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

DATE: April 2, 2026  
TO: New Castle Town Council  
FROM: David McConaughy, Town Attorney  
RE: Riverside Park Lot 1 PUD Plan  
Ordinance TC 2026-1 Second Reading

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### **Executive Summary**

Ordinance 2026-1 will be considered on second reading at the Town Council meeting on April 7, 2026. The ordinance now includes the proposed Development Agreement discussed below. Condition (a) has been deleted based on the Applicant's submission of an updated Site Plan, which will be included in the Council packet. Staff proposes a 5-year period for vested rights, which has been inserted into Section 6(a), but Council will need to decide that. Council will need to open a public hearing and consider any public comments before granting any vested rights. Council will also need to consider the Applicant's request to pay tap fees and water rights dedication fees over time. Subject to those details to be determined by Council, Staff recommends approval. A proposed motion is set forth at the end of this memo.

### **Vested Rights Procedures**

Chapter 16.36 of the Town Code requires an additional public hearing as a condition of granting vested property rights. A "vested property right" means the right to undertake and complete the development and use of property under the terms and conditions of a site-specific development plan. That "plan" is the complete application as defined in the proposed ordinance, and the terms and conditions are set forth in the ordinance and development agreement.

The presumptive period for vested rights under both Colorado law and the Town Code is three years. However, the Council has authority to approve a longer or shorter period in its discretion. Zoning and PUD approval does not automatically expire when vested rights expire. To change the land use entitlements would require new public hearings and review by the Planning Commission and the Town Council. Historically, the Town has generally not attempted to change land use entitlements simply because vested rights expire. The vested rights for Lakota PUD, for example, expired several years ago, but development under the original PUD continues.

Here, the Applicant has requested a 10-year vested rights period. Staff recommends a 5-year period. Review criteria were addressed in the detailed staff report presented at first reading, but the Council has broad discretion to determine the vesting period.

Council may ask questions of staff, the Applicant, or the public during the public hearing. Councilmembers should not express opinions about how they may vote until after the hearing is closed so that any decision will be based on the entire record.

### **Changes to Ordinance on Second Reading**

A “redline” is enclosed with this memo to show the changes from first to second reading. Those changes include:

- The recitals (or “Whereas” clauses) are updated to reflect that the application includes both PUD approval and the subdivision of the property into two lots;
- The Site Plan has been revised and updated as defined in Section 3(a);
- The Vested Rights period is proposed as 5 years in 6(a);
- Condition (a) has been deleted in light of the submission of the updated Site Plan;
- Condition (i) (formerly j) now references the Development Agreement, which would be approved by passing this ordinance.

### **Development Agreement**

The draft Development Agreement is our standard form and provides procedures and requirements for the Developer to build all required public improvements and to provide security to guaranty their construction if they are not complete prior to recording the Final Plat. This is to ensure that improvements will be built regardless of whether the Developer sells the lots before completion.

Section 12 references Exhibit C to show the EQR calculations to be used for water and sewer requirements and to calculate tap fees and water rights dedication fees. Exhibit C makes some modifications from the presumptive EQRs under the Town Code to reflect, for example, that the restaurant uses would be limited to a breakfast buffet with lower demands than a full restaurant serving lunch and dinner.

The Developer has requested the ability to pay certain fees over time. Typically, water rights dedication fees are due in full at Final Plat, and tap fees are due in full at the time of building permit. However, the Town has in the past agreed to allow developers of commercial properties such as Main Street restaurants to pay tap fees over time in order to encourage economic development. Section 12 would allow the water and sewer tap fees to be paid over 5 years from

building permit subject to a promissory note that would be interest-free except in the event of default. The actual amount would depend on the tap fee rates in effect at the time of the note.

Similarly, Section 16 would require cash in lieu of water rights dedication based on the same EQR schedule mentioned above, with payments again to be spread over 5 years starting at the recording of the Final Plat.

Other than these issues mentioned above, the Development Agreement is largely the same standard form that New Castle has used in connection with other developments in Town.

### **Proposed Motion**

**I move to approve [or deny] Ordinance TC 2026-01 on second reading as presented.**

Council has the option to include additional conditions or changes and should consider the Applicant's request with regard to the vested rights period, payment schedule, or other matters.

Alternatively, Council could make a motion to deny the ordinance or to continue any decision to a future meeting. If there is a motion for denial, Council should engage in discussion on the record as to the reasons for denial prior to voting.