

**Town of Basalt, Colorado
Ordinance No. 16
Series of 2011**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BASALT,
COLORADO, AMENDING THE APPROVALS GRANTED IN ORDINANCE NO.
18, SERIES OF 2009, ALLOWING AMENDMENTS TO THE APPROVAL
DOCUMENTS REGARDING POSTING OF FINANCIAL SECURITY FOR
PUBLIC IMPROVEMENTS FOR THE STOTT'S MILL SUBDIVISION/PUD,
BASALT, COLORADO**

RECITALS

A. The Town of Basalt ("Town"), acting by and through its Town Council ("Town Council"), has the power to amend subdivision and PUD development approvals. MSP1 LLC. ("Applicant") applied to the Town on June 29, 2011, requesting approval to amend the approvals granted in Ordinance No. 18, Series of 2009, to allow for deferral of posting financial security for the public improvements associated with the Stott's Mill Subdivision/PUD. The property subject to the application is more fully described in **Exhibit A** attached hereto.

B. At a public meeting held on July 26, 2011, the Town Council considered this Ordinance on first reading and continued and set a public hearing and second reading for this Ordinance for August 9, 2011, at a meeting beginning no earlier than 6:00 pm at the Basalt Town Hall, 101 Midland Avenue, Basalt, Colorado.

C. At a public hearing and second reading on August 9, 2011, the Town Council heard evidence and testimony as offered by the Town Staff, the Applicant, and members of the public.

D. The Town Council finds and determines it is in the best interests of the Town to approve this Ordinance. The Town Council finds and determines this Ordinance is reasonable and consistent with the Town Code. Further, the Town Council finds and determines this Ordinance is reasonably necessary to promote the legitimate public purposes of the public health, safety and welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF
THE TOWN OF BASALT, COLORADO AS FOLLOWS:**

A. FINDINGS. The Town Council hereby incorporates by reference and conclusively makes the above findings.

B. CONDITIONS.

1. The proposed amendment to the Stott's Mill Subdivision/PUD approvals established pursuant to Ordinance No. 18, Series of 2009 (referred to hereafter as the "Approval Ordinance"), permitting the deferral of the financial security for the required public improvements is approved and Condition No. 18, Exhibit J of Ordinance No. 18, Series of 2009 is hereby amended as included in **Exhibit B** attached hereto.

2. The Applicant shall comply with all material representations made by the Applicant in the meetings before the Town Council.

3. The deadline for recording the necessary documents to effectuate the Stott's Mill approvals as specified in Ordinance No. 18, Series of 2009 is hereby extended to November 8, 2011.

C. MISCELLANEOUS.

1. The approvals and conditions contained herein shall be binding on and inure to the benefit of the heirs, successors and assigns of the Applicant and the owners of the Property.

2. This Ordinance, after fully executed, shall be recorded in the office of the Clerk and Recorder of Pitkin County.

3. If any part, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance and the Town Council hereby declares it would have passed this Ordinance and each part, section, subsection, sentence, clause or phrase thereof regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

READ ON FIRST READING, ORDERED PUBLISHED AND SET FOR PUBLIC HEARING TO BE HELD ON August 9, 2011, by a vote of 6 to 0 on July 26, 2011.

READ ON SECOND READING AND ADOPTED, by a vote of 5 to 0 on August 9, 2011.

TOWN OF BASALT, COLORADO

By: _____
Leroy Duroux, Mayor

ATTEST:

Pamela K. Schilling, Town Clerk

Ord16-StottsMillAmendment.doc

Bill to: 24—111

First Publication: Thursday, August 4, 2011
Final Publication: Thursday, August 18, 2011
Effective Date: Thursday, September 1, 2011

Exhibit A to Ordinance No. 16, Series of 2011

The Property:

PROPERTY DESCRIPTION

A PARCEL OF LAND SITUATED IN GOVERNMENT TRACT 59, SECTION 18, TOWNSHIP 8 SOUTH, RANGE 86 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF PITKIN, STATE OF COLORADO LYING NORTHERLY OF THE DENVER AND RIO GRANDE WESTERN RAILROAD NORTHERLY RIGHT-OF-WAY, SOUTHERLY OF THE HOME SUPPLY DITCH CENTERLINE, WESTERLY OF THE EASTERLY BOUNDARY OF SAID TRACT 59, AND EASTERLY OF THE EASTERLY BOUNDARY OF GOVERNMENT TRACT 62, ALSO LOCATED IN SAID SECTION, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT ANGLE POINT NO.7 OF SAID TRACT 59, A BRASS CAP FOUND IN PLACE; THENCE N 00°48'57" E 468.71 FEET ALONG SAID TRACT 59 EASTERLY BOUNDARY TO A POINT ON SAID DENVER AND RIO GRANDE WESTERN RAILROAD RIGHT-OF-WAY, THE POINT OF BEGINNING; THENCE LEAVING SAID BOUNDARY N 57°19'47"W., ALONG THE NORTHERLY BOUNDARY LINE OF SAID DENVER AND RIO GRANDE WESTERN RAILROAD RIGHT-OF-WAY A DISTANCE OF 1080.27 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF SOUTH SIDE DRIVE; THENCE LEAVING SAID RAILROAD RIGHT-OF-WAY N 00°56'41"E ALONG THE EASTERLY RIGHT-OF-WAY OF SOUTH SIDE DRIVE A DISTANCE OF 617.68 FEET TO A POINT IN THE CENTERLINE OF THE HOME SUPPLY DITCH; THENCE LEAVING SAID EASTERLY RIGHT-OF-WAY THE FOLLOWING TWENTY-TWO (22) COURSES ALONG THE CENTERLINE OF SAID DITCH:

1. S71°30'44"E A DISTANCE OF 56.82 FEET
2. S52°47'38"E A DISTANCE OF 45.26 FEET
3. S71°16'14"E A DISTANCE OF 45.18 FEET
4. S77°30'53"E A DISTANCE OF 51.82 FEET
5. S55°29'58"E A DISTANCE OF 42.09 FEET
6. S64°52'48"E A DISTANCE OF 35.10 FEET
7. N77°18'12"E A DISTANCE OF 44.99 FEET
8. N84°16'01"E A DISTANCE OF 47.61 FEET
9. N62°06'35"E A DISTANCE OF 31.56 FEET
10. N38°04'24"E A DISTANCE OF 78.37 FEET
11. N50°24'51"E A DISTANCE OF 50.37 FEET
12. N44°49'09"E A DISTANCE OF 50.79 FEET
13. N54°25'44"E A DISTANCE OF 33.75 FEET
14. S70°22'45"E A DISTANCE OF 50.06 FEET

15. S77°27'06"E A DISTANCE OF 60.23 FEET
16. S76°09'47"E A DISTANCE OF 44.40 FEET
17. S50°00'52"E A DISTANCE OF 30.88 FEET
18. S28°25'48"E A DISTANCE OF 51.32 FEET
19. S26°14'19"E A DISTANCE OF 98.77 FEET
20. S31°09'46"E A DISTANCE OF 51.73 FEET
21. S58°48'51"E A DISTANCE OF 51.97 FEET
22. N82°37'03"E A DISTANCE OF 82.93 FEET TO POINT ON
THE EASTERLY BOUNDARY OF SAID TRACT 59; THENCE LEAVING
THE CENTERLINE OF SAID DITCH S00°48'57"W ALONG SAID TRACT
BOUNDARY A DISTANCE OF 1015.25 FEET TO THE POINT OF
BEGINNING; SAID PARCEL CONTAINING 18.014 ACRES, MORE OR
LESS.

Exhibit B to Ordinance No. 16, Series of 2011

Amended Condition No 18, Exhibit J (Deleted language is in ~~strikethrough~~ text and added language is underlined).

The Applicant shall provide financial security in a form acceptable to the Town Attorney, in an amount sufficient to secure all of the improvements within both North and South Parks, and the Southside Drive roundabout within the development plus a ten (10%) percent contingency in conjunction with filing the ~~master plat and PUD plan~~ Master Subdivision Improvements Agreement. The Applicant shall prepare the Master Subdivision Improvements Agreement and execute it prior to or contemporaneously with recording the Master Subdivision Plat, Annexation Documents, the PUD Control Document, and other associated approval documents necessary to effectuate the approvals granted in the Approval Ordinance. However, the Master Subdivision Improvements Agreement shall not be finally executed by the Town and recorded until the Applicant is ready to post the necessary financial security as limited below.

The Master Subdivision Improvements Agreement shall be recorded and the necessary financial security posted to the Town's satisfaction prior to the earlier of the following:

- a. The Applicant selling any individual property or lots within the development property; and,
- b. The Applicant applying for a permit to commence construction activities within the development; and,
- c. The expiration of vested rights.

The Applicant shall have a licensed engineer update the cost estimates for the public improvements when the Applicant is ready to post financial security and the amount of financial security shall be based on the updated cost estimates.

The Applicant shall enter into a unity of title agreement with the Town prepared by the Applicant and approved by the Town Attorney requiring that individual properties not be sold off from the remainder of the development property until the necessary financial security has been posted for the public improvements specified above. The unity of title agreement shall be executed and recorded prior to or contemporaneously with recording the other documents necessary to effectuate the approvals granted in Ordinance No. 18, Series of 2009.

Additionally, prior to the issuance of the first building permit or closing on the sale of any lots in an individual block, whichever is earlier, the Applicant shall prepare

and record a subdivision plat for the individual block or blocks that are being developed.

In conjunction with filing the subdivision plats on the individual blocks, the Applicant shall be required to put up sufficient financial security in a form acceptable to the Town Attorney for the public improvements in the block. If the Applicant is proposing to develop multiple blocks at once, they shall be allowed to record multiple block subdivision plats at once, but they would need to put up security for the public improvements on all of the blocks being platted.

The Town may draw on the financial security posted for the public improvements to install any incomplete public improvements or restore the site to an acceptable condition if at any time after the commencement of construction activities the Town Engineer determines that the project or a portion of the project has been abandoned. Abandonment for the purpose of administering this condition shall mean that the Applicant has started improvements, but has stopped all construction activities on the site for a period of more than six (6) months.

No more frequently than once every quarter, Applicant shall be entitled to partial releases or reductions of the Performance Guaranty as portions of the Improvements are completed and approved. In order to obtain a partial release or reduction of the Performance Guaranty, Applicant shall submit a Certificate of Partial Completion signed by an engineer licensed in the State of Colorado or other appropriate professional acceptable to the Town describing the portion of the Improvements completed, and the cost allocation associated with such completed improvements.