

DISCLAIMER: This document offers opinions from a layman's perspective. It is not, nor intended to be legal advice, nor does it comprehensively discuss all issues.

The Mountain Coaster Decision Opposition

Arguments and References

The simple short position opposing the use of a Coaster is that

- 1) The project is a commercial use, prohibited in Residential zones. It clearly fits the Commercial Recreation and Entertainment Establishment definition, which is not vague at all about ticket sales or a private commercial enterprise.
- 2) The project does not clearly fit in the definition of a Park and Recreation use, which the Town says is permitted. *Even if it did,*
- 3) The Code specifies that if a project fits two classifications, only the most restrictive use can be approved. The Code governs. The commercial use is not allowed in residential zones, so it is more restrictive. Choosing a Park use is the least restrictive.
- 4) For this development, either as a Park & Recreation use or as a Commercial facility in a residential zone, Planning Commission review and attendant public comment cannot be avoided.

Here is the Town's decision basis, as we understand it, from an email dated 06/19/18 in 4 simple steps, and the opposition points, in *parenthesis*.

1. The DEFINITION of Park and Recreation Facility does not explicitly differentiate between **public** recreational facilities and **private** recreational facilities. *(no, only public and nonprofit examples are given)*
2. Both definitions (Recreation Facility AND Commercial Recreation and Entertainment Establishments) are vague. *(no, the terms and examples are clear)*
3. The Mountain Coaster project fits both Park and Recreation Facility AND Commercial Recreation and Entertainment Establishments definitions. They are both legitimate. *(It does not fit Park & Rec, and Town admits it fits the commercial definition)*
4. When that happens, land use protocols and court cases require that the least restrictive definition be used, so as to preserve the owner's property rights. *(EV Code overrides that law. The more restrictive use controls)*
5. Planning Commission review is not required because it fails to meet building sq. ft. and more than 20 parking spaces thresholds.

I. Opposition Arguments & Position

Our arguments and position is as follows:

1. This use is **NOT** a Park and Recreation Facility because it is commercial. That definition clearly describes fully public and nonprofit operations.
2. This use **IS** a Commercial Recreation and Entertainment Establishments- Outdoor facility
3. Even if it fits the residential Park and Recreation definition (which it does not), the commercial use is the more restrictive definition, and governs. If it fits the use, which the Town has admitted in writing that it does, then it prohibits this use in residential zones. Both definitions cannot apply, per the mutually exclusive Code dictate.
4. Commercial Recreation and Entertainment Establishments- Outdoor facility use is NOT allowed Residential zones (this is RE-1 district).
5. The prior “use” of trail rides across it does not establish the parcel as a commercial property.
6. Whether it is permitted in residential zones (which it is not), or nonresidential zones, then Planning Commission review is required. The Codes require PC review for any “park” or “Public Facility/Use Location and extent review” use, and any “development” meeting certain other criteria.
7. IF it is permitted in residential zones by right (although it does not), it fails to meet the requirements of the Comprehensive Plan.

Basis of Position:

EVDC = Estes Valley Development Code

PC = Planning Commission

Yellow highlights are emphasis added to applicable legal texts

Legal authority and references footnoted by a red number in brackets [x], and appears at the end

The arguments against the Town decision are based on the following:

1. The use is NOT a Park and Recreation facility. The Town’s entire position is built on its interpretation of definitions to justify its categorization of where in the code falls the Mountain Coaster Project. Lancaster says that the definition of a Park and Recreation facility [1] does not distinguish between private or public. However, the examples in the definition refer only to nonprofit or repeatedly refer to “public” operations. The absence of “private” indicates that it is intended to apply to only public, not private facilities. The Mountain Coaster is a private enterprise.

2. The use exactly matches the definition of Commercial Recreation and Entertainment Establishments [2]. Lancaster admitted this in an email, so little argument remains. This development involves a “ticketing office” (page 3 of 4 on the project’s Statement of Intent), which definitely makes it commercial beyond the Bond Park example given by the Town, and ONLY fitting under Commercial Recreation and Entertainment Establishments EVDC §13.2 Part 13. [2]

Ticket selling, expressly described in the Commercial definition above, for admission into Parks and Recreation Facilities appears to be prohibited by the obvious and explicit example of nonprofit botanical gardens that is written in the Park and Recreation definition in EVDC §13.2 Part 34.[1]. The Town claims the definitions of Park and Recreation is “vague”, but it is logical that the “nonprofit” description was purposefully added to distinguish the use from the Commercial Recreation and Entertainment Establishments, Outdoor definition [2].

The Town is also relying on the definition of Recreational Facility in 13.3 Part 197 [3], allowed in Residential zones as a Park and Recreation use, which doesn’t explicitly say “no ticket selling” (presumably, in our opinion, because the word Recreation is addressed in the Commercial Recreation definition).

3. The more restrictive use is the commercial one, and it only applies. Town Staff has determined the definition fits BOTH a use permitted under Residential Zones (Park and Recreation Facility)[1] and a use allowed in Nonresidential Zones (Commercial Recreation and Entertainment Establishments, Outdoor).[2]

The Town Administrator states that if the use fits two definitions, the least restrictive use is permitted, per court cases. However, code language overrides case law (unless the particular code is reviewed and rejected). The EVDC §1.8 says the opposite of the Town Administrator’s position– the most restrictive use shall govern [4].

Furthermore, both definitions cannot be applied. EVDC §4.2 (B)(5) [5] expressly says the use classifications on the use Tables (discussed below) are “intended to be mutually exclusive”. That means since Lancaster admitted it fits the definition of the commercial outdoor recreation establishment, it cannot also meet the definition of Park and Recreation.

4. That ticket selling for admission shouldn’t be allowed in the residential part of the code also is implied, because the explicit “ticket selling” language is in the Commercial Recreation and Entertainment Establishments definition’s text (§13.2.13)[2], and the use of such commercial recreation establishments is absent from the residential use Table 4.1 (discussed below). It is logical to assume that language was intended to limit that activity to just commercial zones.

It is obvious that “ticket selling” language is intended to differentiate against other public uses allowed in residential areas. The Town, however, has referred to the example in a meeting with us—the Farmer’s Market in Bond Park. Hunt said the Park and Recreation definition was applied to the use of that area, but admitted no purchased admission tickets are required to enter. The Town justifies commercial activity in Park and Recreation Facilities by claiming that the definition contains no restriction against charging fees or commercial activities. The Town makes no mention of the explicit example (nonprofit) of botanical gardens. It was under this interpretation that they determined commercial activity in Bond Park, as defined in EVDC §13.2 Part 54, [2] was permissible. Bond Park is not a residential zone, however, and no ticket is needed to enter, say the Farmer’s Market .

This justification clearly ignores the numerous references to “public” in the Park & Recreation Facility examples, and the fact that this development is private (not public), and that the botanical gardens description is just given by way of example of a “nonprofit” permissible use. It is interesting to note the word “private” appears nowhere in the examples.

The commercial use defined is NOT allowed in RE-1. The use Tables in the Code summarize which of the defined uses are allowed in the Residential districts (Table 4-1) [5], and the Nonresidential districts (Table 4-4)[6].

EVDC §4.2 (B)(5) [4], excerpted above, also states that “If a use type is specifically listed in the table, that use type is allowed only in the districts indicated. The “Commercial Recreation and Entertainment Establishments, Outdoor” classification is on the Nonresidential Table 4-4,[6], but not in the Residential useTable 4-1[5]. In other words, as Lancaster admitted in writing, it fits the latter definition, and it is ONLY allowed in NonResidential zones.

Yes, Park and Recreation use is permitted in all residential as well as commercial zones, but the other use, outdoor commercial recreation, is clearly omitted from permitted uses in residential zones, Table 4-1 [5]. It is a commercial use, not allowed in residential zones. The project is in a residential zone (RE-1).

The fact that Outdoor Commercial use is NOT listed in the Residential zone Table [5] clearly indicates that use is NOT allowed in residential zones. It is a commercial use, not allowed in residential zones, unless it is listed in Table 4.1, per EVDC §4.2 (B)(5) [4].

In short, the more restrictive definition, per EVDC Code §1.8 [3], applies, and that use is prohibited in Residential zones.

5. The property classification has not been changed by its current use. The Town has posted a list of FAQs and answers. In one section, the Town argues that because

Sombrero Stables has been using the property for its trail rides, it is already in commercial use. This argument has no merit. The Walker family has simply given permission to allow the Stables to occasionally use their own property. Do the trail rides and Green Jeep tours in the Park now mean that a Dairy Queen can be constructed in the Park?

Importantly, though, horseback riding is compatible with residential character. An outdoor commercial amusement facility is incompatible.

6. Planning Commission review is required. If the Park and Recreation use applies, as the Town claims (which it does not, as described above), Planning Commission review is required.

a. Review as a park. Table 4-1 [5] and in Table 4-4 [6] which summarize the uses allowed in Residential and NonResidential zones. The right most column of Table 4-1 [5] clearly marks a required review under is EVDC §3.13 [7], described as a Public Facility/Use Location and Extent Review [5][7].

A planning commission review of all parks is required by state law [8] as explicitly implemented in EVDC §3.13 [7]

If it is outdoor commercial recreation activity, that use is not shown in Residential zones, and the review standards in NonResidential zones in Table 4-4 do not apply, as it is zoned as residential zone RE-1.

But, if the Town prevails on its argument that it is Park and Recreation classification, they cannot avoid a Location review by the Planning Commission.

b. Review as a “development”.

The Town states that the Staff has final decision making authority, and no PC review is required, because the building is under the 10,000 sq.ft. building and 21 parking space threshold. These criteria are in EVDC §3.8- ‘Development Plan Review’ and Table 3-3 [9], under review of NonResidential Development in Any Zoning District. This same table shows it must be reviewed by Planning Commission. If the plan has a “Determining Factor” described as “Major alterations that also entail alterations to the number of parking spaces, the configuration of parking, ingress, egress, water, sewer, drainage or lighting on the premises” that are over 10,000 s.f. in area”. [9], Planning Commission review is required. In all Nonresidential development, in any Zoning District, a similar states that any “major alterations that also entail alteration to the number of parking spaces, the configuration of parking, ingress, egress, water, sewer, drainage or lighting on the premises” , require Planning Commission review. It is very likely that the entire development, including the driveway, parking spaces, building and the Coaster itself, would easily encompass over 10,000 sq.ft.

(“Nonresidential Development” seems inconsistent in residential zones, but some construction other than dwelling units and accessory uses are allowed in some residential zones, such as utilities, day care centers or schools.)

Additionally, EVDC §13.3—Definitions-- #80 [3] applies, which defines a “development” as

1. “carrying out of any material change in the use or appearance of the land
2. “any change in the intensity of use of land...”;and
- 8: “...the deposit of refuse, solid or liquid waste

There is significant excavation, intense public use, and some use of Sombrero fill.

The Town’s FAQs ignore the “park” definition that requires PC review, and it also states that because the proposed building has a 1000 s.f. or less footprint, and less than 21 parking spaces, it does not meet the threshold for review under EVDC §3.8 Table 3-3 [9]. The omission of the other development factors is in error. It is also of importance to note that the Town has admitted that once the plan is approved, the owner can add as many parking spaces as desired, without further review. It is likely this plan of 19 spaces and then shuttling extra patrons from other parking areas is just an attempt to get the plan under the 21 parking space threshold, which plan will be abandoned on approval.

In summary, PC review is required if it is a “park” or as a development that requires a large area of alterations.

EVPC review, a final decision by the PC, and the attendant opportunity for public comment and input cannot be ignored.

To not meet this additional requirement violates the law and avoids due process. This applies whatever definition interpretation you have (e.g., whether you use the Parks and Recreation use in either Table 4.1 or in the Commercial use in Table 4.4 of the EVDC.

The procedural requirement in the Code is clear and unambiguous. Unless the Town does this, it is in violation. Unless the Town meets this additional requirement, it is a good basis for plaintiffs to first ask a court for:

- (a) an injunction, and
- (b) a declaratory judgment interpreting the law.

Perhaps the Town intends to meet this requirement at some later stage, but it already has given preliminary approval, stated repeatedly in public comments there is no right to PC review, and the Town Administrator has affirmed its staff approval on the record.

7. The Comprehensive Plan applies. The Town’s decision fails to meet the clear directives of the Comprehensive Plan. EVDC § 1.8 requires implementation of the Comprehensive Plan.[10]. There are numerous standards in the Plan [11] that have been ignored, for example “visually sensitive areas, wildlife migration routes and habitat...” “the perceived openness” of the North End, etc.

II Appendix (for reference)

- **[1] EVDC § 13.2.34 Park and Recreation Facilities.** Parks, playgrounds, recreation facilities and open spaces. This classification includes public parks, cemeteries, public squares, plazas, playgrounds, ballfields, public recreation areas, nonprofit botanical gardens and nature preserves. Golf courses are classified separately as a recreational use.

[2] USE CLASSIFICATIONS/SPECIFIC USE DEFINITIONS AND EXAMPLES

A. Purpose and Applicability. Use classifications classify land uses and activities based on common functional, product or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered and site conditions. The use classifications provide a systematic basis for assigning present and future land uses into appropriate zoning districts.

B. Uses Not Classified. Any new use, or any use that cannot be clearly determined to be in an existing use classification pursuant to the use classification procedure set forth in §3.12, shall be prohibited until and if such use is incorporated into the zoning regulations by a code text amendment, as provided by §3.3 of this Code.

C. Use Classification/Specific Use Definitions and Examples. This Section sets forth specific use classifications in alphabetical order. A general definition is typically provided for each use classification, and in many instances examples are provided of specific uses that fall within the broader use classification. When a specific use example is provided, the example should satisfy both the broader classification's general definition as well as the definition of the specific use, if provided. Finally, the text may provide specific examples of uses that are not included in a particular use classification (referred to in the text as "exceptions").

....

.. 13. Commercial Recreation or Entertainment Establishments, Outdoor.

a. General Definition : Any outdoor enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the gates of the activity. Activities may take place in a number of structures that are arranged together in an outdoor setting. Accessory uses may include concessions, restaurants, parking, caretaker's quarters and maintenance facilities.

b. Examples : This classification includes go-kart tracks, outdoor mazes, riding academies, roping arenas, livery stables, equestrian arenas, amusement parks, golf driving ranges, miniature golf facilities and zoos.

c. Exceptions : This use classification does not include the following:

- (1) Concert halls, stadiums, race tracks of any kind, or other similar facilities intended to attract large crowds in excess of one thousand (1,000) persons. Uses that draw large numbers of people to periodic events, rather than on a continuous basis, are classified as major entertainment events;
- (2) Outdoor shooting ranges;
- (3) Golf courses, which are classified separately under "Golf Course" below.

[3] § 13.3 - DEFINITIONS OF WORDS, TERMS AND PHRASES

...
54. Commercial Use shall mean activity involving the sale of goods or services carried out for profit

...
80. Development shall mean the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land...
1.. “carrying out of any material change in the use or appearance of the land
2. “any change in the intensity of use of land...”;and
8: “...the deposit of refuse, solid or liquid waste

....
197. Recreational Facility shall mean a place designed and equipped for the conduct of sports or passive and/or active recreational activities.

[4] EVDC § 1.8: “When the provisions of this Code are inconsistent with one another, or when the provisions of this Code conflict with the provisions found in other ordinances, codes or regulations adopted by the Town of Estes Park or Larimer County, **the more restrictive provision shall govern** unless the terms of the provisions specify otherwise.

[5] EVDC § 4.2 Compliance with District Standards

A. Compliance Required. No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed in use except in accordance with all of the regulations established by this Code for the zoning district in which the land, building, or structure is located.

B. Use Tables—Permitted Uses. Use Tables 4-1 and 4-4 (below) set forth the use classifications and specific uses permitted within the relevant zoning districts.

1. Permitted By-Right Uses. A "P" in a cell indicates that a use classification or specific use is allowed by right in the respective zoning district. Permitted by-right uses are subject to all other applicable regulations of this Code, including the General Development Standards set forth in Chapter 7.

2. Special Review Uses. An "S" in a cell indicates that a use category is allowed only if reviewed and approved as a Special Review Use, in accordance with the Special Review procedures of [§3.5](#).

3. Uses Not Allowed. A "—" in a cell indicates that a use type is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Code.

4. Additional Regulations. Many uses are subject to additional use-specific regulations (in addition to Chapter 7 regulations that apply to all development in general). The final column of the use table contains references to applicable use-specific standards, which are set forth in [§5.1](#) of Chapter 5, "Use Regulations." Standards referenced in the Additional Regulations column apply in all zoning districts unless otherwise expressly stated.

5 Use Classifications/Specific Use Types. All of the use classifications listed in Tables 4-1 and 4-4 are described and defined in Chapter 13, [§13.2](#) of this Code. In some cases, specific uses are listed in the second column of the table. The use classifications are intended to be **mutually exclusive**. If a use type is specifically **listed** in the table, that use type

is allowed **only in the districts indicated**, not within the districts that may allow the broader classification.

C. Uses Not Listed as Permitted. Uses not specifically listed as permitted by right or by special review in a specific zoning district, as depicted in Use Tables 4-1 and 4-4, are prohibited unless such use is subsequently permitted pursuant to the use classification procedure set forth in [§3.12](#) of this Code, or the rezoning/amendment procedure set forth in [§3.3](#) of this Code.

[6] EVDC § 4.1 - Establishment of Districts

Table 4-1 (excerpt)										
Permitted Uses: Residential Zoning Districts										
Use Classification	Specific Use	Zoning Districts								Additional Regulations (Apply in All Districts Unless Otherwise Stated)
		"P" = Permitted by Right								
		"S1 or S2" = Permitted by Special Review								
		"—" = Prohibited								
		RE-1	RE	E-1	E	R	R-1	R-2	RM	
Household Living	Single-family dwelling	P	P	P	P	P	P	P	P	In R-1, §4.3.D.4 applies (Ord. 18-01 §13)
Hospital		—	—	—	—	—	—	—	S2	
Park and Recreation Facilities		P	P	P	P	P	P	P	P	§3.13, Location & Extent Review
Park and Ride Facilities		—	—	—	—	—	P	P	P	
Golf Course		P	S2	S2	S2	—	—	—	—	§5.1C
ACCESSORY USES; SEE §5.2 "ACCESSORY USES AND ACCESSORY STRUCTURES"										
TEMPORARY USES; SEE §5.2 "TEMPORARY USES AND STRUCTURES"										

[6] EVDC § 4.4 - Nonresidential Zoning Districts

Table 4-4 (excerpt)									
Permitted Uses: Nonresidential Zoning Districts									
Use Classification	Specific Use	Zoning Districts							Additional Regulations (Apply in All Districts Unless Otherwise Stated)
		"P" = Permitted by Right							
		"S1 or S2" = Permitted by Special Review							
		"—" = Prohibited							
		A	A-1	CD	CO	CH	I-1		
Park and Recreation Facilities		P	P	P	P	P	—	—	§3.13, Location & Extent Review
Commercial Recreation or Entertainment Establishments, Outdoor	Amusement parks	—	—	—	S2	—	—	—	§5.1.C
	Miniature golf	—	—	—	S1	—	—	—	§5.1.C
	Riding academies, livery stables, roping or equestrian arenas	S2	—	—	S2	—	—	—	§5.1.C
	All other	—	—	—	S2	—	—	—	§5.1.C
Entertainment Event, Major	Indoor Facility	S2	—	S2	S1	—	—	—	§5.1.C
	Outdoor Facility	—	—	—	S1	—	—	—	§5.1.C

Note that once this activity is defined by the Town as Park and Recreation use, instead of a Commercial Outdoor Recreation use, now these type facilities also can go in BY RIGHT in 4 of the 6 nonresidential zones, and in a 5th by special review, too. In other words, they can put them in accommodations and just about all other nonresidential zones.

[7] EVDC §3.13 - Public Facility/Use Location and Extent Review

Public Facility/Use Location and extent review’—“A proposed development plan shall be submitted to the Estes Valley Planning Commission for approval, pursuant to the development plan approval process set forth in §3.8 of this Chapter.”

This section expressly requires a “review of the location and extent of specified public facilities and uses” and “especially as to whether such public use is consistent with the Estes Valley Comprehensive Plan and this Code.”.

(There is another Code section that allows the Town to waive development plan submissions, but that is left to another discussion).

The code section above also requires application of this State statute 30-28-110 [8], below, which requires review by a planning commission if a master (i.e. comprehensive) plan has been adopted. The review does not limit it to projects with buildings or permanent development. All parks, whether publicly or privately owned, must be reviewed, so even if the Staff opinion that it is not a “development” prevails, it still must go to the PC.

[8] Colorado Revised Statutes (as of 06/27/18 on website)

30-28-110. Regional planning commission approval - required when - recording

(1) (a) Whenever any county planning commission or, if there is none, any regional planning commission has adopted a master plan of the county or any part thereof, no road, park, or other public way, ground, or space, no public building or structure, or no public utility, whether publicly or privately owned, shall be constructed or authorized in the unincorporated territory of the county until and unless the proposed location and extent thereof has been submitted to and approved by such county or regional planning commission.

(b) In case of disapproval, the commission shall communicate its reasons to the board of county commissioners of the county in which the public way, ground, space, building, structure, or utility is proposed to be located. Such board has the power to overrule such disapproval by a vote of not less than a majority of its entire membership. Upon such overruling, said board or other official in charge of the proposed construction or authorization may proceed therewith.

(c) If the public way, ground, space, building, structure, or utility is one the authorization or financing of which does not, under the law governing the same, fall within the province of the board of county commissioners or other county officials or board, the submission to the commission shall be by the body or official having such jurisdiction, and the commission's disapproval may be overruled by said body by a vote of not less than a majority of its entire membership or by said official. In the case of a utility owned by an entity other than a political subdivision, the submission to the commission shall be by the utility and shall not be by the public utilities commission; however, the commission's disapproval may be overruled by the public utilities commission by a vote of not less than a majority of its entire membership.

(d) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, or sale or lease of or acquisition of land for any road, park, or other public way, ground, place, property, or structure shall be subject to similar submission and approval, and the failure to approve may be similarly overruled.

(e) The failure of the commission to act within thirty days after the date of official submission to it shall be deemed approval, unless a longer period is granted by the submitting board, body, or official.

...

Lexis is the legal reporting service that Colorado uses for displaying its statutes. Lexis notes, below, are excerpted from the website:.

....

One of the purposes of this section is to provide a method by which the county through its planning commission can inform and advise other governmental units of the effects of their proposed actions upon the county and its residents. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

It is incumbent upon entity having jurisdiction over project to submit proposal to county planning commission, even though such entity has authority to later override the planning commission's disapproval. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

In order that county residents may present objections and views. Even though a town may affirmatively overrule a county's decision regarding the town's proposed construction of a sewage plant, the residents of the county are entitled to an opportunity to present their objections and views and to have these considered as part of the planning commission's approval or disapproval and to require that if construction is to proceed, the town must determine to proceed in the face of county's objection. *Blue River Defense Comm. v. Town of Silverthorne*, 33 Colo. App. 10, 516 P.2d 452 (1973).

Disregard of zoning regulations. Even without definite statutory direction, as found in this section, courts of last resort have recognized that districts, authorities, and other state authorized governmental subdivisions have the power to overrule or disregard the restrictions of county or

municipal zoning regulations. *Reber v. South Lakewood San. Dist.*, 147 Colo. 70, 362 P.2d 877 (1961); *Hygiene Fire Prot. Dist. v. Bd. of County Comm'rs*, 205 P.3d 487 (Colo. App. 2008), *aff'd*, 221 P.3d 1063 (Colo. 2009).

Law reviews. For **article**, "Recent Developments in Zoning Law in Colorado", see 39 *Dicta* 211 (1962). For **article**, "1974 Land Use Legislation in Colorado", see 51 *Den. L.J.* 467 (1974). For **article**, "Inverse Condemnation -- A Viable Alternative", see 51 *Den. L.J.* 529 (1974).

[9] EVDC § 3-8- 'Development Plan Review'—Table 3-3

.....
B. Applicability. All development set forth in Table 3-3 below shall be required to submit a development plan for review

.....

**Table 3-3
 Development Plan Review Requirements**

Determining Factor	Staff Review	EVPC Review
All Nonresidential Development, Except Accommodations Development, in any Zoning District (Ord. 8-05 #1)		
Number of Parking Spaces	10 - 20	21 or more
Construction of Gross Floor Area	2,000 - 10,000 sq. ft.	More than 10,000 sq. ft. (Ord. 8-05 #1)
Major alterations that also entail alteration to the number of parking spaces, the configuration of parking, ingress, egress, water, sewer, drainage or lighting on the premises (Ord. 8-05 #1)	2,000 - 10,000 sq. ft.	More than 10,000 sq. ft. (Ord. 8-05 #1)
All Residential or Accommodations Development (Ord. 8-05 #1)		
Number of New Dwellings, Guest Units and/or RV pad/campsites (Ord. 8-05 #1)	3 - 10	11 or more

Determining Factor	Staff Review	EVPC Review
<p>Major alterations that also entail alteration to the number of parking spaces, the configuration of parking, ingress, egress, water, sewer, drainage or lighting on the premises (Ord 18-01 #7; Ord. 8-05 #1)</p>	<p>3-10 dwellings, guest units and/or RV pad/campsites (Ord. 8-05 #1)</p>	<p>11 or more dwellings, guest units and/or RV pad/campsites (Ord. 8-05#1)</p>

(Ord. 18-01 #6, 7; Ord. 8-05 #1; Ord. 17-17, §1)

.....
C.2.

Step 4: EVPC Review and Action. All development plans subject to **EVPC review**, as shown in Table 3-3 above, shall be reviewed by the EVPC, who shall take **final action** by either approving, approving with conditions or denying the application.

[10] EVDC §1.3: "...the regulations of this Code are **intended to implement** the 1996 Estes Valley Comprehensive Plan, as amended..."

Part H: "Encourage non-residential development that preserves and protects the character of the community, including its natural and cultural landscape, and that **minimizes objectionable noise, glare, odor, traffic and other impacts that such development, especially when adjacent to residential uses or downtown historic core.**"

[11] The COMPREHENSIVE PLAN

a. Chapter 4: "Future Land Use within the Valley— The Plan proposes **limited** development on steep slopes, visually sensitive areas, wildlife migration routes and habitat..."

b. Chapter 6, Part 6.6—"Ensure that new development **minimizes the impacts to visual and environmental quality** within the Valley".

c. Chapter 6—Planning Area 1- The North End. "The North End is visible from a number of locations within the Estes Valley, and perceived openness of this area, if lost, will affect the image of the entire Valley.

Of further note are the Larimer County development codes. While they do not apply, it may be of interest to the reviewing Court as at least a guidance to interpretation. The County code does not appear to have a Parks and Recreation category, like the EVDC but it does have a "Recreational" category, with "Place of Amusement or Recreation" as a specific use that is prohibited in every residential district, including RE-1, allowed by special review only, and only in a handful of commercially oriented zoning districts. Also there is this interesting provision (4.3.5.D.1.): "A place of amusement or recreation that involves any activity outside of a building,

except for the parking of customers' cars, requires approval through the special review process."

Since Frank Lancaster, Randy Hunt, and new planner Jeff Woemer were all involved with Larimer County development for years, they are no doubt aware of these codes. We suspect they will simply take the position that the Estes Valley, being a tourist destination, intentionally wrote its Code to support the free development of tourist facilities.