved plans.

8. In accordance with Section 2.13.10 of the Land Use Code, in order for an applicant to be entitled to a positive vested rights determination, the City Attorney and City Manager must be persuaded by clear and convincing evidence that there has been some authorized act of the City, together with reasonable good faith reliance upon such act by the applicant, which resulted in a substantial change in position or expenditure by the applicant such that it would be highly inequitable or unjust to destroy the rights acquired. In accordance with the criteria established in Section 2.13.10 of the Land Use Code, the City Attorney and City Manager have come to the following conclusions of law.

## CONCLUSIONS OF LAW

1. Authorized Act of the City. By approving the Final Development Plan for the Project, and by approving the utility plans and entering into a development agreement for the foregoing development, accepting dedication of land for park purposes, and accepting funds from the Applicant for improving Turnberry Road in an amount in excess of \$367,000, the City performed authorized acts upon which the Applicant might reasonably have relied.

2. Reasonable Good Faith Reliance. The Applicant acted reasonably and in good faith by relying upon the authorized acts of the City in moving forward with the construction of certain infrastructure improvements for the Project, and by generally proceeding to development the Project.

3. Substantial Change in Position or Expenditure. By investing approximately \$12,104,617.00 in the design and installation of infrastructure improvements for the Project, by dedicating park land, and rights-of-way and easements for the construction of such infrastructure improvements, and by constructing other street and infrastructure improvements, some of which are necessary to serve the Project and others of which are necessary to accommodate other developments in the area, the Applicant has made substantial expenditures and substantially

changed its position to such an extent that it would be inequitable or unjust to destroy the rights acquired by reason of the City's approval of the Final Development Plan.

**DETERMINATION**

The Applicant has reasonably, and in good faith, relied upon authorized acts of the City in making such a substantial change in position or expenditure that it would be highly inequitable and unjust to destroy such rights as may have been acquired by the Applicant in the approval of the Final Development Plan for the Project. It is hereby determined that it would be equitable under the circumstances to allow the Applicant an additional period of three (3) years from the date hereof within which to complete the development of the Project in accordance with the previously approved Final Development Plan and related development construction documents.



CITY OF FORT COLLINS, COLORADO,  
a Municipal Corporation

By: [Signature]  
Darin A. Atteberry, City Manager

By: [Signature]  
Stephen J. Roy, City Attorney

ATTEST:

Wanda Nelson  
City Clerk

HORSETOOTH DEVELOPMENT, LLC,  
a Colorado limited liability company

By: Estate Development Corporation,  
a Colorado corporation, its Manager

By: [Signature]  
Miles R. Grant, Manager

Approved by City Council by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2013.

\_\_\_\_\_  
City Clerk

**MAPLE HILL SUBDIVISION**

PROJECT COSTS	SPENT	TO BE SPENT	
		HARD	SOFT
Acquisition Costs	\$96,269	\$0	
Land purchase price	\$3,755,000	\$0	
Fees and permits	\$38,476		\$9,000
Development agreement expenditures			
Offsite oversizing	\$225,000		
County road 11	\$367,092		
Other	\$88,353		
<b>TOTAL</b>	<b>\$680,445</b>		
Management Consulting	\$234,312		\$65,000
Engineering Construction Services	\$100,378		\$20,000
Surveying	\$81,900		\$29,300
Geotechnical Services	\$42,959		\$23,500
Landscape / Fence	\$504,166		\$317,625
Clearing	\$31,875		\$0
Erosion Control	\$82,094	\$28,112	
Grading	\$348,204	\$18,983	
Sanitary Sewer	\$708,728	\$120,204	
Water distribution	\$585,482	\$201,120	
Irrigation	\$99,380	\$77,986	
Storm Sewer	\$369,211	\$237,989	
Concrete	\$416,612	\$409,323	
Paving	\$564,454	\$508,037	
Reimbursement	-\$32,152	-\$104,532	
Signage	\$20,344	\$21,678	
Dry Utilities	\$306,559	\$309,600	
<b>OVERHEAD</b>			
Legal	\$85,265		\$15,000
Tax service	\$1,629		\$1,500
Insurance	\$246,260		\$85,000
Property Taxes	\$755,664		\$80,000
Other	\$9,085		\$4,000
Contingency	\$21,345		\$20,000
G & A	\$113,955		\$50,000
<b>TOTAL OVERHEAD</b>	<b>\$1,233,203</b>		<b>\$255,500</b>
<b>FINANCING COSTS</b>	<b>\$1,836,718</b>		<b>\$350,000</b>
Remaining Hard Construction Costs		\$1,828,500	
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<b>PROJECT TOTAL</b>	<b>\$12,104,617</b>	<b>\$2,898,425</b>	