Ivins City Staff Report
City Council Meeting 1/20/22

Agenda Item: Discuss and Consider Public Access Utility Easement Agreement

Submitted by: Charles R. Gillette, P.E., Public Works Director and City Engineer

Recommended City Council Action:
Approve Public Access and Utility Easement agreement

BACKGROUND:
Ivins City is in the process of acquiring right-of-way and easements for the construction of a shared-use pedestrian facility along the north side of Old Highway 91 from 200 East to Ivins Reservoir.

VE Management owns a 10.05 acre triangle shaped property that sits adjacent to Old Highway 91 along a 1350' long segment, the longest side of the triangle. The property has a planned landuse of high density residential (HDR) and is zoned multi-family.

In negotiations with VE Management, they have indicated that they would dedicate the easement if the City would consider their proposed utility easement agreement. The most crucial part of the agreement is the request that the dedication be counted towards one half of the open space requirement when the property is developed as a multi-family property.

FINDINGS AND ANALYSIS:
The code (see attached) is clear that any landscape buffer that is required to be dedicated to the City is not allowed to be counted towards usable open space. Yet the code also indicates that walkways and paths are considered to be acceptable open space.

The property is 10.5 acres and has a potential to develop into a multi-family project consisting of 100 to 120 units. According to current zoning rules, minimum open space is 800 square feet for the first two units and 200 square feet for each additional unit. A 120 unit project would require 24,400 square feet or 0.56 acres of open space be provided.

Here are the special circumstances that the Council may consider in this request, but perhaps not others that might request something similar:

- The dedication burden is high due to the shape of the property. It represents 10 percent of the property lost to the landscape buffer and sidewalk easement.
- They are not ready to develop, but the city is ready to install the trail.

SUPPORT MATERIALS:
Proposed agreement With Exhibit
Section of City Code on Multi-Family Open Space
Land Use Map

FINANCIAL IMPACT:
none

Respectfully Submitted:

Charles Gillette, P.E., Public Works Director & City Engineer

Content Review:

Dale Coulam, City Manager

WHEN RECORDED, MAIL TO:

KARI JIMENEZ
IVINS CITY RECORDER
85 NORTH MAIN
IVINS, UT 84738

MAIL COPY TO GRANTEE(S):

VE MANAGEMENT
1240 E 100 S
SUITE 12
ST GEORGE, UT 84790

APN: I-6-2-7-110

PUBLIC ACCESS AND UTILITY EASEMENT AGREEMENT

This Public Access and Utility Easement Agreement ("Agreement") is dated this ____ day of _____, 2022, and is between VE MANAGEMENT AND INVESTMENT CO., L.C., a Utah limited liability company (hereinafter "VE Management" or "Grantor") and IVINS CITY, a Municipal Corporation of the State of Utah, whose address is 85 N Main Street, Ivins, Washington County, Utah, including its successors and assigns (hereinafter "Ivins City" or "Grantee") (hereinafter VE Management and Ivins City are collectively referred to as the parties).

A. VE Management owns a 10.05-acre parcel of real property in Washington County, Utah, identified as parcel number I-6-2-7-110 ("Parcel 110").

B. Ivins City desires to have an easement for a 10' wide paved facility and utilities within, upon and across a portion of Parcel 110, said portion being more particularly described in the attached Exhibit 1 and referred to herein as the "Subject Property.

C. VE Management desires to grant Ivins City nonexclusive easements, as more particularly described below, through and across the Subject Property, for the benefit of Ivins City, including its successors and assigns.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows: For the sum of ten dollars ($10.00) and other good and valuable consideration, and the mutual covenants, terms, and conditions set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, transfer, and convey to Ivins City, its successors and assigns, the following easements:

Public Access Easement: upon, through, and across the Subject Property, a perpetual easement for the construction, operation, repair, replacement and maintenance of a paved public sidewalk limited for public access by pedestrians, bicyclists and other non-motorized vehicles, the paved portion being ten feet (10') in width and meandering in a direction that is generally parallel to the adjacent Highway 91. The public access easement shall exist so long as it is used to connect to public facilities on the property that is immediately adjacent to the Subject Property.

Utility Easement: upon, through, and across the Subject Property, a perpetual easement for the installation, construction, operation, repair, replacement and maintenance of subsurface public utility lines, water, drainage, sewer, and appurtenant road facilities for Highway 91, including signs and related and necessary improvements to each of the foregoing.

(a) Purpose and Scope. The foregoing easements are limited and nonexclusive perpetual easements for installation, construction, maintenance, operation, repair, removal, and replacement of the public paved facility, utilities and other improvements described in this Agreement.

(b) Use. The foregoing easements shall not unreasonably interfere with Grantor's right to use all portions of Parcel 110, including the Subject Property, and Grantor shall have the right to use and connect to the utilities, water, drainage, sewer, and other improvements within or upon the Subject Property. Owners of any portion of property within Parcel 110 shall have the right to use the public access easement and all of the Subject Property shall be counted toward one half (1/2) of the minimum area of site acreage required to be usable open space for development of Parcel 110. Upon development of the Parcel 110, the easement shall be dedicated by plat to Ivins City as full access right-of-way per the development standards of the City.

(c) Maintenance. Grantee is responsible, at its own cost, for all installation, construction, maintenance, repair, inspection, and replacement of the easements located within or upon the Subject Property and any improvements thereto that are for the primary benefit and use of the easements. Grantee shall promptly repair, at its own cost, any damage caused by it or its licensees, permittees, invitees, and guests within or upon the Subject Property.

The grant of the foregoing easements shall constitute a covenant running with the land and is for the benefit of the parties, including each of their successors and assigns.

Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between any persons or any owner(s) of Parcel 110, including the Subject Property.

With respect to the easements and improvements that are the subject of this Agreement, Grantee shall indemnify, defend, and hold Grantor harmless, against any and all claims, liabilities, damages, penalties, costs, demands, and expenses (including attorney fees and legal costs) relating to accidents, injuries, loss, or damage of or to any individual or entity or property arising from the negligent, intentional, or willful acts or omissions of Grantee. If reasonably available, Grantee shall obtain and maintain one or more policies of liability insurance coverage against claims for any injury, death, or omissions of Grantee.

In addition, Grantor shall indemnify, defend, and hold Grantee harmless, against any and all claims, liabilities, damages, penalties, costs, demands, and expenses (including attorney fees and legal costs) relating to accidents, injuries, loss, or damage of or to any individual or entity or property arising from the negligent, intentional, or willful acts or omissions of Grantor. If reasonably available, Grantor shall obtain and maintain one or more policies of liability insurance coverage against claims for any injury, death, or omissions of Grantee.

If Grantee breaches or threatens to breach this Agreement, Grantor shall be entitled to injunctive relief, specific performance, and all other available legal and equitable remedies. If Grantor breaches or threatens to breach this Agreement, Grantee shall be entitled to injunctive relief, specific performance, and all other available legal and equitable remedies. The remedies provided in this Agreement are cumulative and all remedies available at law or in equity may be asserted.

This Agreement binds and inures to the benefit of the owner(s) of Parcel 110, including any and all future owners of all or any portion of Parcel 110. Each grantee, by accepting the conveyance of any portion of property within Parcel 110, shall thereby become a party to and be bound by this Agreement.

Utah law shall govern this Agreement and all adversarial proceedings arising out of or related to this Agreement. If a party to this Agreement takes legal action, with or without suit, to enforce, interpret, or resolve a dispute arising out of or related to this Agreement, the prevailing party or parties shall be entitled to recovery and an award of all costs, expenses, and attorney fees related to the same.

No waiver of any default or breach of an obligation by either party will be implied from any omission by the other party to take action with respect to such default or breach. This Agreement may be modified or amended, in whole or in part, or terminated, only by written consent of all parties which is evidenced by a document that expressly refers to this Agreement and which is fully executed by the parties, acknowledged, and recorded against the property in the official records of the Washington County Recorder, State of Utah.

This Agreement shall not be construed for or against any party, and no rule or presumption against the drafter shall be employed. Each provision of this Agreement shall be interpreted in a way that is valid under applicable law. Each provision of this Agreement and the application thereof to the property are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement.

Time is of the essence in this Agreement and the parties agree to execute other documents and to perform other acts that may be reasonably necessary to further the expressed intent and purpose of this Agreement.

This Agreement, including the recitals which are hereby incorporated, constitutes the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all other agreements, whether written or oral, between the parties. All prior easements and agreements related to the subject matter of this Agreement are released and replaced in their entirety by this Agreement.

The parties, by executing this Agreement, agree, consent, and understand this Agreement may be recorded against the Subject Property in the official records of the Washington County Recorder, State of Utah.

If the parties sign this Agreement in multiple counterparts, each will be deemed an original, but all counterparts together will constitute one instrument.

The parties are signing this Agreement which shall be effective as of the date stated in the introductory paragraph. Each of the undersigned represents and warrants that he/she has the right and authority to execute this Agreement.

VE MANAGEMENT AND INVESTMENT CO., L.C.
a Utah Limited Liability Company

_____
By:
Its authorized representative

STATE OF UTAH)
:ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before this ___ day of _____, 2022, by _____, who duly acknowledged to me that (he/she/they) executed the same for its stated purpose.

_____
Notary Public

IVINS CITY

a Municipal Corporation of the State of Utah

_____
Chris Hart, Mayor

STATE OF UTAH)
:ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, who duly acknowledged to me that (he/she/they) executed

the same for its stated purpose.

_____
Notary Public

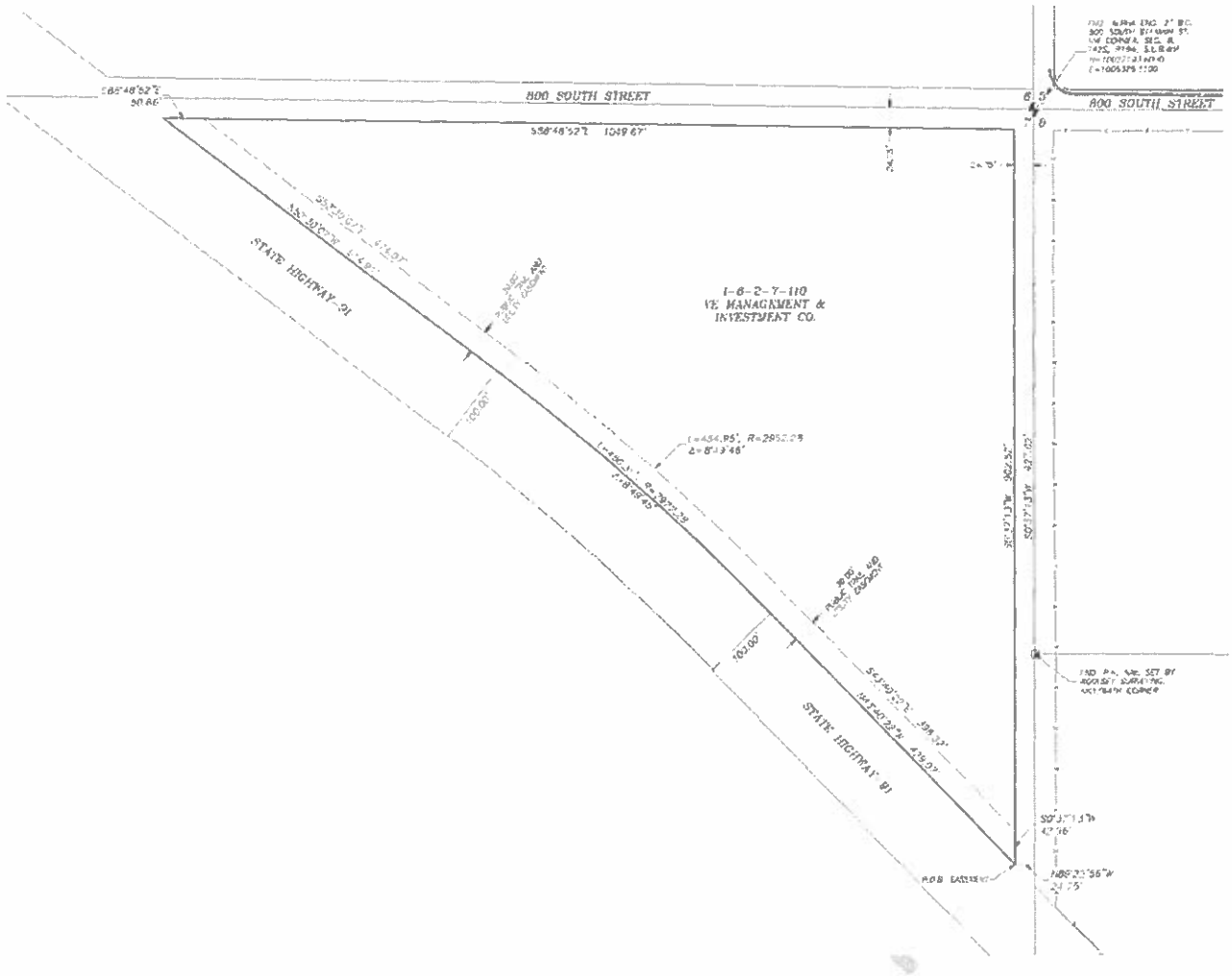
Exhibit 1

(Legal Description of the Subject Property and Map)

COMMENCING AT THE NORTHEAST CORNER OF SECTION 7, TOWNSHIP 42 SOUTH, RANGE 16 WEST, OF THE SALT LAKE BASE AND MERIDIAN; THENCE S00°37'13"W, ALONG THE SECTION LINE, 927.02 FEET; THENCE N89°22'56"W, 24.75 FEET TO THE POINT OF BEGINNING; SAID POINT BEING THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF MAIN STREET AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY-91; THENCE DEPARTING SAID MAIN STREET RIGHT-OF-WAY AND RUNNING ALONG THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY-91 THE FOLLOWING THREE (3) COURSES:
N43°40'22"W, 429.07 FEET TO A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 2,922.28 FEET, AND A CENTRAL ANGLE OF 08°49'45". (RADIAL LINE BEARS S46°18'31"W); THENCE NORTHWESTERLY ALONG SAID CURVE, 450.31 FEET; THENCE N52°30'07"W, 514.91 FEET TO THE INTERSECTION OF SAID STATE HIGHWAY-91 RIGHT-OF-WAY AND THE SOUTH RIGHT-OF-WAY LINE 0F 800 SOUTH STREET; THENCE DEPARTING SAID STATE HIGHWAY-91 RIGHT-OF-WAY LINE

AND RUNNING S88°48'52"E, ALONG THE SOUTH RIGHT-OF-WAY LINE OF SAID 800 SOUTH STREET, 50.66 FEET; THENCE DEPARTING SAID LINE AND RUNNING 30.00 FEET NORTHEASTERLY AND PARALLEL TO THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID STATE HIGHWAY-91 THE FOLLOWING THREE (3) COURSES:
S52°30'07"E, 474.07 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 2,952.28 FEET, AND A CENTRAL ANGLE OF 08°49'45". (RADIAL LINE BEARS S37°28'46"W); THENCE SOUTHEASTERLY ALONG SAID CURVE, 454.95 FEET; THENCE S43°40'22"E, 398.32 FEET TO A POINT LOCATED ON THE WEST RIGHT-OF- WAY LINE OF SAID MAIN STREET; THENCE S00°37'13"W, ALONG SAID LINE, 42.96 FEET TO THE POINT OF BEGINNING.

SAID EASEMENT DESCRIPTION BEING DERIVED FROM RECORD OF SURVEY BY CORNERPOINT LAND SURVEYING FOR VE MANAGEMENT AND INVESTMENT CO. INC., FILE No. 6636-15, DATED 7-18-2014, ON FILE IN THE OFFICE OF THE WASHINGTON COUNTY RECORDERS OFFICE.


800 SOUTH STREET
800 SOUTH STREET
S89°48'52"E 1049.67'
STATE HIGHWAY 91
I-6-2-7-110
VE MANAGEMENT &
INVESTMENT CO.
STATE HIGHWAY 91
POB EASTING
N89°23'36"W

16.18.102: SITE PLANNING:

These guidelines and standards are intended: to improve site planning, to enhance the image of the City, reflect unique site characteristics, and provide strong neighborhood environments; to protect natural site features, open space and use and incorporate such features and areas as community amenities; and to provide usable open space and maintain significant natural areas for the use and enjoyment by residents of the multi-family development.

(1) Lot Coverage And Density:

(a) Density Calculation: In all multi-family High Density Residential zoning districts, densities shall be calculated as a percentage of the total square footage of the horizontal cross section of all residential structures at their largest point as compared to the total square footage of the parcel(s) included in the multi-family development. In addition to structures intended for human habitation, residential structures include but are not limited to garages, storage units, covered patios, and any similar structures. In no event, shall a property owner be allowed a base density that is less than the density that would be achieved using an R-1-5 zoning district.

(b) Maximum Density With No Density Bonus: The maximum allowed base densities with no bonus improvements are as follows:

(i) Fifteen percent (15%) for multi-family developments with standard height restrictions.

(ii) Twenty percent (20%) for multi-family developments limiting the height of all structures located within fifty feet (50') of the outside boundary of the multi-family development to eighteen feet (18').

(iii) Twenty-five percent (25%) for multi-family development limiting the height of all structures to eighteen feet (18').

(c) Maximum Density With Density Bonus: The maximum allowed base densities with bonus improvements are as follows:

(i) An additional ten percent (10%) for multi-family developments with standard height restrictions.

(ii) An additional fifteen percent (15%) for multi-family developments limiting the height of all structures located within fifty feet (50') of the outside boundary of the multi-family development to eighteen feet (18').

(iii) An additional twenty percent (20%) for multi-family development limiting the height of all structures to eighteen feet (18').

For purposes of this section, the ten percent (10%), fifteen percent (15%), and twenty percent (20%) respective bonuses are referred to as the "Density Bonus".

(2) Open Space: The intent of this section is to create areas of usable open space for passive and active recreation that are easily accessed by residents, provide focal points for community recreation and interaction, and add to the overall quality of life for residents. Usable open space should be integrated purposefully into the overall design of the development and not merely be residual areas left over after buildings and parking lots are sited.

(a) Minimum Usable Open Space Required:

(i) All new multi-family developments shall set aside at least a minimum area of site acreage as usable open space for the passive and active recreational use and enjoyment of the development's residents. The usable open space shall be aggregated into meaningful, quality open spaces. Clustering of buildings is encouraged to minimize small, narrow, unassigned strips in front of and between buildings. Open space shall be clearly identified on the development plan.

(ii) The minimum amount of usable open space shall be eight hundred (800) square feet for the first two (2) units and two hundred (200) square feet for each additional unit.

(b) Areas Not Allowed As Part Of Usable Open Space: The following shall not count toward usable open space set aside requirements:

(i) Private lots, yards, balconies and patios dedicated for use by a specific unit;

(ii) Public right-of-way or private streets and drives;

(iii) Open parking areas and driveways for dwellings;

(iv) Land covered by structures, except for ancillary structures associated with the use of open space such as gazebos, picnic shelters and approved recreational amenities;

(v) Designated outdoor storage areas;

(vi) Required perimeter setback areas;

(vii) Land and area between buildings and parking lots of less than twenty feet (20'); or

(viii) Detention/retention areas, including drainage swales except when accessible and usable, as determined by the City, for use by residents (e.g., picnic areas, passive recreation areas, playgrounds, etc.).

(c) Design Criteria For Usable Open Space: Usable open space may include:

(i) Planting areas and trees;

(ii) Water features;

(iii) Grass areas;

(iv) Seating;

(v) Pedestrian scaled lighting;

(vi) Walkways/paths;

(vii) Gazebos/covered picnic;

(viii) Play structures for children; and

(ix) On site community recreation amenities.

(d) Preservation Of Natural Features: On a case by case basis, the preservation of significant natural features or areas may be considered as open space for density bonus purposes.

(3) Bonus Improvements:

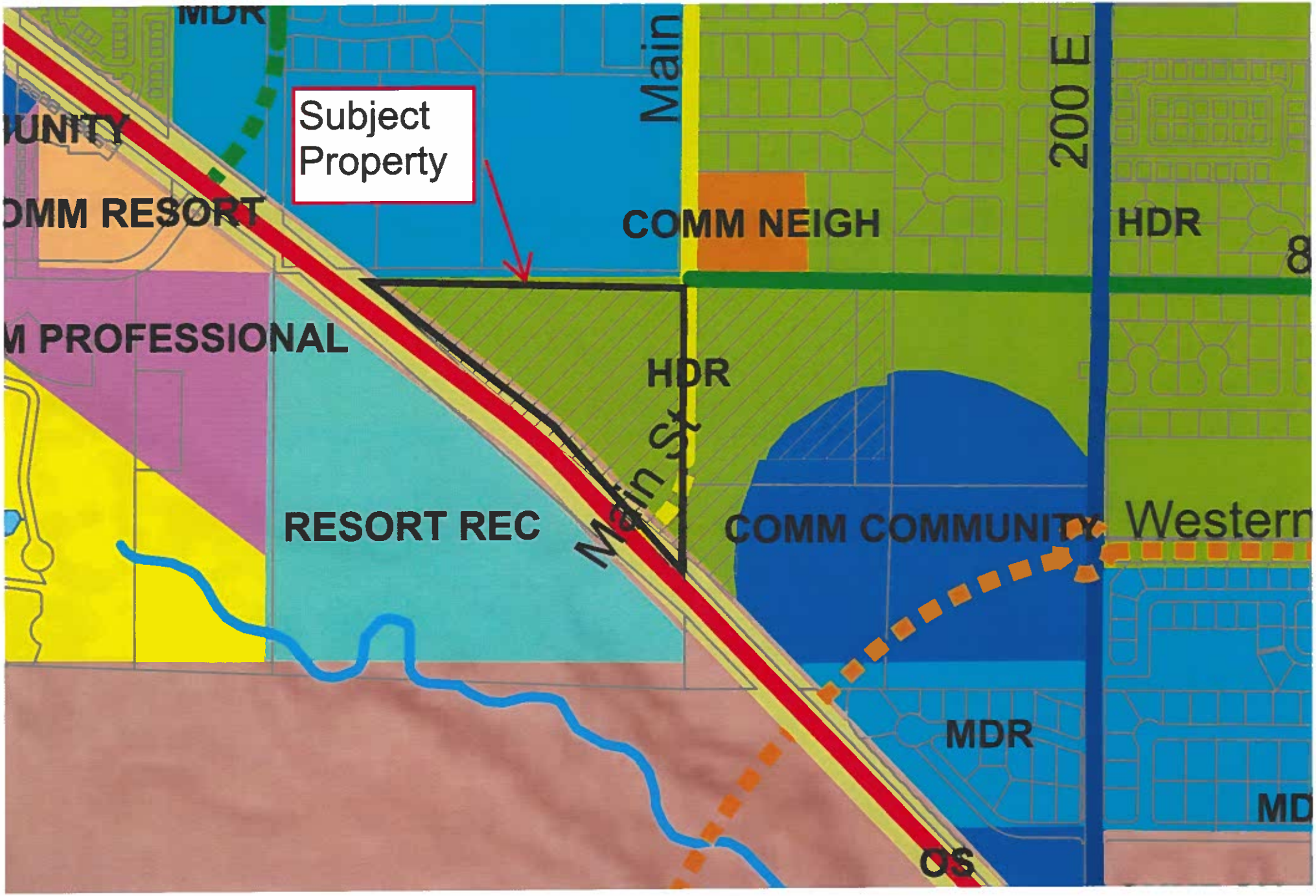
(a) Density Bonus Calculations: To qualify for a Density Bonus, or any portion thereof, a multi-family development may include any of the improvements listed below. Any Density Bonuses will be awarded proportionally based on the square footage of the improvements compared to the recommended size indicated, but in no event will qualify for a bonus higher than the maximum percentage of the Density Bonus indicated. Any single multi-family development may include any combination of the improvements listed below but in no event will be awarded a Density Bonus in excess of the maximum bonus listed in subsection (1)(c) above.

(b) Outdoor Activity Improvements: A multi-family development may qualify for up to forty percent (40%) of its allowable Density Bonus by including outdoor activity improvements, such as a basketball court, volleyball court, pickleball court, or other amenity intended to be used for active, organized activities, with a recommended size of seventy five (75) square feet of outdoor activity improvements per unit in the multi-family development.

(c) Outdoor Recreation Improvements: A multi-family development may qualify for up to thirty percent (30%) of its allowable Density Bonus by including outdoor recreation improvements, such as a children's play area, barbeque area, picnic area, or other amenity intended to be used for simple recreation, with a recommended size of seventy five (75) square feet of outdoor recreation improvements per unit in the multi-family development.

(d) Swimming Pool Improvements: A multi-family development may qualify for up to thirty percent (30%) of its allowable Density Bonus by including a swimming pool, with a recommended size of forty (40) square feet of swimming pool, and related amenities, per unit in the multi-family development. At least half of the square feet per unit must be surface area of the swimming pool.

(e) Indoor Improvements: A multi-family development may qualify for up to twenty five percent (25%) of its allowable Density Bonus by including indoor improvements, such as a weight room, exercise room, pickle ball court, meeting room or other amenity intended to be used indoors, with a recommended size of forty (40) square feet of indoor improvements per unit in the multi-family development. (Ord. 2008-21, 2009; Ord. 2019-08, 2020)


MDR
Subject Property
Main
200 E
UNITY
OMM RESORT
COMM NEIGH
HDR
M PROFESSIONAL
HDR
Main St
RESORT REC
COMM COMMUNITY
Western
MDR
MD
OS