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February 3, 2020

Planning Commission, City of Laramie
406 Iverson Avenue
P.O. Box C
Laramie, WY 82073

VIA EMAIL to planning@cityoflaramie.org

Re: Spring Creek Village First Filing Final Plat

Dear Commissioners:

As you are probably aware, our law firm represents Spring Creek Investments, LLC. Before you for your consideration and recommendation is the Spring Creek Village First Filing Final Plat. This is the final platting of two lots lying south of Boswell Drive, and between 9th Street on the east and the future extension of Bill Nye Avenue on the west. One of the lots is developed with the Spring Creek Storage facilities and is owned by Spring Creek Storage, LLC. The other lot is a vacant commercial lot, consisting of approximately 3 acres, that has no current development proposals. The City is requiring that these two lots be final platted first. We ask that you recommend to the Laramie City Council that it approve the final plat as submitted.

We want to thank you for previously postponing your consideration of this item. The postponement requests were a function of two things. First, Spring Creek Investments wanted to meet with planning staff to discuss items in the staff report and to obtain clarification with respect to certain items. Due to scheduling conflicts, holidays, and seasonal illnesses that meeting was not able to be accomplished until January 14, 2020. Second, following that meeting, I was required to attend a court hearing in Sheridan, Wyoming on January 27th for another client, making my attendance to represent Spring Creek Investments at your most recent meeting impossible. Again, thank you for your willingness to postpone this matter.

By way of brief background: In January of 2017, Spring Creek Investments filed an application for approval of its preliminary plat for the Spring Creek Village Addition. The Planning Commission ("Commission") recommended approval of the preliminary plat at its

meeting on January 22, 2018. The Commission recommended the preliminary plat be approved with 19 conditions, but rejected numerous conditions requested by planning staff. The staff conditions rejected by the Commission related to requirements that Spring Creek Investments dedicate property to the City for Bill Nye Avenue, requirements for Spring Creek Investments to construct (and bond the cost of construction for) Bill Nye Avenue for the City, and requirements that Spring Creek Investments construct (and bond the cost of construction of) an oversized sewer line in Bill Nye Avenue for the City. The Commission's recommendation of approval without these requirements was not presented to the City Council by planning staff for decision as required by Laramie Municipal Code §15.06.060.P.4(e). Instead, planning staff presented its own conflicting recommendation that the preliminary plat be denied. The City Council first moved to deny the preliminary plat. Then, at its April 17, 2018 meeting, the City Council attempted to amend its motion to deny to being a motion to approve the preliminary plat subject to certain conditions. In doing so, the City Council included those conditions which were previously rejected by the Commission, and conditions which were not part of the process that moved forward to the City Council. Those conditions of the preliminary plat were never agreed to or accepted by Spring Creek Investments as part of its preliminary plat filing.

In its December 9, 2019 staff report, the planning staff provides that there are numerous deficiencies with the final plat. To be clear, all but one of the staff report's alleged deficiencies have to do with the issue of the dedication and construction of Bill Nye Avenue or the construction of the oversized sewer line in Bill Nye Avenue. The only alleged deficiency which is not directly related to Bill Nye Avenue is the odd requirement that Spring Creek Investments include in this plat another lot, located in an entirely different area for dedication to the City for a park. Because all of the alleged deficiencies revolve around these three issues, for the sake of brevity we will address these three issues instead of addressing each line item related to these issues.

First, Bill Nye Avenue: As mentioned, one of the requirements to be imposed, and which was originally rejected by the Commission, would require Spring Creek Investments to physically dedicate land to the City for Bill Nye Avenue on the basis that it is shown on the Major Street Plan. Another condition, also originally rejected by the Commission, would require Spring Creek Investments to construct Bill Nye Avenue, bond for the costs to construct Bill Nye Avenue at some unknown future date, or provide some unknown and unauthorized cash-in-lieu payment to the City. None of the statutes or codes require the dedication of land to the City, or the fronting of construction costs, simply because a road is identified on the Major Street Plan. Not a single code or statute requires a developer to dedicate land or build (or front the cost to build) any road which is not required or necessary for its subdivision. It should be noted that other conditions and ordinances specifically provide that no lot within the subdivision will be able to access to or from Bill Nye Avenue, if and when constructed. The street is not required or necessary for the subdivision.

The City's scheme as it relates to Bill Nye Avenue violates the Laramie Municipal Code, Wyoming Statutes, the Wyoming Constitution, and the U.S. Constitution. The purpose, procedure, and effect of the Major Street Plan is set out in WYO. STAT. § 15-1-508, *et. seq.* and L.M.C. §12.02.010, *et. seq.* Contrary to the City's position, simply because a potential street is identified on a Major Street Plan does not require one to dedicate that property to the City free of charge. State Statute specifically provides that the Major Street Plan does not constitute the establishment of any street or the taking of any land for street purposes. WYO. STAT. § 15-1-508(b). The Major Street Plan simply preserves potential roadway locations by restricting issuance of building permits where a building may encroach on the lines of any street shown on the map, unless approved by the board of adjustment. WYO. STAT. § 15-1-509. If the City wishes to deny a building permit for a building that encroaches on the lines of any street shown on the map, it is "subject to" (e.g. required to go through) the appropriate eminent domain proceedings to acquire the property for just compensation. *Id.* It is only a violation for the owner of real estate to construct a building or structure in the mapped street areas, and the City can take action to prevent, enjoin, abate or remove any such erections, construction, alteration, maintenance or use. WYO. STAT. § 15-1-512. Likewise, the Laramie Municipal Code provides similar provisions, requiring the City to engage in eminent domain proceedings to acquire a portion of property for a future street shown on a major street plan. L.M.C. §12.02.010, *et. seq.* Similarly, the L.M.C. also deals with building permits and construction of structures within the preserved area. L.M.C. §12.02.030. Here, no building is being proposed for construction within the delineated future street corridor, and the final plat specifically shows that the area is preserved by the Major Street Plan. In the future, if and when someone may decide to build on the lot, or the City may wish to construct its street, the City can properly acquire the preserved area set out by the ever-changing Major Street Plan. The Wyoming Constitution and the U.S. Constitution both provide that the government may not take property for public use without payment of just compensation. WY CONST Art. 1, §33; and, U.S. COSNT Amend. V. Imposition of conditions as part of the final plat, requiring Spring Creek Investments to dedicate property to the City for Bill Nye Avenue, and requiring it to undertake, at its cost, to construct a street which is not necessary or required for its subdivision amounts to inverse condemnation. WYO. STAT. § 1-26-516.

Second, Bill Nye Avenue sewer line extension: One of the requirements to be imposed, which was also originally rejected by the Commission, would require Spring Creek Investments to physically construct an extension of an oversized sanitary sewer line from Boswell Drive to the south. This condition would require Spring Creek Investments to construct the sewer line beginning at the manhole in Boswell Drive across property it does not own, onto and then across its property to a dead end within what would presumably be the future Bill Nye Avenue. The sewer line would have no connection to or use for the subdivision. L.M.C. §15.18.010.B.2 provides: "All water and wastewater mains **required to serve a development**, including cross-connecting mains shall be installed at the cost of the developer. The developer shall install mains to the farthest points of the subdivision or to the appropriate terminus with the development as

determined by the department.” (emphasis added). All of the sewer lines required to serve the lots within this final plat meet this code. The code does not require a developer to construct sewer lines which are not required to serve the development. The proposed condition requires Spring Creek Investments to build a sewer line that is useful only to the City or neighboring property owners; it is an unlawful condition on the preliminary plat.

Finally, dedication of park land: As the staff report points out, one of the conditions provides in part: “Concurrently with the first filing of the Final Plat Lot 11, Block 6 shall be platted for dedication to the City for Park Land dedication.” This first filing final plat is for two lots (Lot 1 and Lot 2) in Block 1. It is totally unrelated to and physically separated from Block 6. The two lots being platted are zoned commercial, and one of the lots is already developed as a storage facility. L.M.C. §15.14.070.B provides: “Applicability: Any person applying for preliminary or final plat for development of **any area zoned and to be used for single-family, two-family, or multifamily residential purposes** in the city shall be required to dedicate for open space a portion of land per individual unit, or pay a fee in lieu thereof” None of the lots on this final plat meet the requirements for park land dedication. This condition should not be imposed as part of this first final plat.

In summary, based on the foregoing, we ask that the Planning Commission move the Spring Creek Village First Filing Final Plat on to the Laramie City Council with a recommendation to approve as submitted. If you have any questions regarding this matter, please contact me at (307) 742-7140.

Sincerely,
NICHOLAS & TANGEMAN, LLC



Mitchell H. Edwards

cc: Derek Teini (via email)
Bob Southard (via email)
Client (via email)