

ORDINANCE NO. 287

AN ORDINANCE VACATING PORTIONS OF RIVER STREET WITHIN THE TOWN OF RICO, COLORADO, EASEMENT IN THE PORTIONS VACATED THEREBY AND ESTABLISHING SNOW STORAGE AND EMERGENCY VEHICLE EASEMENTS FOR THE TOWN OF RICO.

WHEREAS, the Town of Rico has entered into a development agreement between the Town of Rico and Environmental Planning and Development, a limited liability company; and,

WHEREAS, within that Development Agreement of the Board of Trustees of the Town of Rico agree to vacate certain portions of the River Street right of way as set out in the town plat of the Town of Rico, retaining certain access & utility easements; and,

WHEREAS, Environmental Planning and Development agreed to grant snow storage and emergency vehicle easements to the Town.

NOW, THEREFORE, BE IT ORDAINED by the Board of Trustees of the Town of Rico, Colorado.

Section 1. Pursuant to C.R.S. 31-15-702, the Town of Rico has the authority to vacate streets and therefore, that portion of River Street lying between the North line of Lot 4 of Block 27 and Lot 37 of Block 2, thence South to the south line of Lots 14 of Block 27 and Lot 27 of Block 2 is hereby vacated.

Section 2. A utility and access easement for municipal purposes is hereby established running north and south along the center line of the former right-of-way of River Street as described in Section 1 above and being twenty-eight feet in width for the entire length of the vacated portion of River Street, sixteen feet of said access and utility easement being west of said centerline.

Section 3. This Ordinance is passed conditionally & shall become effective upon the conveyance by Environmental Planning and Development to the Town of Rico of the snow storage and emergency vehicle easements on Lot 4 and 14 of Block 27, Town of Rico.

Section 4. If any portion of this ordinance be held to be void or unconstitutional by any court of competent jurisdiction such holding shall not affect the balance of this ordinance.

READ, PASSED, APPROVED AND ADOPTED by the Board of Trustees of the Town of Rico this 11th day of February 1992.

ATTEST:

Linda Yellowman
Town Clerk

TOWN OF RICO:

Kenneth F. Hazen
Mayor

DEVELOPMENT AGREEMENT

This Development Agreement is made and entered as of the 11th day of February, 1992 by and between ENVIRONMENTAL PLANNING AND DEVELOPMENT, a Limited Liability Company and the TOWN OF RICO, a Municipal Corporation acting by and through its Board of Trustees.

WHEREAS, the State of Colorado enacted legislation C.R.S., Sections 24-68-101 et. seq., effective Jan. 1, 1988 concerning the establishment of vested property rights; and,

WHEREAS, Section 24-68-104(1) of the Vested Rights Statutes authorizes local government to enter into development agreements which provide for the vesting of certain property right upon the approval of a site specific development plan after public hearing; and,

WHEREAS, public hearing was held on the development plan of Environmental Planning and Development on October 8, 1991 and upon the recommendation of the Planning Commission of the Town of Rico, the Town voted to approve the site specific development of Environmental Planning & Development consisting of a development within and adjacent to Lots 4 through 14, Block 27, Town of Rico; and,

WHEREAS, Environmental Planning and Development and the Town, in exchange for the mutual promises and covenants desire to enter into this Development Agreement.

WHEREFORE, the parties have agreed to set forth their agreements concerning the foregoing in writing.

NOW, THEREFORE, in considerations of the promises and agreements herein contained, the parties agree as follows:

1. Basis for Vesting of Rights.

a. Environmental Planning and Development lots are located within the Town of Rico and have proposed development of Lots 4 through 14, Block 27, Town of Rico, according to the following plan. Environmental Planning and Development agrees, that upon vacation of certain portions of the River Street right of way, they will survey and plat a private road from the southern boundary of Lot 14 through the northern boundary of Lot 4 all in Block 27 Town of Rico, as depicted on the attached site plan. Said private road shall be sixteen feet in width and shall be available for access and utility purposes.

b. A snow storage easement shall be created on Lots 4 and 14 Block 27, Town of Rico, for the storage of plowed snow from the sixteen foot private drive. The easement of said Lot 14 shall also be available for the storage of plowed snow from River Street right of way.

c. An emergency vehicle easement shall be created by Environmental Planning and Development on portions of and Lots 4 and 14 of Block 27, Town of Rico, Colorado, as depicted on the attached site plan, for the purposes of emergency vehicle turn around. These areas shall be restricted from construction and no parking shall be allowed thereon.

d. Environmental Planning and Development shall, at its own expense, remove the pagoda now located in the River Street right of way and shall, at its own expense, reinstall the pagoda in a site acceptable to the Town of Rico.

e. Environmental Planning & Development shall grant Town of Rico title to Lots 10, 11, 12, 13 & 32, Block 15 of the Town of Rico which shall be surveyed at Environmental Planning and Development expense and shall be conveyed to the Town by general warranty deed and accompanied by evidence of good and marketable title. Said lands shall be for park, recreational and open space purpose only, in perpetuity.

f. The Town assumes no liability for maintenance and snow removal on the private drive shown on the site plan. Said snow removal shall be paid for by Environmental Planning and Development or any successor organization. Said successor organization shall contain all provisions and covenants within its covenants or Homeowner Association agreements to provide for the maintenance and snow removal on the private drive.

g. The Town of Rico shall, by ordinance, vacate those portions of River Street adjacent to Lots 4 through 14, Block 27, Town of Rico, Colorado, in accordance with applicable statutes.

h. Consistent with the purposes of the agreement, the Town and Environmental Planning & Development hereby agree that all rights and land uses established and set forth in this agreement shall be vested property rights and the owners of land that is a part of this specific site development plan have a vested property right to undertake and complete development of and use such land in accordance with such vested right as provided herein. These rights shall vest to and benefit the owners of any land that is a part of this specific site development & their heirs, personal representatives, successors and assigns, and shall run with title to the said land.

2. The establishment of this Development Agreement and vested property rights, pursuant to this agreement, shall not preclude the application of the Town of Rico or Dolores County regulations of general applicability including but not limited to impact fees, application of local improvement districts, building, fire, plumbing, engineering electrical and mechanical codes, any exist or on the date of this agreement or may be enacted or amended after the date hereof.

3. Should Environmental Planning and Development fail to comply with the terms of this agreement, the Town shall give the landowners written notice of a breach of default and landowners shall have sixty days after the receipt of said notice in which to cure any breach or default. Should the Environmental Planning and Development fail to cure any such breach or default, the Town shall have the right to pursue any remedies to enforce this agreement including to but not limited to filing an action of specific performance or terminating this agreement causing it to be null and void, and no longer binding on the Town or Environmental Planning and Development. Except as otherwise provided herein, this parties to this agreement or by their successors in interest following public notice and public hearing procedures required for approval of this agreement.

4. There shall be no monetary liability by the Town of Rico, although the vested right statutes provide for monetary damages in the event of breach or default under this agreement by the Town, Environmental Planning and Development so remedies hereunder shall be equitable remedies as specific performance and injunctive relief.

5. Before bringing any action against the Town for breach of this agreement, Environmental Planning & Development owners shall give the Town of Rico written notice of any claim by the landowners by the breach or default by the Town of Rico and the Town of Rico shall have sixty days after receipt of such notice in which to cure any such breach or default.

6. The Town shall not be responsible for & Environmental Planning and Development shall have no remedy against the Town if development is prevented or delayed for reasons beyond the control of the Town.

7. Nothing in this agreement or otherwise shall require the Town of Rico to approve development or use any portion of the development where there exists natural or man made hazards on or in the immediate vicinity, of the proposed areas of use, whether or not such natural or man made hazards could have been reasonably have been discovered at the time of approval of this agreement, provided that such hazards are not or cannot be corrected and that such hazards, if uncorrected, would pose a serious threat to public health, safety and welfare.

8. Extension of municipal services to the property shall be paid by the developer. All plans for extension of services shall be approved by the town engineer. Improvements shall be constructed to town engineer specifications.

9. Environmental Planning and Development agrees to and shall indemnify and hold harmless the Town of Rico, officers & employees against any and all claims, damages, actions or cause of actions and expenses to which it may be subjected by reason

of any work done or omission made by Environmental Planning and Development, their agents, officers or employaes in connection with, arising out of, or resulting from the performance of this agreement as set forth in this agreement.

10. If any provision of this agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality, enforceability of any other provisions of this agreement. Furthermore, if a material provisions of the agreement is held invalid, illegal or enforceable, the parties hereto agree to renegotiate that provisions to be a valid, legal and enforceable and to reflect as closely as possible the original intent of the parties hereto as expressed herein with respect to the subject matter of that provision.

11. This agreement is intended to be made and shall run with the title to Environmental Planning and Development and shall be binding upon and enure to the benefit of Environmental Planning and Development and its heirs, successors and assigns in ownership of Environmental Planning & Development and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year listed above.

ATTEST:

TOWN OF RICO:

Linda Yellowman
Town Clerk

Kenneth F. Hazen
Mayor

ENVIRONMENTAL PLANNING AND
DEVELOPMENT

BY: James F. Green
Manager