



Town of Berthoud Planning Commission Work Session and Public
Hearing
Town Hall
807 Mountain Avenue
Thursday, September 12, 2024, at 6:00 p.m.
All published times are approximate.

1. Call Meeting To Order
2. Pledge Of Allegiance
3. Roll Call
4. Approval Of Minutes From August 22, 2024

Documents:

[2024 08 22_PLANNING COMMISSION MINUTES_DRAFT.PDF](#)

5. 6:05 P.M. Work Session: The Connection Between Economic Development And Housing Availability
Presentation by: Walt Elish, Berthoud Business Development Manager
Representatives from UPSTATE Colorado
6. 7:00 P.M. Public Hearing: Resolution 10 (Series 2024), A Resolution Approving The Farmstead 3rd Filing Neighborhood Master Plan, And Ordinance 1343, An Ordinance Amending The Zoning Map Of The Town Of Berthoud To Rezone The Farmstead 3rd Filing Property Currently Zoned PUD - Planned Unit Development To SR - Suburban Residential, SC – Suburban Commercial, And UR – Urban Residential.
Presented by: Tawn Hillenbrand, Senior Planner

Documents:

[FARMSTEAD CONTINUANCE DOCUMENTS.PDF](#)
[FARMSTEAD 3RD SCHOOL SITE - SCHOOL DISTRICT](#)
[CORRESPONDENCE_2024 09 09.PDF](#)

7. Report By Staff
8. Adjourn

Join Zoom Meeting <https://us02web.zoom.us/j/86049631362> Meeting ID: 860 4963 1362

One tap mobile +17193594580,,86049631362# US

Individuals needing special accommodation may request assistance by contacting the Town Clerk at 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-2643 at least 24 hours in advance.



**Garden
Spot of
Colorado**

MEETING MINUTES OF THE PLANNING COMMISSION – WORK SESSION

Town Board Room

807 Mountain Avenue, Berthoud, CO 80513

August 22, 2024, at 6:00 p.m.

1. The Meeting was Called To Order at 6:02 p.m. by Chairperson Karen Anderson
2. The Pledge of Allegiance was led by Chairperson Anderson.
3. Roll Call was taken and the following Commission members were present:
 - Karen Anderson, Chair
 - Abigail Smith, Vice Chair
 - Nick Semedallas, Commissioner
 - Marc Hofmans, Commissioner
 - David Pond, Commissioner

The following Commission member was absent:

Joe Donnelly, Commissioner

The following Town Trustees and Agency Representatives were also present:

Sean Murphy, Mayor Pro-Tem

Tim Hardy, Trustee

Tiffany Brodie, Berthoud Habitat for Humanity

The following Staff members were also present:

Anne Johnson, Community Development Director

Teri Reger, Planning Technician

The following Consultants from Ayres Associates were also present:

Melissa Hunt – via Zoom, Josh Olhava, and Karlyn Vasan

4. **A MOTION made by Secretary Semedallas to APPROVE the Minute for the August 8, 2024, Planning Commission Meeting and SECONDED by Vice Chair Smith. With all those in favor, THE MOTION CARRIED.**
5. The Housing Steering Committee project kick-off was introduced by Anne Johnson, the Town's Community Development Director. Ayres & Associates was chosen as the consultants for this Town project and they led a presentation and discussion on what the process will be for the study. They asked the Committee for input and direction on how they might proceed regarding events that would be valuable to attend to engage the community in the process.
6. Report by Staff
 - September 12th PC meeting will have a presentation by UpSTATE representatives and Walt Elich regarding the impact housing has on a community's economic development prospects. There will also be a public hearing.
 - A follow-up Housing Steering Committee Meeting will be held after the community input has been gathered in 4-6 weeks.
 - Short-term Rentals went before the Town Board and was approved with a 200' buffer, ADUs will be allowed as STRs and there will be a cap of 50 overall. Two webinars were presented on the process for application. Applications will be taken starting September 23, 2024.
 - o Commission asked: Could STRs be pulled in the future if the Town were to see a lot of issues

stemming from the approval? *The short answer is yes, however, it's difficult to take something away once it's been granted.*

- In October the PC could see presentations by both Habitat for Humanity and The Loveland Housing Authority.
7. **A MOTION was made by Vice Chair Smith to adjourn the August 27, 2024, Planning Commission Work Session and SECONDED by Secretary Semedalas. With all in favor, THE MOTION CARRIED.**

The meeting was adjourned at 8:40 p.m.

Chairperson

Secretary

PLANNING COMMISSION INFORMATION



COMMUNITY DEVELOPMENT DEPARTMENT

Meeting Date:	September 12, 2024
Agenda Title/Subject:	Resolution 10 (Series 2024), a Resolution approving the Farmstead 3rd Filing Neighborhood Master Plan, and Ordinance 1343, an Ordinance amending the zoning map of the Town of Berthoud to rezone the Farmstead 3rd Filing property currently zoned PUD - Planned Unit Development to SR - Suburban Residential, SC – Suburban Commercial, and UR – Urban Residential.
Type of Item:	Public Hearing
Request:	Request to accept the Neighborhood Master Plan for the Farmstead 3rd Filing property and to change the existing zoning to align the proposed development with the vision found in the 2021 Comprehensive Plan future land use map.
Presented by:	Tawn Hillenbrand, Senior Planner

ATTACHMENTS:

- Staff Report with attachments
- Resolution 10 (Series 2024) and Ordinance 1343
- Applicant Letter, regarding school site, dated August 21, 2024, and correlating email correspondence

BACKGROUND:

The Farmstead 3rd Filing Neighborhood Master Plan includes a proposed public-school site. The School District provided Staff and the Applicant new information regarding the proposed school site shortly before the scheduled Planning Commission public meeting on August 8, 2024. For this reason, the Planning Commission moved to continue the Planning Commission meeting to September 12, 2024, with the expectation that the Applicant/Developer and School District work through the new information and work together to find a solution for the proposed school site.

The Applicant provided Staff a letter, dated August 21, 2024, addressing the proposed school site. The letter and correlating email correspondence are attached to this report.

The current request consists of four (4) undeveloped parcels. The four parcel total approximately 124-acres. Three of the subject parcels were annexed to the Town in 1997 while the fourth parcel was annexed in 1998. The four parcels were zoned PUD in April 2000.

The intent of the Neighborhood Master Plan and Rezone request, to rezone to SR - Suburban Residential, SC – Suburban Commercial, and UR – Urban Residential, is to align land uses with the vision and intent of the Comprehensive Plan and Future Land Use Map while also allowing the future development of the proposed residential and commercial lots. The Comprehensive Plan Future Land Use Map is not legislative in nature such as a zoning district boundary. The Future Land Use Map is a vision document to guide future development.

UPDATE/NEXT STEPS:

Tonight, the Planning Commission will hear two requests of the applicant. The first will be the Neighborhood Master Plan. The purpose of the Neighborhood Master Plan is to conceptualize the overall character of a future subdivision inclusive of “zoning, transportation, pedestrian network, parks, open space, subdivision identity standards and other amenities.” The second request is the Change of Zone which should be a simple public hearing if the Neighborhood Master Plan is approved as the Change of Zone is simply a map illustrating zoning boundaries which conform to the Neighborhood Master Plan

The applicant will be required to record the Neighborhood Master Plan and Change of Zone if approved by the Town Board of Trustees. Following recording of the documents, the next step would be a Preliminary Plat which would be presented in a public hearing before both the Planning Commission and the Town Board of Trustees. The Preliminary Plat review phase includes review of the Construction Documents (80%), referral agency review, analysis of the utilities and infrastructure planned for the project, off-site and on-site improvements, for example. If approved, the final planning process step would be a public hearing before the Planning Commission for a Final Plat. The Final Plat phase includes review of the Construction Documents (100%), referral agency review, analysis of the utilities and infrastructure planned for the project, off-site and on-site improvements, for example. The Final Plat can encompass all or a portion of the project. Both the Preliminary and Final platting must adhere to the Neighborhood Master Plan.

Referral agencies such as the school district, fire protection district, utility and infrastructure providers, for example have reviewed the Neighborhood Master Plan and the Change of Zone applications. Referral agency comments at this phase are incorporated into the Staff Report and are used by the applicant when they are preparing their next land use application materials for review. Sanitary sewer and water main engineering designs, the need for water dedication, and school bus stop locations, if needed, for example are reviewed at the Preliminary Plat and Final Plat stages. The developer will provide Construction Documents with these next two phases of development, and these will be reviewed by the Town Engineer and supportive agencies.

FISCAL IMPACT AND FUND SOURCE:

There is no negative impact to the Town in consideration of this request to rezone the property in conformance with the 2021 Comprehensive Plan update. Public notice is funded through fees paid by the applicant. Development review is funded through fees paid by the applicant.

COMMUNITY TOUCHSTONES:

Consideration of this request does not negatively impact community touchstones and in fact is supportive of the 2021 Comprehensive Plan update. The applicant’s request for Neighborhood Master Plan and Rezone illustrates a change to align the proposal with the vision of continued growth within the Town’s utility service area. Suburban Residential, Suburban Commercial, and Urban Residential zoning classifications are proposed and align more closely with the Comprehensive Plan’s vision for all three districts. Additional open

space and park space coupled with greater diversity of housing types have been provided.

RECOMMENDED ACTION(S):

Neighborhood Master Plan

Staff recommends Planning Commission make a motion to recommend approval of the Farmstead 3rd Filing Neighborhood Master Plan to the Town Board of Trustees with the following condition:

1. The applicant shall confirm and show the upsized sanitary line, as referenced in Baseline Engineering referral comments dated July 24, 2024, with the Farmstead 3rd Filing Preliminary Plat application submittal.
2. The applicant shall include sufficient right-of-way width for the north half of Weld County Road 42.5 extending from Weld County Road 1 east approximately 1,160-feet. This must be included with the Farmstead 3rd Filing Preliminary Plat application submittal to ensure completion of the required local street section frontage improvements along the southern property boundary.
3. The applicant shall provide a letter from the Thompson School District confirming either the School District no longer desires a future school site in the Farmstead 3rd Filing or the School District has agreed to an alternative school site within the Farmstead 3rd Filing. If an alternative school site is selected, that site shall be provided at the Preliminary Plat submittal. Depending on the relocation, a revised Neighborhood Master Plan may be warranted.

Rezoning

Staff recommends Planning Commission make a motion to recommend approval to the Town Board of Trustees of the Farmstead 3rd Filing Rezone request to rezone from PUD – Planned Unit Development to SR – Suburban Residential, SC – Suburban Commercial, and UR - Urban Residential.

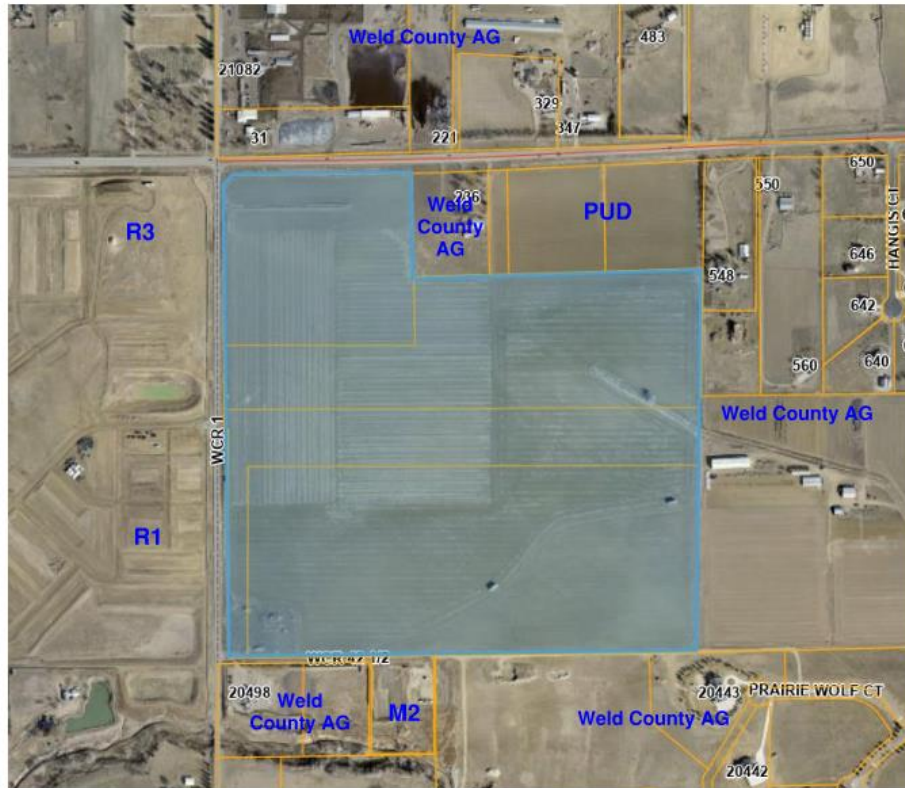


STAFF REPORT: FARMSTEAD 3rd FILING NEIGHBORHOOD MASTER PLAN AND REZONING

**DATE: Continued to September
12th, 2024**

GENERAL INFORMATION

Applicant:	Steve Schroyer – Schroyer Resources	Size: 124 acres
Site Location:	This property is located at the southeast corner of Mountain Avenue (Highway 56) and Weld County Road 1. Parcel # 106119201003, #106119200076, #106119000064, and #106119000065 Subject Property highlighted in blue. 	
Applicant's Request:	The Applicant is requesting to rezone the subject property from PUD – Planned Unit Development to SR – Suburban Residential, SC – Suburban Commercial, and UR – Urban Residential, and Neighborhood Master Plan for a proposed development consisting of residential and commercial lots.	
Surrounding Property Current Uses:	North across Mountain Avenue: agriculture and residential North adjacent: undeveloped/agriculture and residential West: undeveloped Farmstead 2nd and 4th Filings. South: Berthoud Gun Club and undeveloped (Town property) East: agriculture and residential	
Surrounding Property Current Zoning:	*see map next page	



	<u>PUD</u>	<u>SC</u>	<u>SR</u>	<u>UR</u>
Max Density	Set at FDP	N/A	N/A	N/A
Min. Lot Size	Set at FDP	4,000 sq. ft.	2,500 sq. ft. (detached house) 1,600 sq. ft. (townhome)	2,500 sq. ft. (urban residential) 1,600 sq. ft. (townhomes)
Min. Lot Width	Set at FDP	N/A	40-feet (detached house) 16-feet (townhomes)	25-feet (urban residential) 16-feet (townhome)
Front Setback	Set at FDP	50% of Building within 10-feet minimum	20-feet or 10-feet based on front loaded or rear loaded garage	8'-12' for urban residential, townhomes
Side Setback	Set at FDP	50% of the Building within 10-feet	5-feet; 10-feet (side corner)	5-feet (zero for attached lot line for townhome)
Rear Setback	Set at FDP	10-feet	20-feet or 5-feet based on front loaded or rear loaded garage	5-feet with rear loaded garage for urban residential, townhomes
Building Height:	Set at FDP	40-feet	30-feet	30-feet for urban residential, townhomes

SURROUNDING ZONING, LAND USE AND REQUIRED BUFFERS

<u>Adjacent Zoning</u>		<u>Adjacent Land Uses</u>	<u>Setbacks for Adjacent Zoning/ Buffer required if rezoned</u>
North:	PUD and Weld County AG	Single-family Residential/agriculture	N/A
South:	M2 and Weld County AG	Berthoud Gun Club and undeveloped	N/A
East:	Weld County AG	Residential and agriculture	N/A
West:	R3 and R1	Undeveloped; future residential	N/A

Proposal

The applicant is proposing the following two requests: Neighborhood Master Plan and Rezone from PUD – Planned Unit Development to SR – Suburban Residential, SC – Suburban Commercial, and UR – Urban Residential for the Farmstead 3rd Filing. The Neighborhood Master Plan shows commercial at the northwest corner transitioning to higher density residential lots for the remaining portion along Mountain Avenue, a future public-school site at the northeast corner, single-family alley loaded lots south along Weld County Road 1, and lower density residential lots on the remaining portions of the site. The zoning map similarly shows SC – Suburban Commercial at the northwest corner, UR – Urban Residential along Weld County Road 1, and SR – Suburban Residential for the remaining portions of the site.

Background

The subject project is currently zoned PUD – Planned Unit Development. According to project records, three of the four parcels were annexed in 1997 while the fourth parcel was annexed in 1998. The parcels were zoned PUD in April 2000.

The subject parcels were included in the Farmstead 2nd Filing Neighborhood Master Plan (NMP) which was approved in 2021. The Farmstead 2nd Filing included the subject property as well as the land directly to the west across Weld County Road 1. At that time, in 2021, the properties to the west were rezoned as a matter of function and proximity to existing utilities. The intent was to rezone the parcels to the west of Weld County Road 1, what is now being referred to as Farmstead 3rd Filing, at a later date as development became more feasible. Three years later, the proposed Farmstead 3rd Filing is relatively consistent with the Farmstead 2nd Filing NMP approved in 2021. The overall total density has been reduced with the current proposal and modifications have been made to the proposed commercial areas.

Over the course of the last few years, the Town has phased out the PUD process and the PUD zone district is no longer a preferred zone district. The Town has strongly encouraged property owners with PUD zoned properties to transition their projects to a current zone district rather than continuing with the PUD-FDP process. By doing so, developers can alter their development plans to align more closely with the vision found in the most recent vision update to the Comprehensive Plan. The Comprehensive Plan's future land use map is a guiding document and is not a set boundary such as the Zoning Map. Applicants for re-zoning provide information on how the intent of the Comprehensive Plan future land use map can be met by the rezoning request.

The Farmstead 3rd Filing Neighborhood Master Plan and Rezone project has had five (5) rounds of referral agency review. Additionally, neighbor notification was sent to adjacent properties owners notifying them of the request.

Neighborhood Master Plan

The Neighborhood Master Plan is a conceptual design of the development, submitted with a rezoning or major subdivision application, that depicts the applicant's vision for the overall development, including zoning, transportation, pedestrian network, parks, open space, subdivision identity standards and other amenities. The Neighborhood Master Plan is binding on a development, and all future platting/zoning actions must follow the approved plan or apply for an amendment of said plan. Section 30-6-106 of the municipal code states that a Neighborhood Master Plan must consist of the following required elements:

30-6-106(E) Required Elements	Finding	Rationale
1. <u>Traffic Plan</u> : The applicant shall provide a preliminary traffic plan that addresses the following elements: i. The proposed street network connectivity to the existing road network, including all proposed access points. ii. The location and layout of all arterial and collector roads within the development. Local streets	Yes	i. The proposed development would connect to the existing road network via connections to Mountain Avenue (Highway 56) and Weld County Road 1. ii. The project does not propose arterial or collector roads within the development. Local Roads are proposed throughout the site to provide adequate traffic flow connecting primarily to Weld County Road 1.

and alleys do not need to be depicted. iii. A preliminary traffic impact study prepared by a licensed traffic engineer which evaluates proposed access points, the existing street system, and any need for any road improvements (including off-site improvements) created by the proposed development.		iii. A preliminary traffic impact study/analysis was provided with the submittal. The Town Engineer reviewed the traffic impact study/analysis and found that the on-site and off-site impacts from the anticipated traffic will be mitigated, and such mitigation will be provided with the Preliminary Plat application
30-6-106(E) Required Elements	Finding	Rationale
2. <u>Open Space Plan</u>: The applicant shall provide a preliminary open space plan that addresses the following elements: i. Proposed open space distribution and location, including percentage of open space. ii. Compliance with 30-2-109(D)(4) open space elements. iii. Required buffer areas as per 30-2-109(C)(2)	Yes	i. An open space plan was provided as part of the Neighborhood Master Plan. Farmstead is a master-planned community and includes Farmstead 2nd Filing located on the west side of Weld County Road 1. Open Space was incorporated into the overall master plan to ensure development of a cohesive community, with amenities and open space strategically located to serve the neighborhoods. For the purposes of calculating open space requirements, Staff includes Farmstead 2nd Filing. Although the open space provided in Farmstead 3rd Filing is less than 10% (of total site area) at 5.1 acres or 4.1%, Farmstead 2nd Filing provided 17.8% or 16.9 acres. When combining the additional 7.39 acres in Farmstead 2nd Filing with the 5.1 acres of Farmstead 3rd Filing, the 10% requirement is met at 12.49 acres of open space for Farmstead 3rd Filing. In summation, Farmstead 3rd along with Farmstead 2nd Filing is meeting the open space requirement. ii. By code, the applicant would be required to provide three open space elements for the Farmstead 3rd Filing. The project provides four elements, which include a Greenway, Green Area, Trailhead, and Plazas for commercial areas. iii. There are no required buffer areas with this request.
3. <u>Park(s) Plan</u>: i. Proposed park locations and types of parks as per Section 30-2-109(B)(2) and (3) ii. Proposed park acreage as per Section 30-2-109(B)(2)	Yes	(i.-ii.) Parks are provided in accordance with 30-2-109(B)(2) and (3). A full list of how the project meets these requirements can be found on page 2 and page 3 of the NMP.

30-6-106(E) Required Elements	Finding	Rationale
4. <u>Pedestrian Network:</u> i. Location of all trails within development, and connection to existing trail network. ii. Connectivity of sidewalks to the existing pedestrian system, including any off-site sidewalk improvements. iii. Depiction of any bike lanes or any other multi-modal features.	Yes	i. Locations of all trails are depicted on the NMP. Connections are provided to the existing trail network and additional trails are provided throughout the project, including a Planned Neighborhood trail as depicted in the Berthoud Trails Master Plan. ii. Sidewalks will be constructed along the frontages of all properties and will then connect to the existing pedestrian system. iii. Bike lanes are not proposed nor required along the Local Roads internal to the site. Bike lanes will be required along Weld County Road 1 and will be required as part of this development.
5. <u>Zoning:</u> i. The location of zoning boundaries shall be provided with the application and depicted on the Neighborhood Master Plan. ii. The plan should show how lot diversity standards of Section 30-2-116(D)(1)(c), are met and create a mix of zoning which is harmonious with the surrounding area, and within the property itself. iii. Density and lot diversity shall be distributed throughout the project and shall not be located in only one area.	Yes	i. In addition to the Neighborhood Master Plan, this project also includes a rezoning request. The Neighborhood Master Plan identifies the project showing the proposed zoning changes. ii. The proposed zoning districts will be consistent with the neighboring residential districts as well as proposed commercial districts to the west in Farmstead 2nd Filing. The proposed Suburban Commercial (SC) district at the northwest corner adjacent to the Mountain Avenue and Weld County Road 1 intersection, is appropriate for the placement of commercial. The proposed Suburban Residential (SR) zoning district provides a transition from this intersection to the east and south. The Urban Residential (UR) district is proposed south of the commercial area and adjacent to Weld County Road 1. This provides opportunity for higher density residential along this road corridor and provides a transition to the proposed Suburban Residential to the east and the Weld County zoned AG-Agriculture beyond this development. iii. Density and diversity are distributed throughout the residential portions of the project.
6. <u>Overall Utility Plan:</u> i. A preliminary utility plan depicting the existing capacity of the utility system for both the proposal and any potential future development. ii. Proposed connections to the existing utility system. iii. The location of any proposed or required lift stations.	Yes	(i. – iv.) A preliminary utility plan has been provided showing the water line and sewer line connections capacity and demand, and where the lines would be located to verify the project can served by utilities. The project will connect to existing Town of Berthoud utilities through connections in Weld County Road 1 and from the property to the south. Baseline Engineering noted in their review of the preliminary utility plan that a proposed sanitary line needs to be upsized to accommodate the development. This

iv. Utility plans for the interior of the development (such as water and sewer service lines) are not required as part of this process.		requirement is noted as a condition of approval to be addressed at the Preliminary Plat submittal.
30-6-106(E) Required Elements	Finding	Rationale
7. <u>Subdivision Identity Standards:</u> i. The applicant shall provide compliance with subdivision identity standards found in Section 30-2-131.	Yes	i. Code requires the proposed development to provide eight subdivision identity and place elements. The applicant has chosen to provide eight: pocket parks(2), trails(3), playground(1), and alley-loaded product type (2)

Neighborhood Master Plan Review Criteria

Section 30-6-106(G) states that the town shall use the following criteria in addition to other applicable provisions of the code to evaluate the application.

30-6-106(G) Review Criteria	Finding	Rationale
1. The land use mix within the project conforms to Berthoud's Zoning District Map and Comprehensive Plan Preferred Land Use Map and furthers the goals and policies of the Comprehensive Plan.	Yes	The Preferred Land Use plan [future land use map] envisions this area as Suburban Business adjacent to Mountain Avenue (Hwy 56), Urban Residential for a portion directly below the Suburban Business and adjacent to Weld County Road 1, and Suburban Residential for the remainder of the site. The vision of the Future Land Use map suggests a transition from higher intensity uses along Mountain Avenue with lower intensity uses to the south. Additionally, the northwest corner of the property is located in the Mountain Avenue Overlay, specifically Berthoud East Character District. Appropriate transitions from residential neighborhoods to mixed-use or commercial development is desired in this area at the corner of Weld County Road 1 and Mountain Avenue. The proposed Farmstead 3 rd Filing NMP provides an appropriate transition from higher intensity commercial at the northwest corner and townhomes along Mountain Avenue to single-family detached rear loaded lots along Weld County Road 1 transitioning back to townhomes along the southern property line. Moving east, into the site, a variety of single-family detached lot types are provided. The proposed development furthers the goals and policies of the Comprehensive Plan, specifically housing diversity and creating a strong community. The future land use map is a vision/guiding tool and is not legislative in nature such as zone district boundaries.

30-6-106(G) Review Criteria	Finding	Rationale
2. The Neighborhood Master plan represents a functional system of land use and is consistent with the rationale and criteria set forth in this Chapter, the Town Comprehensive Plan, and the Parks, Open Space and Recreation (PORT) Plan as amended.	Yes	The proposed plan is consistent with this criterion. The proposed transition from the higher intensity or higher density uses along both Mountain Avenue and Weld County Road 1, to lower density residential moving east-southeast across the site creates a functional system of land use that is consistent with Code and the Comprehensive Plan. The project will extend existing roadways to service the proposed lots allowing for a more connected neighborhood design. Additionally, the trail system proposed will allow connections throughout the project and into neighboring areas.
3. The preliminary traffic, open space, park utility and pedestrian design is adequate and functional given the existing and planned capacities of each system, and meets the standards found in this Code.	Yes	Plans were reviewed by Town staff as well as outside referral agencies. No deficient capacity issues were identified. Three roundabouts are near construction at the intersection of Weld County Road 1 and Mountain Avenue, Nebraska Avenue, and Tenderfoot Drive as part of the greater Farmstead development. These traffic amenities will assist in mitigating traffic concerns.
4. Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.	Yes	Impacts to neighboring properties have been mitigated through multiple access points as to not create congested roadways, as well as placing the higher intensity uses (commercial) at the northwest corner adjacent to the Mountain Avenue and Weld County Road 1 intersection. A 15-foot open space buffer has been provided between the proposed residential lots at the north property line adjacent to Mountain Avenue and the Town's future park site to the east. Additionally, single-family residential lots are proposed along the east and a portion of the north property line not adjacent to Mountain Avenue, where some existing agriculture and residential uses are located.
5. There is a need or desirability within the community for the development and the development will help achieve a balance of land use and/or housing types within Berthoud according to town goals.	Yes	The proposed project is consistent with the Future Land Use Map in the Comprehensive Plan. The proposed Neighborhood Master Plan provides a balance of single-family detached lots, townhomes, and limited commercial lots.

Rezoning

The subject project is currently zoned PUD – Planned Unit Development. According to project records, three of the four parcels were annexed in 1997 while the fourth parcel was annexed in 1998. The four parcels were zoned PUD in April 2000.

The subject parcels were included in the Farmstead 2nd Filing Neighborhood Master Plan (NMP) which was approved in

2021. At that time, in 2021, the properties to the west were rezoned as a matter of function and proximity to existing utilities. The intent was to rezone the parcels to the west of Weld County Road 1, what is now being referred to as Farmstead 3rd Filing, at a later date as development became more feasible. Three years later, the proposed Farmstead 3rd Filing is relatively consistent with the Farmstead 2nd Filing NMP approved in 2021.

Over the course of the last few years, the Town has phased out the PUD process and the PUD zone district is no longer a preferred zone district. The Town has strongly encouraged property owners with PUD zoned properties to transition their projects to a current zone district rather than continuing with the PUD-FDP process. By doing so, developers can alter their development plans to align more closely with the vision found in the most recent vision update to the Comprehensive Plan.

The proposed commercial area would be focused in the SC – Suburban Commercial zoned area at the northwest corner of the site, while the residential uses would be focused in the SR – Suburban Residential and Urban Residential zoned areas. This request is consistent with the Future Land Use Map contained in the Comprehensive Plan.

Rezoning is addressed through an official zoning map amendment. Section 30-3-110(D) states for the purpose of establishing and maintaining sound stable and desirable development within the Town, the Zoning Map shall not be amended except when it addresses one or more of the criteria in the following table.

30-3-110(D) Zoning Map Amendment Criteria	Finding	Rationale
1. To correct a manifest error in an ordinance establishing the zoning for a specific property; or 2. To rezone an area or extend the boundary of an existing district because of changed or changing conditions in a particular area or in the Town generally; or 3. The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Town Comprehensive Plan; or 4. The proposed rezoning is necessary to provide land for a community-related use that was not anticipated at the time of the adoption of the Town Comprehensive Plan, and the rezoning will be consistent with the policies and goals of the Comprehensive Plan; or 5. The area requested for rezoning has changed or is changing to such a degree that it is in the public interest to encourage development or redevelopment of the area	Yes	Staff finds that the proposed rezoning meets criteria 2. The town has shifted away from Planned Unit Developments, and the proposed rezoning will help create more consistency between the project and what is intended in the Future Land Use map in the Comprehensive Plan.

PUBLIC NOTICE AND COMMENT

Notice of the Planning Commission Public Hearing has been mailed to property owners within 500 feet of the subject property July 23, 2024, a legal ad published July 25, 2024, and the property was posted as required by the Development Code by the applicant on July 24, 2024. As of the drafting of this staff report, staff has not received any public comments on the proposed request.

FINDINGS AND RECOMMENDATIONS

Neighborhood Master Plan

Staff recommends Planning Commission make a motion to recommend approval of the Farmstead 3rd Filing Neighborhood Master Plan to the Town Board of Trustees with the following two (2) conditions:

1. The applicant shall confirm and show the upsized sanitary line, as referenced in Baseline Engineering referral comments dated July 24, 2024, with the Farmstead 3rd Filing Preliminary Plat application submittal.
2. The applicant shall include sufficient right-of-way width for the north half of Weld County Road 42.5 extending from Weld County Road 1 east approximately 1,160-feet. This must be included with the Farmstead 3rd Filing Preliminary Plat application submittal to ensure completion of the required local street section frontage improvements along the southern property boundary.
3. The applicant shall provide a letter from the Thompson School District confirming either the School District no longer desires a future school site in the Farmstead 3rd Filing or the School District has agreed to an alternative school site within the Farmstead 3rd Filing. If an alternative school site is selected, that site shall be provided at the Preliminary Plat submittal. Depending on the relocation, a revised Neighborhood Master Plan may be warranted.

Rezoning

Staff recommends Planning Commission make a motion to recommend approval to the Town Board of Trustees of the Farmstead 3rd Filing Rezone request to rezone from PUD – Planned Unit Development to SR – Suburban Residential, SC – Suburban Commercial, and UR – Urban Residential.

Attachments

1. Application form
2. Project Narratives
3. Neighborhood Master Plan
4. Rezoning Map
5. Preliminary traffic impact study/analysis
6. Baseline Engineering Comments

RESOLUTION NUMBER 10

(SERIES 2024)

A RESOLUTION OF THE TOWN OF BERTHOUD BOARD OF TRUSTEES APPROVING A NEIGHBORHOOD MASTER PLAN FOR A DEVELOPMENT KNOW AS THE “FARMSTEAD 3rd FILING” DEVELOPMENT IN THE TOWN OF BERTHOUD.

WHEREAS, the property under consideration is known as the “Farmstead 3rd Filing” development; and

WHEREAS, the Town of Berthoud (“Town”) approved Ordinances 850 on April 11, 2000, which approved the Zoning of the Farmstead 3rd Filing property to Planned Unit Development; and

WHEREAS, the applicant has reviewed the 2021 Comprehensive Plan and seeks to incorporate the Town’s new zoning classifications and conform to the land development vision outlined in the 2021 Comprehensive Plan at the request of staff; and

WHEREAS, the Neighborhood Master Plan attached herein as Exhibit A has been reviewed by referral agencies to ensure the proposed development does not present a burden on service provision; and

WHEREAS, notice was properly posted in the manner required by law and a public hearing was conducted on September 12, 2024, before the Berthoud Planning Commission; and

WHEREAS, after the public hearing, the Berthoud Planning Commission made a unanimous recommendation to the Town Board of Trustees to approve the Neighborhood Master Plan as presented with the following condition:

1. The applicant shall confirm and show the upsized sanitary line, as referenced in Baseline Engineering referral comments dated July 24, 2024, with the Farmstead 3rd Filing Preliminary Plat application submittal.
2. The applicant shall include sufficient right-of-way width for the north half of Weld County Road 42.5 extending from Weld County Road 1 east approximately 1,160-feet. This must be included with the Farmstead 3rd Filing Preliminary Plat application submittal to ensure completion of the required local street section frontage improvements along the southern property boundary.
3. The applicant shall provide a letter from the Thompson School District confirming either the School District no longer desires a future school site in the Farmstead 3rd Filing or the School District has agreed to an alternative school site within the Farmstead 3rd Filing. If an alternative school site is selected, that site shall be provided at the Preliminary Plat submittal. Depending on the relocation, a revised Neighborhood Master Plan may be warranted.

WHEREAS, notice was properly posted in a manner required by law and a public hearing was conducted on September 24, 2024, before the Board of Trustees as required by law and which public hearing incorporated the testimony of citizens which were allowed to speak during “Citizen Participation” during the Board of Trustees meeting held September 24, 2024, and which testimony the applicant confirmed it had reviewed; and

WHEREAS, based on the testimony and evidence presented at the public hearing and that given September 24, 2024, the Board of Trustees determines and finds that compliance with the Neighborhood Master Plan review criteria as provided in Section 30-6-106.G of the Berthoud Municipal Code has been demonstrated.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. NMP Approval. The Neighborhood Master Plan is hereby approved. The Preliminary Plat shall be submitted in accordance with the Neighborhood Master Plan and the processing shall follow the Land Use Code.

Section 2. Interpretation: This Resolution shall be interpreted and construed to effectuate its general purpose.

Section 3. Effective Date: The provisions of this Resolution shall take effect upon adoption.

APPROVED AND ADOPTED this 24th day of September 2024.

TOWN OF BERTHOUD

By _____

William Karspeck, Mayor

ATTEST:

By: _____

Christian Samora, Town Clerk

Exhibit A: Neighborhood Master Plan

ORDINANCE NO. 1343

**AN ORDINANCE AMENDING THE ZONING MAP OF THE TOWN OF BERTHOUD
TO REZONE THE FARMSTEAD 3RD FILING PROPERTY PREVIOUSLY ZONED TO
PLANNED UNIT DEVELOPMENT TO SUBURBAN RESIDENTIAL, SUBURBAN
COMMERCIAL, AND URBAN RESIDENTIAL DISTRICTS**

WHEREAS, the property under consideration is known as the “Farmstead 3rd Filing” development and was zoned to Planned Unit Development by Ordinances 850 in 2000 by the Town of Berthoud; and

WHEREAS, the applicant has reviewed the 2021 Comprehensive Plan and seeks to incorporate the Town’s new zoning classifications and conform to the land development vision outlined in the 2021 Comprehensive Plan at the request of staff; and

WHEREAS, the Planning Commission considered the request to rezone the property at their public hearing on September 12, 2024 and moved to forward their approval of the request to the Town Board of Trustees; and

WHEREAS, notice was properly posted in the manner required by law and a public hearing was conducted on September 12, 2024, before the Berthoud Planning Commission and a public hearing was conducted on September 24, 2024, before the Board of Trustees as required by law; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. Map Revision: The official zoning map of the Town of Berthoud shall be amended hereinafter and which property is commonly known as the “Farmstead 3rd Filing” development as described in Exhibit A, shall be rezoned from Planned Unit Development to Suburban Residential (SR), Suburban Commercial (SC), and Urban Residential (UR) as illustrated in Exhibit B.

Section 2. Interpretation: This Ordinance shall be so interpreted and construed to effectuate its general purpose.

Section 3. Publication: The Town Clerk shall certify to the passage of this Ordinance and cause its contents to be published and shall cause the appropriate change to be made to the official Berthoud Zoning District Map.

Section 4. Effective Date: The provisions of this Ordinance shall take effect thirty days after publication as required by law.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED IN FULL on this 24th day of September 2024.

TOWN OF BERTHOUD

By _____

William Karspeck, Mayor

ATTEST:

By: _____

Christian Samora, Town Clerk

EXHIBIT A: LEGAL DESCRIPTION

PARCEL 1:

LOT 3, GREEN ACRES MINOR SUBDIVISION, COUNTY OF WELD, STATE OF COLORADO.

PARCEL 2:

LOT B, RECORDED EXEMPTION NO. 1061-19-2 RE 1472, RECORDED FEBRUARY 8, 1993 UNDER RECEPTION NO. 2321003, LOCATED IN THE NW 1/4 OF SECTION 19, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH P.M.,

EXCEPTING THEREFROM THAT PARCEL CONVEYED BY DEED RECORDED DECEMBER 26, 2002 UNDER RECEPTION NO. 3018041,

AND ALSO EXCEPTING THAT PARCEL PLATTED AS GREEN ACRES MINOR SUBDIVISION, RECORDED AUGUST 14, 2003 UNDER RECEPTION NO. 3095453, COUNTY OF WELD, STATE OF COLORADO.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Considering the Westerly line of the Northwest Quarter of Section Nineteen (19) Township Four (4) North, Range Sixty-eight (68) West of the Sixth (6) Principal Meridian, County of Weld, State of Colorado, with the West Quarter Corner of said Section 19, being monumented by a 3.25" Aluminum Cap on a #6 Rebar stamped "LS 12374" in a monument box, and the Northwest Corner of said Section 19, being monumented by a 2.5" Aluminum Cap on a #6 Rebar stamped "LS 28285" in a monument box as bearing North 00°05'10" West and with all bearings contained herein relative thereto:

COMMENCING at the West Quarter Corner of said Section 19, THENCE along the Southerly line of the Northwest Quarter of said Section 19 to the Easterly right-of-way of North Weld County Line Road 1, also known as South Larimer County Line Road 13, North 88°58'53" East 30.00 feet also being the POINT OF BEGINNING;

THENCE along said Easterly right-of-way line North 00°05'10" West 1630.80 feet to a #4 Rebar with Yellow Plastic Cap stamped LS 32444, also being the Northwest Corner of Special Warranty Deed recorded under Weld County Clerk & Recorder Reception Number 4794857;

THENCE along the Northerly boundary of said deed South 89°55'50" East 20.00 feet to a #4 Rebar with an illegible Yellow Plastic Cap, also being the Southwest Corner of Lot 3, Green Acres, recorded under Weld County Clerk & Recorder Reception Number 3095453;

THENCE along the Easterly right-of-way of County Line Road 1, also being the Westerly line of said Lot 3, North $00^{\circ}05'10''$ West 860.98 feet to a #4 Rebar with Yellow Plastic Cap stamped "LS 32444";

THENCE departing said right-of-way line and continuing along the Southerly right-of-way of E. State Highway 56, also being the Northwesterly line of said Lot 3, North $44^{\circ}47'56''$ East 42.41 feet to a #4 Rebar with Yellow Plastic Cap stamped "LS 32444";

THENCE continuing along said right-of-way line, also being the Northerly line of said Lot 3 North $89^{\circ}36'54''$ East 515.71 feet to a #5 Rebar with 2" Aluminum Cap stamped "LS 13446";

THENCE along a curve concave to the North 425.77 feet, said curve having a radius of 20412.46 feet, a central angle of $1^{\circ}11'42''$, and whose chord bears North $89^{\circ}02'47''$ East 425.76 feet to the Northwest Corner of Exception Lot A RE 1061-19-2-RE 1472, also being the Northeast corner of said Lot 3;

THENCE South $01^{\circ}02'05''$ East 544.11 feet along the Easterly line of said Lot 3 to a #4 Rebar with Yellow Plastic Cap stamped LS 32444;

THENCE departing said Easterly line and continuing along the Southerly line of Lot A of Recorded Exemption 1061-19-2-RE 1472 recorded under Weld County Reception Number 2321003 North $88^{\circ}12'10''$ East 399.98 feet to a #5 Rebar with 2" Aluminum Cap stamped LS 13446;

THENCE along the Southerly line of the excepted parcel described in Book 1609 Page 496 North $88^{\circ}18'58''$ East 100.12 feet to a #5 Rebar with an illegible 1.5" Aluminum Cap, also being the Southwest Corner of Lot 2, Green Acres, recorded under Weld County Reception Number 3095453;

THENCE along the Southerly line of said Lot 2 North $88^{\circ}10'49''$ East 509.18 feet to a #5 Rebar with an illegible 1.5" Aluminum Cap, also being the Southeast Corner of said Lot 2 and the Southwest Corner of Lot 1, Green Acres recorded under Weld County Reception Number 3095453;

THENCE along the Southerly line of said Lot 1 North $88^{\circ}13'28''$ East 509.31 feet to a #4 Rebar with Yellow Plastic Cap stamped LS 32444, also being the Southeast Corner of said Lot 1 and a point on the Easterly line of the Northwest Quarter of Section 19;

THENCE continuing along said Easterly line South $00^{\circ}39'27''$ West 664.77 feet to the Center North Sixteenth Corner of said Section 19, being monumented by a 2.5" Aluminum Cap on a #6 Rebar stamped "LS 28285, 2002";

THENCE continuing along said Easterly line South $00^{\circ}39'47''$ West 1327.42 feet to the accepted Center Quarter Corner of said Section 19, being monumented by a #6 Rebar with no cap;

THENCE departing said Easterly line and deviating from the accepted Southerly line of the Northwest Quarter of said Section 19, and continuing along the apparent Northerly line of Spanish Fox Estates PUDF18-0007 recorded under Weld County Reception Number 4581302, South $89^{\circ}23'43''$ West 1354.13 feet;

THENCE along the Westerly line of said Spanish Fox Estates Plat South $00^{\circ}05'51''$ West 9.24 feet to a point on the Southerly line of the Northwest Quarter of said Section 19;

THENCE departing said Westerly line South $89^{\circ}00'16''$ West 21.30' along the accepted Southerly line of the Northwest Quarter of Section 19 to the Center West Sixteenth Corner of said Section 19, being monumented by a 2.5" Aluminum Cap on a #6 Rebar stamped "LS 12374";

THENCE continuing along said Southerly line South $88^{\circ}58'53''$ West 1117.01 feet to the POINT OF BEGINNING.

The above-described parcel of land contains 5,471,817 square feet or 125.62 acres, more or less ($\pm$), and may be subject to easements and rights-of-way now on record or existing.

EXHIBIT B: CHANGE OF ZONE MAP

From: Matthews, Pamela A. <pmatthews@bhfs.com>
Sent: Wednesday, August 21, 2024 4:38 PM
To: Anne Johnson; Tawn Hillenbrand
Cc: Erin M. Smith (ESmith@NortonSmithLaw.com); White, Carolynne C.
Subject: Farmstead Phase 2 Revisions (Farmstead Project)
Attachments: Letter to Town of Berthoud - Farmstead Project-Post Modern Development(30673367.1).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

You don't often get email from pmatthews@bhfs.com. [Learn why this is important](#)

Good afternoon – attached please find correspondence with regard to the Town of Berthoud, Farmstead Phase 2 Revisions (Farmstead Project).

Thank you.

Pamela Matthews, Legal Practice Assistant to Carolynne White

Pamela A. Matthews

Legal Practice Assistant

Brownstein Hyatt Farber Schreck, LLP

675 15th Street, Suite 2900

Denver, CO 80202

303.223.1435 tel

pmatthews@bhfs.com

Brownstein - we're all in.

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August 21, 2024

VIA E-MAIL ONLY – ajohnson@berthoud.org |
thillenbrand@berthoud.org

Town of Berthoud, Colorado
Attn: Anne Johnson and Tawn Hillenbrand

**RE: Thompson School District Referral Comments – Farmstead Phase 2 Revisions
(Farmstead Project)**

Dear Anne and Tawn:

Our client, Post Modern Development (“Developer”) has requested the Firm analyze referral comments provided to the Town of Berthoud (“Town”) on August 6th, 2024, by the Thompson School District (“School District”) regarding the development project known as the Farmstead Phase 2 Revisions (“Farmstead Project”). The School District has expressed a concern that the school site proposed by the Developer is “within the updated 2000 ft setback, for new oil and gas wells, set by the Colorado Energy and Carbon Management Commission (“ECMC”).” This is not the case. The ECMC regulates how close new oil and gas well pad surfaces may be located from existing school facilities, but the state does not regulate how close new school facilities may be located to existing oil and gas well pad surfaces. See ECMC Rule 604.a.(3).

The Town similarly does not regulate how close new school facilities may be located to existing oil and gas well working pad surfaces. In fact, the Town adopted new oil and gas regulations just last month on July 9, 2024, but the Town did not adopt a “reverse” setback dictating how far from existing oil and gas well pads new school facilities may be located, choosing instead to adopt setbacks applying only to commercial, residential, and mixed-use buildings. See Town of Berthoud Municipal Code § 30-11-104.

Furthermore, it should be recognized that the primary purpose of setbacks is to address the most impactful stages of oil and gas operations, namely, the construction, drilling and completions (hydraulic fracturing) phases. The nearest oil and gas well pad working surface, the Enright 18-N, ECMC

Facility ID # 454492, was constructed several years ago and all wells at the location have been drilled, with all drilled wells but one also having concluded completion operations (that is, having been hydraulically fractured). These drilled and completed wells have been producing and continue to safely produce hydrocarbons without incident.

Thus the proposed school site is not in violation of any applicable setback.

Additionally, the proposed school site has been shown in its current location since the Neighborhood Master Plan for the Farmstead Project was approved in 2021. Since then, the School District has had numerous opportunities to comment regarding this issue, but has not done so, until now, when the Farmstead Project is in its 5th round of comments and nearing final approval, and it is not possible to rearrange the project in order to accommodate a different location for a school site. The School District has even shared its vision for what the school site would look like in this location, without reference to the proximity of existing oil and gas wells.

The Town of Berthoud Municipal Code requires the dedication of appropriate sites for schools, or payment of a fee-in-lieu. It does not provide, however, that the School District may select its preferred site, or rearrange a long-planned master planned development to accommodate its preferences. If the School District does not wish to accept the site designated on the current Neighborhood Master Plan, the Developer would be pleased to instead remit the fee-in-lieu. Otherwise, the Developer requests that the Town approve the pending application for the Farmstead Project, including the proposed school site.

We are also happy to discuss further with the Town at your convenience.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

A handwritten signature in cursive script, appearing to read 'Carolynne C. White', written in dark ink.

By: Carolynne C. White

cc: Erin Smith, Town Attorney (esmith@nortonsmithlaw.com)

From: Anne Johnson
Sent: Monday, August 26, 2024 4:04 PM
To: Tawn Hillenbrand
Subject: FW: FW: Farmstead Phase 2 Revisions (Farmstead Project)

From: JD Padilla <jd@postmoderndevelopment.com>
Sent: Monday, August 26, 2024 4:00 PM
To: Todd Piccone <todd.piccone@tsd.org>
Cc: steve@schroyerresources.com; Anne Johnson <AJohnson@berthoud.org>; Chris Kirk <CKirk@berthoud.org>
Subject: RE: FW: Farmstead Phase 2 Revisions (Farmstead Project)

Todd,

If you would like to discuss possible options, I can make time for a call if you feel that is appropriate.

JD Padilla, President

**Post Modern Development Inc.
351 Linden St Unit 160
Fort Collins Colorado 80524
Ph.970-407-7808**



From: Todd Piccone <todd.piccone@tsd.org>
Sent: Monday, August 26, 2024 3:44 PM
To: JD Padilla <jd@postmoderndevelopment.com>
Cc: steve@schroyerresources.com; AJohnson@berthoud.org; Chris Kirk <CKirk@berthoud.org>
Subject: Re: FW: Farmstead Phase 2 Revisions (Farmstead Project)

Hi JD,
Thanks for forwarding the letter and making us aware of your position. We will respond appropriately.

Todd Piccone
Assistant Superintendent

Operations

p: 970.613.5050 | f: 970.613.6169
Thompson School District R2J
800 South Taft Ave.
Loveland, CO 80537
www.thompsonschoools.org



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Mission:

The Thompson School District Operations Team supports students, staff, and community by collaboratively preparing high quality, engaging learning environments, protecting our resources, and providing superior customer service

On Mon, Aug 26, 2024 at 3:03 PM JD Padilla <jd@postmoderndevelopment.com> wrote:

Todd,

Hope you are doing well. This letter was sent to the town last week expressing our opinion of the matter. I am happy to discuss this with you at your earliest convenience if you would like to schedule a call.

Sincerely,

JD Padilla, President

Post Modern Development Inc.

351 Linden St Unit 160

Fort Collins Colorado 80524

Ph.970-407-7808

From: Todd Piccone <todd.piccone@tsd.org>
Sent: Monday, September 9, 2024 10:43 AM
To: Anne Johnson; Tawn Hillenbrand
Cc: esmith@nortonsmithlaw.com; Chris Kirk
Subject: Farmstead Filing 3
Attachments: SKM_ADMIN_B24090908460.pdf

Good Morning,
Please see the attached letter regarding our concerns with the Farmstead Filing 3 Neighborhood Master Plan Amendment.

I have delivered a hard copy to Karen Anderson at the Berthoud Town office, please forward it as necessary.

Todd Piccone
Assistant Superintendent
Operations

p: 970.613.5050 | **f:** 970.613.6169
Thompson School District R2J
800 South Taft Ave.
Loveland, CO 80537
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Via Personal Delivery

September 9, 2024

Anne Johnson
Community Development Director
Town of Berthoud

Karen Anderson
Chair of Town of Berthoud Planning Commission

Re: Farmstead 3rd Filing (“Filing”)– Neighborhood Master Plan Amendment

Dear Ms. Johnson and Ms. Anderson:

For the Planning Commission’s consideration and the record in the September 12, 2024 hearing, this is the Thompson School District R2-J’s (“District”) objection to the proposed Resolution 10 and Ordinance 1343 related to the above-referenced master plan amendment and rezoning as currently presented. The applicant has not satisfied the school site dedication requirements, the Use by Special Review Criteria, nor condition number 3 of the “Recommended Action” in the staff report.

The proposed school site is unacceptable to the District because it is within the 2000’ set back from a large producing well pad and thus presents an intolerable risk and hazard to the public health, safety, and welfare of all children, staff, and community members for any school that would be located there. Due to the number of proposed units and the lack of capacity of other area schools at all levels, a useable school site within the development is critical. However, the applicant has declined to move the school site the required distance away from the well pad and has not proposed an alternative school site.

In all prior referrals since this project was initially proposed in 2017 and as recently as April 4, 2024, the District has timely reported that the development would have a significant impact on its ability to provide adequate educational opportunities to students living in the development and would overload the District’s capacity at every grade level.

The District has appreciated the long-standing partnership with the Town over the years in providing adequate school sites for the Town’s residents, including the IGA and Educational Facilities Agreement between the District and the Town. These agreements recognized the imperative of providing adequate school facilities to serve new residential developments as “necessary to protect, enhance, and preserve the public health, safety, and welfare of the citizenry

within the Town.” As a fiduciary of the public’s trust, that is the reason the District is unable to accept the school site as proposed.

In 2021, after careful rulemaking and public comment, the Energy & Carbon Management Commission (formerly known as the Colorado Oil and Gas Conservation Commission) (the “Commission”) determined that in order to best safeguard public health and safety “no Working Pad Surface will be located 2,000 feet or less from a School Facility or Child Care Center.” 2 C.C.R. § 404-1:604. The school setback distance of 2,000’ is not waivable by an operator even with the permission of affected school districts. The Commission has the express authority to regulate oil and gas operators but does not have enforcement authority directly over developers. That is within the exclusive domain and jurisdiction of the Town of Berthoud. The logic and sound rationale for the 2000’ limit is compelling and equally applicable to school siting decisions.

The District has attempted to work with the applicant to place the proposed school site south of its existing location and outside of the 2,000’ setback distance. The request has been denied multiple times and again in the applicant’s attorney’s letter dated August 21, 2024 addressed to the Town of Berthoud. That letter begs the question and ignores health and safety considerations to say on the one hand that an oil and gas operator cannot locate an oil and gas well pad within 2000’ of a school site but that the District may and should.

Finally, because no acceptable school site has been provided to the District, the applicant has not met the Town’s “Use by Special Review Criteria” No. 4, requiring that: “The proposed land use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.”

In summary, approving the Filing as presented would knowingly force the District to place a school that would house hundreds of children and staff within a health and safety risk and in violation of the IGA and the Educational Facilities Agreement. Unless and until the applicant shifts the proposed school site more than 2,000’ away from the oil and gas operations, the District must object to the proposed 3rd Filing.

The District is hopeful that, with the Town’s support, the applicant will reconsider its position and offer a school site that satisfies the health, safety, and welfare interests of the District and Town as required by the IGA and the Educational Facilities Agreement.

Please contact me if you have any questions. Thank you for your courtesy.

Sincerely,



Todd Piccone
Assistant Superintendent of Operations

Enclosures

cc: LGI Homes-Colorado LLC/Post Modern Development
(via email to: steve@schroyerresources.com)

Tawn Hillenbrand, Senior Planner (via email to: THillenbrand@Berthoud.org)

Erin Smith, Town Attorney (via email to esmith@nortonsmithlaw.com)

From: Todd Piccone <todd.piccone@tsd.org>
Sent: Monday, September 9, 2024 10:57 AM
To: Anne Johnson; Tawn Hillenbrand
Subject: Communication attempts

Hi Anne,

I also wanted to forward the below email string showing the attempts to connect with JD after the planning commission meeting and before he issued the letter from his legal counsel. The attempts to reach out were not responded to.

Todd Piccone
*Assistant Superintendent
Operations*

p: 970.613.5050 | f: 970.613.6169
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Loveland, CO 80537
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----- Forwarded message -----

From: Todd Piccone <todd.piccone@tsd.org>
Date: Mon, Aug 26, 2024 at 9:24 AM
Subject: Re: Next Steps
To: <jd@postmoderndevelopment.com>
Cc: Steve Schroyer <steve@schroyerresources.com>

Hi JD,

I thought I'd reach out again. As time passes I'd like to suggest we push the review of this issue.

Todd Piccone
*Assistant Superintendent
Operations*

p: 970.613.5050| f: 970.613.6169
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On Fri, Aug 16, 2024 at 11:30 AM Todd Piccone <todd.piccone@tsd.org> wrote:

Hi JD,
Do you have any suggestions on how to move this forward? Thank you

Todd Piccone
*Assistant Superintendent
Operations*

p: 970.613.5050| f: 970.613.6169
Thompson School District R2J
800 South Taft Ave.
Loveland, CO 80537
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On Mon, Aug 12, 2024 at 12:11 PM Steve Schroyer <steve@schroyerresources.com> wrote:

Hey Ryan,

This is now outside of my purview. You will need to reach out to JD on this.

He is cc'd on this email and his phone is – 970-407-7808

Steve Schroyer

SCHROYER RESOURCES

Real Estate Development
970-481-5505 cell

steve@schroyerresources.com

www.schroyerresources.com



From: Ryan Baker <ryan.baker@tsd.org>
Sent: Monday, August 12, 2024 11:18 AM
To: Steve Schroyer <steve@schroyerresources.com>
Cc: Todd Piccone <todd.piccone@tsd.org>
Subject: Next Steps

Hello Steve,

Given the Berthoud Planning Commission's resolution, what next steps do you want to take to move forward with the negotiation process?

Best,

--

Ryan Baker

Planning Manager

Thompson School District

(o) 970-613-5663 (c) 970-698-1701