

***M E M O R A N D U M***

April 17, 2024

TO: Madison Harris, Planner I  
Scot Hunn, Planning Director

FROM: Susan M. Ryan, Esq. (Holland & Hart LLP)  
Cristy Radabaugh, P.E. (Martin and Wood Water Consultants, Inc.)

RE: Midtown Village PUD  
Preliminary PUD Plan Application: Referral Comments

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This memorandum sets forth the combined referral comments of Holland & Hart LLP and Martin and Wood Water Consultants, Inc. regarding the Midtown Village PUD (the “Project”) Preliminary PUD Plan Application submitted on March 20, 2024 (the “Application”) by Midtown Lofts, LLC (the “Applicant”) and in particular the Midtown Village – Water Exhibit, dated March 11, 2024. The Application was resubmitted to address the completeness comments we provided on September 11, 2023. We have reviewed the Applicant’s response to our completeness comments and have the following referral comments.

Our comments are based on the requirements in Sections 16-15-140 and 17-5-70 of the Town’s Municipal Code. Those provisions require the Applicant to provide, among other information: detailed descriptions and commitments for the proposed source of legal and physical water supply for the project; evidence that the water supply is sufficient; evidence regarding the Town’s ability to serve the project; and information regarding water rights owned by the applicant and potential for the transfer of such water rights to the Town.

In its Application resubmittal, the Applicant requests that Town Council grant it a variance related to the 22.5 SFEs of municipal water service available from the Town for Phase I and Phase II of the Project. Midtown Village’s requested variance is based on “allocation versus actual usage” and proposes to reduce the overall number of SFEs needed for Phase I and Phase II. It is not clear whether the Applicant is requesting that the remaining SFEs be reallocated to future Phases of the Project.

The Applicant’s requested variance is not consistent with the Town’s current Municipal Code provisions. The Town’s Municipal Code defines one SFE as serving up to 3,000 square feet of indoor use and 2,000 square feet of outdoor, irrigated use. *See* Section 13-1-10. The Town’s Municipal Code does not provide any mechanism for reducing or taking partial credit for SFEs.

To support its requested variance, the Applicant references the Belden Place PUD and Town Council’s Resolution No. 32-Series 2023. However, the Town did not approve Belden Place’s request to modify the current SFE definition in the Municipal Code. Any modification to the current SFE definition in the Municipal Code requires a change to the Municipal Code and

cannot be done on a case-by-case basis. Accordingly, the Applicant must resubmit the portion of the Application evaluating the proposed water supply for Phase I and Phase II based on the current definition of a SFE in the Town's Municipal Code.

The Applicant also states that its existing 22.5 SFEs can be used to irrigate a maximum 45,000 square feet of outdoor space and that its maximum outdoor irrigation potential for the Project is 4,000 square feet. As long as the proposed irrigation area is less than the maximum allowed, this is acceptable. However, the Town needs further information on the outdoor irrigation associated with the Project as the current Application proposes to use zero water for landscaping certain areas. The Applicant should clarify whether and how much water is needed for establishment and maintenance of xeriscaping and other proposed landscaping, including native grasses.

We reserve the right to provide additional comments based on our review of the Applicant's response to this memorandum.