

**TOWN OF LYONS, COLORADO
RESOLUTION 2020-65**

**A RESOLUTION OF THE TOWN OF LYONS, COLORADO OVERTURNING A
DECISION OF THE LYONS PLANNING AND COMMUNITY DEVELOPMENT
COMMISSION ON APPEAL OF PCDC RESOLUTION 2020-03, A RESOLUTION OF
THE TOWN OF LYONS PLANNING AND COMMUNITY DEVELOPMENT
COMMISSION APPROVING A DEVELOPMENT PLAN
(0 Carter Drive – Lyons Valley Park, Inc.)**

WHEREAS, pursuant to C.R.S. § 31-23-301, the Town of Lyons (the “Town”) possesses the authority to regulate land uses within the Town of Lyons; and

WHEREAS, pursuant to Lyons Municipal Code § 16-17-30(g), the Planning and Community Development Commission for the Town of Lyons, Colorado (“PCDC”), shall take final action at a public hearing to approve, conditionally approve, or deny a development plan based on the applicable review criteria; and

WHEREAS, LMC § 16-17-40 provides the relevant applicable review criteria for a development plan public hearing (“Review Criteria”); and

WHEREAS, the Town lost the majority of its affordable housing stock in the historic floods of September of 2013; and

WHEREAS, as part of The Colorado Action Plan for Disaster Recovery the Town received \$4 million of Community Development Block Grant – Disaster Recovery (“CDBG-DR”) Housing New Construction funding to support affordable housing development in Lyons; and

WHEREAS, in 2018, the Town entered into a Purchase and Sale Agreement with Lyons Valley Park, Inc. for Tract A of Filing 8 of the Lyons Valley Park development (“Tract A”); and

WHEREAS, the Town issued a Request for Proposals and interviewed and accepted the proposal of the Summit Housing Group (“Summit” or “Applicant”) for an affordable housing development in Tract A; and

WHEREAS, Summit, on behalf of Lyons Valley Park, Inc., submitted an application for approval of a Development Plan for a multi-family housing development (“the Project”) on Tract A; and

WHEREAS, Summit’s has received Colorado Housing and Finance Authority (“CHAFA”) 4% Low Income Housing Tax Credits and CDBG-DR support to develop affordable housing on Tract A as part of the Project; and

WHEREAS, pursuant to 16-17-30(a), Summit has attended a pre-application conference with Town Staff for the project; and

WHEREAS, pursuant to 16-17-30(b), Summit has submitted a development plan application for the Project (the “Application”); and

WHEREAS, pursuant to 16-17-30(c), Town Staff has certified the application as complete; and

WHEREAS, pursuant to 16-17-30(d), the Application has been submitted to referral agencies for review and the comments of the referral agencies have been submitted to Summit; and

WHEREAS, pursuant to 16-17-30(e) Summit has submitted a revised application for final review based on the comments of the referral agencies; and

WHEREAS, on March 10, 2020, the PCDC conducted a public hearing on the Application pursuant to LMC § 16-17-30(g), following the provision of lawfully required notice to the public; and

WHEREAS, the PCDC unanimously voted to approve the Application based on a review of the evidentiary record against the Review Criteria; and

WHEREAS, LMC § 16-70-60(b) provides that the decision of the PCDC on a Development Plan may be appealed by the applicant, any party holding a proprietary or possessory interest in the real or personal property that was the subject of the decision by the PCDC whose action is to be appealed, owners of property located within three hundred (300) feet of the boundaries of the subject property, and the Town of Lyons Board of Trustees (the “Board”); and

WHEREAS, on March 16, 2020, the Board unanimously decided to invoke its right to appeal the decision of the PCDC to review the decision for abuse of discretion by the PCDC consistent with the requirements of LMC § 16-17-60(e); and

WHEREAS, the Board has review the evidentiary record that was before for the PCDC at the time of hearing consisting of the Application, the presentations of Summit and Town Staff, the written reports of Town Staff and Summit, the written comments of the referral agencies, and public comment submitted to the PCDC both written and oral (collectively the “Evidentiary Record”); and

WHEREAS, the Board finds that decision of the PCDC is not reasonably supported by any competent evidence in the Evidentiary Record and is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF LYONS, COLORADO, THAT:

Section 1. The above recitals are hereby incorporated by reference.

Section 2. The Board has reviewed the Evidentiary Record before the PCDC and hereby finds:

- a) The PCDC held a lawful and duly noticed public hearing on the Application where public comment was taken, and the Evidentiary Record was assembled.
- b) The decision of the PCDC is not reasonably supported by any competent evidence in the Evidentiary Record and is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.
- c) The PCDC erred in its technical interpretation of the applicable requirements of the LMC.
- d) The decision of the PCDC is contrary to the past interpretations of the LMC.
- e) The PCDC decision is contrary to the Town's development goals and objectives.
- f) The PCDC decision is contrary to the Comprehensive Plan.

Section 3. This Resolution shall become effective immediately upon adoption by the Board of Trustees.

ADOPTED THIS 13TH DAY OF APRIL, 2020.

TOWN OF LYONS

Connie Sullivan, Mayor

ATTEST:

Dolores Vasquez
Town Clerk