

November 20, 2017

Sent by Email: kara@town.morrison.co.us

Kara Winters
Town Administrator
321 Hwy 8
Morrison, Colorado 80465

Re: Opposition to Red Rocks Ranch Rezoning and Disconnect Request

Dear Ms. Winters:

This letter sets forth the response of Fossil Ridge Metropolitan Districts No. 1, 2 and 3 (“Fossil Ridge Metro Districts”) to the Town of Morrison’s October 30, 2017 referral request regarding the Red Rocks Ranch application for rezoning and disconnection submitted by Ventana Capital (“Rezoning Application”). As more fully discussed in this letter, the Fossil Ridge Metro Districts oppose the Rezoning Application because the request is procedurally improper and appears to be an end-run to obtain vested property rights before disconnecting from the Town of Morrison.

The Fossil Ridge Metro Districts are quasi-municipal corporations organized to provide and maintain certain infrastructure improvements as well as other services to the residents of the Solterra development (“Solterra”). Solterra is located in the Rooney Valley to the immediate north of the Red Rocks Ranch parcel (formerly known as Red Rocks Centre). Although Solterra is located entirely within Lakewood’s corporate boundaries, Solterra’s residents and property owners (who are in turn constituents of the Fossil Ridge Metro Districts and Jefferson County) work, shop, and recreate in Morrison. Moreover, because the Red Rocks Ranch property is adjacent to Solterra, the Fossil Ridge Metro Districts will be directly impacted by any land use decision affecting the Red Rocks Ranch.

The Fossil Ridge Metro Districts oppose the Rezoning Application in the first instance because the application improperly combines a rezoning process before the Town of Morrison with a simultaneous request to disconnect from the Town of Morrison. However, even if Morrison is willing to overlook this obvious procedural infirmity, the Rezoning Application should nevertheless be denied on its merits because the proposed disconnection is not in the best interest of Morrison. Finally, the request to amend the Overall Development Plan (“ODP”) should be denied because the Rezoning Application does not include sufficient information to find that it will not impair the public health, safety, and welfare. Each of these issues is addressed in turn below.

1. The Rezoning Application Improperly Attempts to Combine Disparate Land Use Decisions and Is Therefore Procedurally Improper.

The Morrison Municipal Code creates a procedure by which an applicant may attempt to disconnect from Morrison. The Morrison Municipal Code also creates a procedure by which an applicant may attempt to amend an ODP. However, there is nothing in the Municipal Code

which provides that these unique processes may be completed simultaneously in one compressed process. Each of these disparate land use decisions is ultimately resolved by Morrison's Board of Trustees, but the Board's resolution of each requires a separate and unique inquiry.

The process for considering a request to disconnect property is relatively narrow. Specifically, Section 10-9-2 of the Municipal Code expressly incorporates Section 31-12-501, C.R.S. This state law provides that disconnection may only be approved if the Board of Trustees is "of the opinion that the best interest of [Morrison] will not be prejudiced by the disconnection." C.R.S. § 31-12-501(3). Standing alone, a simplified disconnection application process may be appropriate, as if a disconnection request is approved, Morrison will no longer have any jurisdiction over the disconnected property and therefore cannot, for example, enforce land use standards against the property.

In stark contrast, the Municipal Code provides an extremely involved process that a landowner must satisfy in order to amend an ODP. Specifically, Section 10-1E-5(E)(3) of the Municipal Code provides that a "major amendment" to an ODP must "be processed in the same manner as the original development plan" and may only be adopted through the enactment of an ordinance by the Board of Trustees. Accordingly, an application to amend an ODP must be accompanied by a site development plan and include information regarding circulation, access, parking, building heights and setbacks, and use requirements. Section 10-1E-5(D)(8) of the Municipal Code also requires that the applicant satisfy eleven different review criteria "to ensure that the general public health, safety and welfare are safeguarded." These criteria include, *inter alia*, conformance with the Plan Rooney Valley master plan (as adopted through intergovernmental agreement between Lakewood and Morrison), compatibility with surrounding land uses, preservation of significant natural features, and the suitable provision of public services to meet any resulting increase in demand.

Beyond these evidentiary requirements, the application process for amending an ODP is similarly much more involved. An applicant for an amended ODP must first attend a preapplication meeting with planning staff before the application may be considered in a public hearing before the Planning Commission. The Planning Commission then provides a recommendation to the Board of Trustees on the application. The Board of Trustees must then hold another public hearing before ultimately determining whether the applicant has met all of the application requirements and material elements for amendment set forth in Section 10-1E-5(D)(8) of the Municipal Code. If approved, an amended ODP then remains valid for three years unless and until the applicant commences any phase of the planned development.

The Municipal Code does not address whether an approved ODP may continue to have lawful force and effect following disconnection of the underlying property. Nor does it appear that Jefferson County has adopted any mechanism by which it deals with the underlying, municipal zoning of property that is subsequently disconnected and returned to unincorporated status. Despite the apparent absence of any controlling law, the applicant here—Ventana Capital—strongly suggests that it believes that a pre-disconnection amendment to the Red

Rocks Ranch ODP will “vest” its property with certain rights which will “simplify the development process through Jefferson County.”¹ (See Oct. 6, 2017 Letter from T. Bales to Morrison, at p. 1.)

The Fossil Ridge Metro Districts disagree that, if approved, the Red Rocks Ranch amended ODP would remain vested in the property if and when the property is subsequently disconnected from Morrison. However, if the applicant is correct that the amended ODP would create a vested right that would survive disconnection, then Morrison should not consider a request to amend an ODP at the same time that it is considering a request for disconnection. Approval of the amended ODP will not “simplify” the process for Jefferson County; instead, it could potentially usurp Jefferson County’s primary role as the ultimate authority over land use development within unincorporated areas of the County. Morrison should not fundamentally alter a largescale development plan before immediately disconnecting the property and potentially foisting new, vested property rights on Jefferson County and its citizens.

For these reasons, the Fossil Ridge Metro Districts respectfully request that the Rezoning Application be summarily denied as procedurally defective. There is no mechanism under the Municipal Code for combining a rezoning with a request to disconnect property from Morrison. The applicant should not be permitted to simultaneously disconnect from Morrison and obtain new development rights from Morrison in a potential end-run on Jefferson County’s authority to regulate a property that will then exist within unincorporated Jefferson County.

2. The Disconnection Request Should Be Denied on Its Merits Because Disconnection Will Prejudice Morrison by Forfeiting Its Ability to Regulate Development.

If Morrison is willing to overlook the procedural defects inherent in the combined Rezoning Application, the Fossil Ridge Metro Districts further oppose the disconnection request on its merits. Disconnection of the Red Rocks Ranch property violates the Plan Rooney Valley master plan and will prejudice Morrison by ceding any control over development within this critical property. Following disconnection, the Red Rocks Ranch property will be an unincorporated development adjacent to Morrison with all of its obvious spillover impacts and no oversight from Morrison.

As noted, the disconnection request must be denied if the applicant cannot demonstrate that the “best interests” of Morrison “will not be prejudiced by the disconnection.” Colorado law does not define “prejudice” in the context of a disconnection application. Nevertheless, Morrison should adopt a standard that seeks to prevent its residents and its neighbors from the harmful effects of unconstrained and/or infeasible growth.

¹ The applicant suggests that the amendment to the ODP must precede disconnection to “vacate all encumbrances including Morrison right-of-way and existing utility easements,” but fails to note that these publications could be vacated through the much more streamlined process of declaring an approved ODP to be obsolete under Section 10-1E-5(F). Any public dedications to Morrison can be vacated pre-disconnection without bestowing new property rights upon the applicant that may or may not remain vested following disconnection.

Morrison has frequently recognized the importance of the Rooney Valley to its citizens and the deliberate, reasonable growth of the surrounding area. The critical importance of the Rooney Valley was most recently recognized by Morrison when the Board of Trustees, along with the city of Lakewood, adopted the Plan Rooney Valley master plan in February 2017. The Plan Rooney Valley master plan expressly provides that landowners within the Rooney Valley should be “encouraged” to annex such properties into either Morrison or Lakewood to enable the municipalities “to implement joint planning efforts.” Plan Rooney Valley, at p. 32. In other words, Morrison has very recently recognized that its interests and the interests of its citizens are best served by ensuring that development within the Rooney Valley occurs within municipal boundaries.

It is against this backdrop that Morrison must now evaluate the applicant’s request to disconnect the Red Rocks Ranch property from Morrison. If the property is disconnected from Morrison, the developer has confirmed that it will be developed as a dense, mixed-use development within unincorporated Jefferson County. Similar developments in other unincorporated areas within Colorado are characterized by minimal land use planning, reduced and often unmaintained infrastructure, and fewer and lower quality public services.

Even if the Red Rocks Ranch property is disconnected from Morrison, it will continue to be located to the immediate east of Morrison’s municipal boundaries. Accordingly, the disconnection and subsequent development of the Red Rocks Ranch property will have a direct impact on Morrison and its citizens. Through disconnection, however, Morrison will forfeit all control of land use decisions, including but not limited to the density of the development and the necessary levels of infrastructure and other public services. This uncertainty and lack of control will, without question, prejudice the best interests of Morrison and its citizens.

Morrison should not abdicate its responsibility to oversee and manage growth within the Rooney Valley. Disconnection would prejudice Morrison, and therefore the applicant’s request should be denied.

3. The Amended ODP Application Should Be Denied Because It Does Not Contain Sufficient Information Regarding Traffic and Municipal Services, Infrastructure, and Upkeep of the Proposed Unincorporated Development.

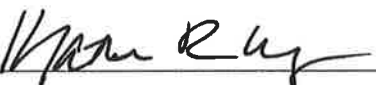
The Fossil Ridge Metro Districts oppose the request to amend the Red Rocks Ranch ODP on its merits. The Rezoning Application does not include enough information for the Board of Trustees to find that the general public health, safety, and welfare are safeguarded. For example, the Rezoning Application does not provide sufficient information regarding the traffic that would be generated by the amended development plan and does not identify where this incredibly dense residential and commercial development would obtain water and sanitation services, and any number of other essential municipal services.

If the Red Rocks Ranch is disconnected from Morrison, it will necessarily be forced to be self-reliant and look inward to provide many critical government services which cannot or

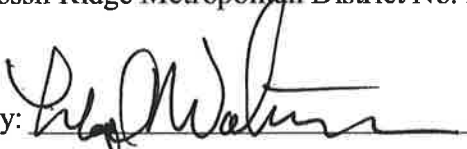
will not be provided by the County. The applicant must specifically address all of these concerns before the amended ODP may be lawfully approved. If the amended ODP is approved without answers to these questions, the negative impact of an incomplete development will necessarily be disproportionately felt by the existing residents and property owners in neighboring Morrison and Solterra. Accordingly, Morrison should deny the request to amend the ODP on its merits unless and until the applicant provides sufficient evidence that its proposal will not impair the general public health, safety, and welfare.

The Fossil Ridge Metro Districts sincerely appreciate Morrison's solicitation and careful consideration of these comments.

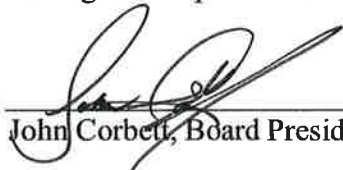
Fossil Ridge Metropolitan District No. 1

By: 
Kathleen R. Kelley, Board President

Fossil Ridge Metropolitan District No. 2

By: 
Tom Waterman, Board President

Fossil Ridge Metropolitan District No. 3

By: 
John Corbett, Board President

Cc: Stephanie Stevens (Stephanie@mccooldevelopment.com)