



# DHI Telluride Development Agreement Amendment

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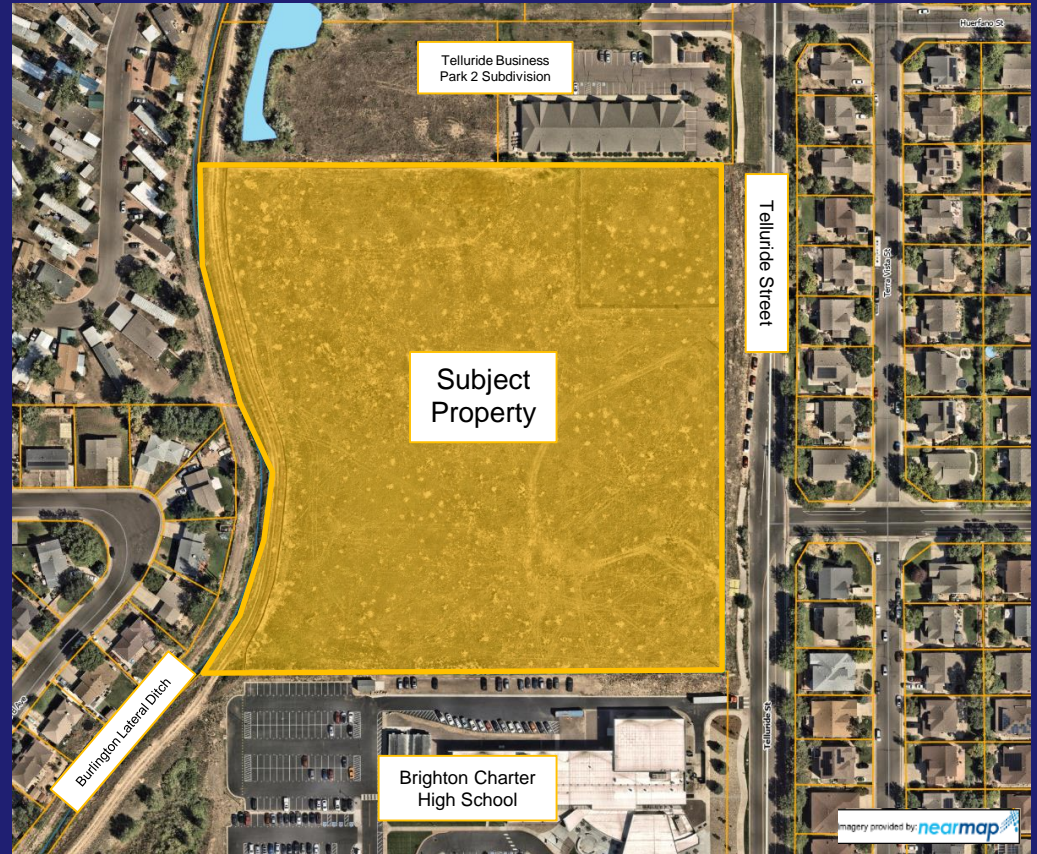
City Council – January 21, 2025

Applicant:	Tamarack Land – Telluride Street, LLC
Project Representative(s):	Brian Bratcher, D.R. Horton - Multifamily Nick Graham, D.R. Horton - Multifamily
City Staff Representative:	Nick Di Mario, AICP, Senior Planner



# Subject Property Location

- The Property is generally located to the east of the Burlington Lateral Ditch, west of Telluride Street, and between the Brighton Charter High School and Telluride Business Park 2 Subdivisions.



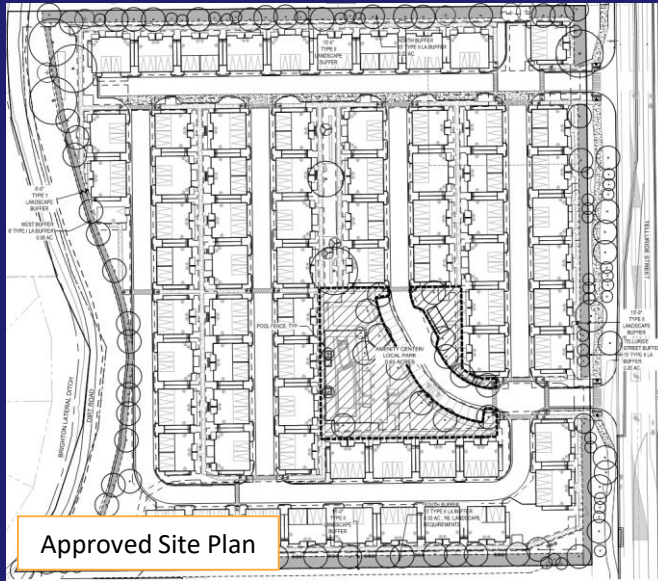
Aerial Map



# Background

## The Property:

- 11.18 acres in size.
- Zoned R-3.
- Final Plat and Development Agreement approved in July of 2024.
- Site Plan for a for-rent, 140-unit residential project was approved in August of 2024.





# DHI Telluride Development Agreement

- Fully executed and recorded in July 2024.
- Details general obligations and understandings.
- Details the timing of public improvements in relation to permit issuance.
- Details the financial guaranteeing of public improvements.
- Details the required public improvements.



## DHI Telluride Development Agreement (cont'd)

### Public Improvement Obligations Include:

- Construction of Telluride Street, both adjacent to property and continuing north to Bridge Street.
- Construction of a stormwater pond south of Southern Street.
- \$50,000 escrow due to the City for pro-rata share of intersection improvements at the intersection of Telluride Street and Bridge Street.



# Proposed DHI Telluride Development Agreement Amendment

- Applicant has proposed an amendment to the executed DHI Telluride Development Agreement.
- Amendment would permit the applicant to pay the development impact fees that were effective April 1, 2024.
- Amendment would exempt applicant from paying development impact fees effective January 1, 2025.
- Amendment would not exempt applicant from paying any new or updated Metro Water Recovery impact fees.
- Amendment details that any permits issued after December 31, 2025 would pay impact fees effective at the time of permit issuance.



# DHI Telluride Development Agreement

## Construction of Telluride Street



# Construction of Telluride Street: Neighborhood Meeting

- Meeting was held prior to subdivision plan submittal on November 10, 2021.

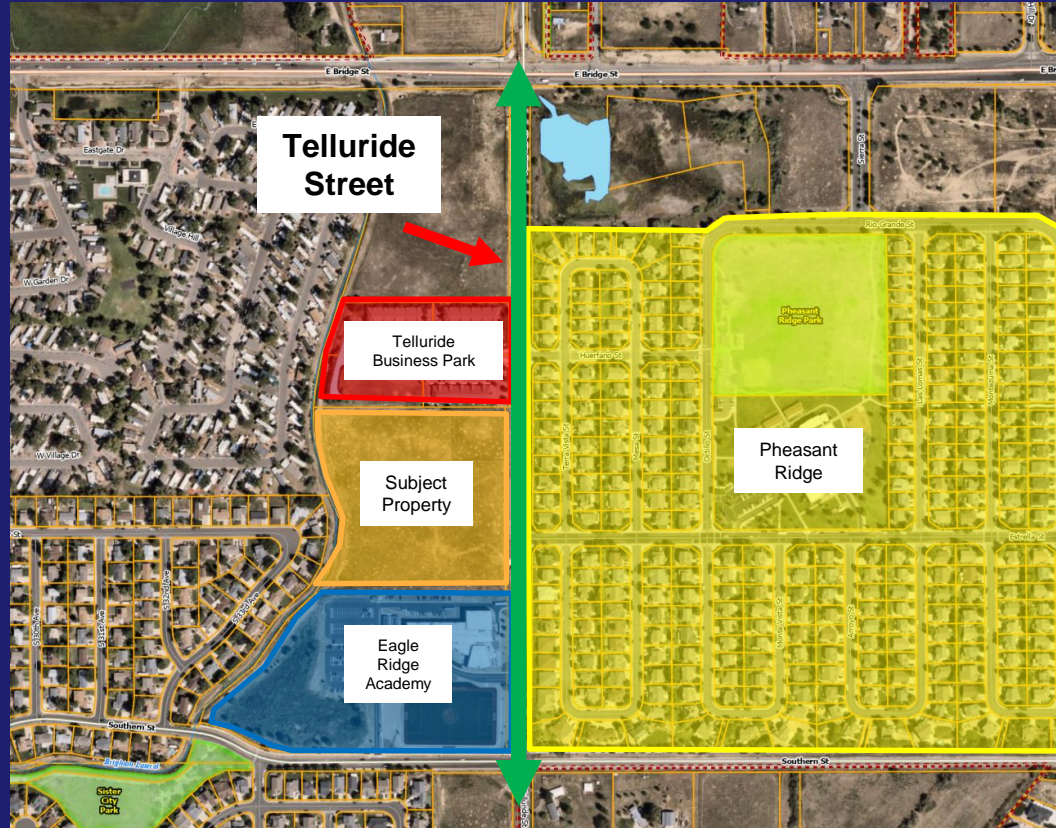
## Resident Concerns Related to Traffic:

- New residential traffic volumes combined with existing residential and high school traffic.
- Long wait times for turning movements at Telluride Street intersection with Bridge Street.



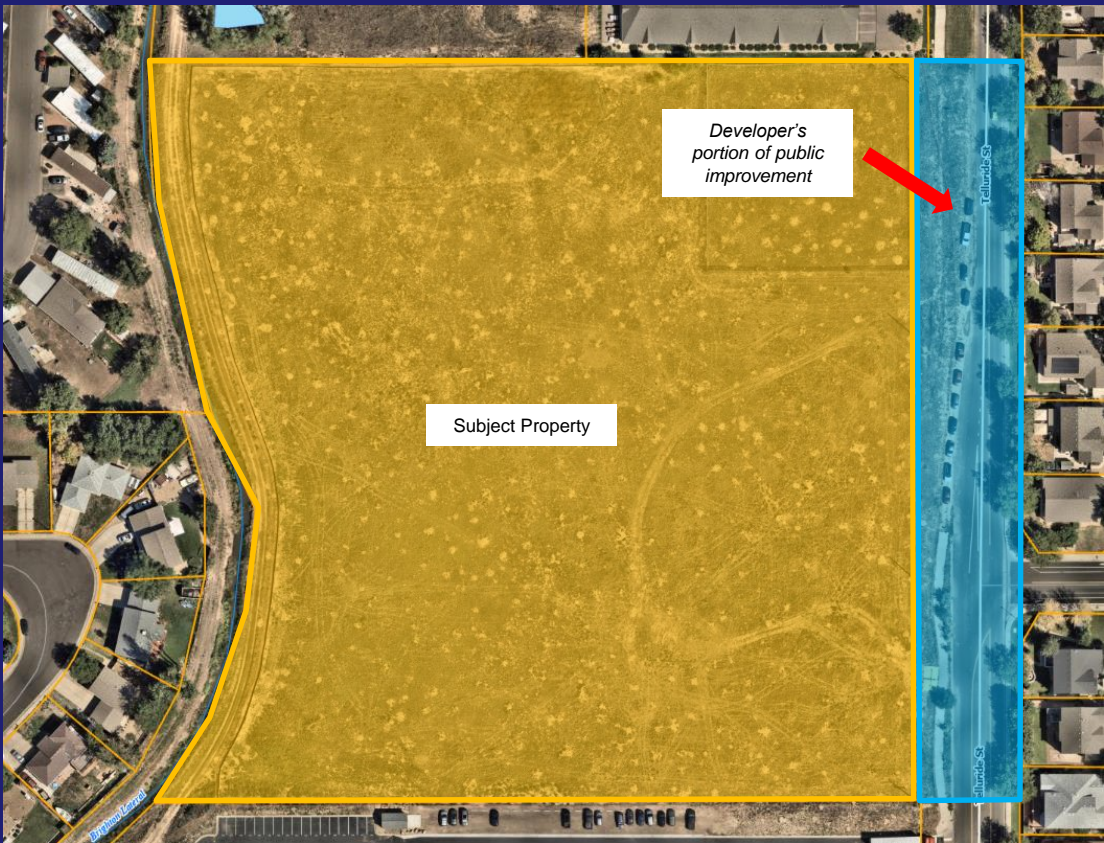


# Construction of Telluride Street (cont'd)





# Construction of Telluride Street (cont'd)





# Construction of Telluride Street (cont'd)

## Telluride Street:

- Designated as a Collector roadway.
- Provides a north / south connection to Bridge Street and Southern Street.

## The Project:

- Is estimated to generate 1,436 daily trips.
- Is estimated to generate 106 daily trips during a.m. peak hours.





## Construction of Telluride Street (cont'd)

- City and applicant entered into a reimbursement agreement for northern portion of Telluride Street on June 6, 2023.
- Reimbursement agreement details a maximum reimbursement of \$903,357.95.
- Reimbursement agreement does not detail where the funds will come from.
- Under 2024 development impact fees, the project would generate \$238,000 in traffic impact fees.
- Under 2025 development impact fees, the project would generate \$495,880 in transportation impact fees.
- Collection of the 2025 transportation impact fee would reduce the City's financial impact of the reimbursement.



# Construction of Telluride Street (cont'd)



*Business park has provided an escrow for this portion of Telluride Street.*



# Ordinance 2454, Fee Resolution 2024-83 and Development Impact Fees



# Development Impact Fees

## City of Brighton Development Impact Fees:

- Fund new capital improvement projects needed to expand services that support the growth of the community.
- Cannot be used to fund staffing or general operations.
- Fee study updated generally every 5 years, but external factors such as significant inflation might cause the City to conduct fee studies sooner.
- Impact fees must be tied to actual growth needs.
- Charged and collected on all new vertical building permits (residential, commercial, industrial).
- If public improvements are required, vertical building permits are issued once all improvements have been completed and accepted.



# Park Related Impact Fees

Eagle View Adult Center



Brighton Sports Complex



Brighton Oasis Family Aquatic Park



Bromley Farm / Koizuma-Hishinuma Farm



Brighton Recreation Center







# Transportation & Multi-Modal Related Development Impact Fees

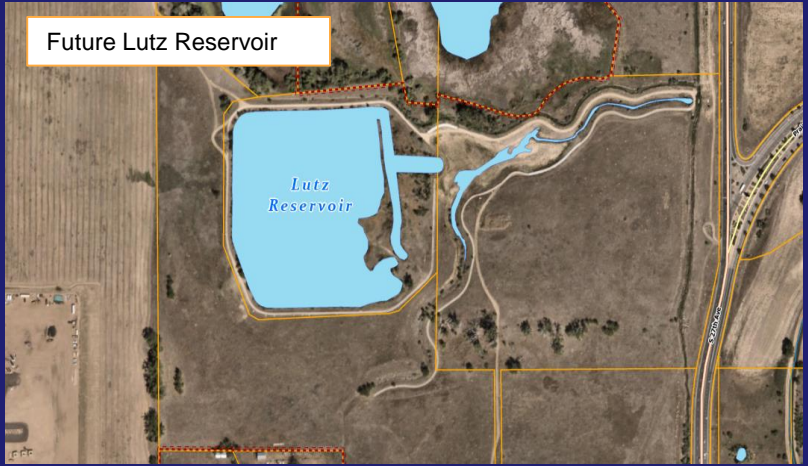


# Utility Related Impact Fees

Water Treatment Plant Expansion



Future Lutz Reservoir

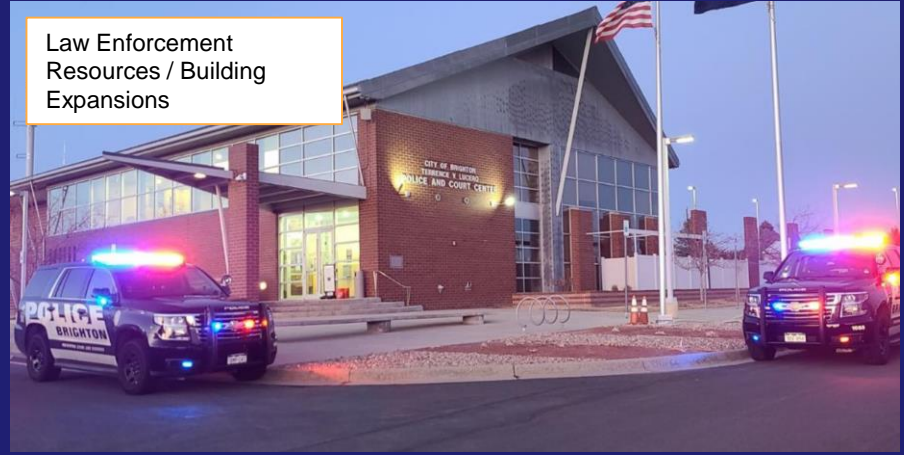




# General Services Impact Fee



Snowplows



Law Enforcement Resources / Building Expansions



# Fee Resolution 2024-83

- Approved in October of 2024.
- Became effective January 1, 2025.
- Added a new impact fee (general services impact fee).
- Increased some impact fees, redefined others.
- Fee increase / redefinition process began in Q4 of 2022.

Development Impact Fees	1-Apr-24	1-Jan-25	Notes
Community Park	\$ 1,971.00	\$ 2,008.00	Increased
Neighborhood Park	\$ 1,971.00	\$ 2,008.00	Increased
Crossing Fee	\$ 700.00	\$ -	Consolidated Into New Transportation Fee (Below)
Transportation & Multimodal	\$ 2,400.00	\$ 3,542.00	Increased
General Services Fee	\$ -	\$ 1,067.00	Implemented in 2025
Storm Drainage	\$ 2,310.00	\$ 4,580.00	Fee did not increase, but redefined duplex rate
Water PIF (First Unit)	\$ 17,919.00	\$ 17,919.00	Unchanged
Water PIF (Addl. Unit)	\$ 10,751.00	\$ -	All Units Now Charged Flat Rate (Above)
Wastewater Connection Fee (First Unit)	\$ 837.00	\$ 837.00	Unchanged
Wastewater Connection Fee (Addl. Unit)	\$ 543.00	\$ -	All Units Now Charged Flat Rate Per Tap (Above)
Water Meter	\$ 324.16	\$ 324.16	Unchanged



# History of Most Recent Development Impact Fee Change

- The City hired Economic and Planning Systems in Q4 of 2022 to conduct a development impact analysis.
- The analysis was first presented to City Council in March of 2023, and again in April of 2024.
- Complete analysis was presented to City Council on July 23, 2024.
- Fee Resolution 2024-83 approved by City Council on October 15, 2024.
- In relation to the project, a potential for a development impact fee increase became public knowledge 3 months after the DHI Telluride project began.



# Applicant's Reasoning to Amend the DHI Telluride Agreement and Staff's Responses



# Developer's Obligation to Construct Telluride Street

*“The requirement to construct these improvements was made by City staff during our Subdivision Plan process **without any justification from City code**. We were informed by the former Assistant Director of Community Development that City staff would not support our project without DR Horton Multifamily agreeing to these public improvements.”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”, November 26, 2024*

## Applicable Code Sections:

- Section 3.04(A)(2) *Required Improvements*
- Section 3.04(D) *Reimbursement Agreements*



# Developer's Obligation to Construct Telluride Street (cont'd)

## Section 3.04(A)(2):

*“Prevent the location or design of a subdivision from placing an undue burden on public utility systems and community facilities serving other areas.”*









## Construction of Telluride Street (cont'd)

### Section 3.04(D):

*“Whenever any portions of the required public improvements are part of a planned future facility for the City, serving an area larger than the subdivision and its impact, the City may require and the applicant may enter into an upsizing agreement.”*

- Due to resident concerns, past Council direction on complete streets, and surrounding land uses, staff required the construction of the north portion of Telluride Street.
- Traffic impact study did not recommend the construction of the north portion of Telluride Street.
- Pursuant to the above code section, staff and applicant agreed to negotiate a reimbursement agreement for the north portion of Telluride Street.



# Fee Increases Relative to DHI Telluride Project

*“While working through the City’s extensive entitlement process over the past three and a half years, we (D.R. Horton) have already incurred an increase of roughly **\$5,600,000** in impact fees from the start of the project.”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”, November 26, 2024*

## Background Information:

- Subdivision Plan application submitted November of 2021 (“start of the project”).
- Since November 2021, there has been several fee resolutions that updated application fees, development impact fees, etc.
- A project involving various various land use entitlements and agreement negotiations can take considerable time to complete.
- A developer or homebuilder should not expect to pay development impact fees earlier than the issuance of building permits, as is standard language in municipal code and development agreements.
- The addition of affordable units within the project would allow the Applicant to pursue a potential development impact fee reduction. Applicant has elected **NOT** to provide affordable units within the project.



# Increase in Development Impact Fees

*“..the proposed fees in the City’s 2025 budget would add an additional **\$693,929** that would push the projects already strained budget over the edge.”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”, November 26, 2024*

## Background Information:

- Development impact fees were increased via Resolution No. 2024-83 and became effective January 1, 2025.
- Ordinance 2454 reclassified certain residential land uses.



# Increase in Development Impact Fees (cont'd)

Development Impact Fees	1-Apr-24	1-Jan-25	Notes
Community Park	\$ 1,971.00	\$ 2,008.00	Increased
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Fees Effective April 1, 2024  
**GRAND TOTAL = \$3,395,404.09**

Fees Effective January 1, 2025  
**GRAND TOTAL = \$4,496,612.21**

**DIFFERENCE = \$1,101,208.12**

*\*Metro Water Recovery fees have been excluded from the above calculations.*



## Increase in Development Impact Fees (cont'd)

- Developer's responsibility to keep up to date with code changes, application and fee changes, etc.



# Reclassification of Stormwater Drainage Impact Fee

*“\$317,800 of this increase is attributed to the revision language to the Stormwater Drainage Impact Fee that now classifies this duplex product, which consists of 26% one-bedroom units and 39% two-bedroom units, in the same category as single family detached houses that are typically much larger, consisting of three and four bedrooms.”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”, November 26, 2024*

## Background Information:

- Under most recent fee resolution, duplexes are considered single-family and pay a single-family impact fee rate of \$4,580 per unit.
- Stormwater Drainage Impact Fee did not increase, but duplexes were redefined into a single-family definition.



## Reclassification of Stormwater Drainage Impact Fee (cont'd)

- Under prior fee resolution, duplexes were considered multi-family and paid an impact fee rate of \$2,310 per unit, the same as a unit in an apartment complex.
- Duplexes and other attached residential products have a substantially higher stormwater impact than that of apartment units.
- Stormwater impact of a duplex is similar to that of a traditional single-family detached residential product.





# Cost of Water Dedication

*“In June 2024, we signed our development agreement and dedicated \$3,428,600 worth of (water) shares to the City in association with the development.”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”,  
November 26, 2024*

## Background Information:

- Water dedication is required with all new developments that do not have a previous agreement to pay fee in lieu of water dedication.
- Staff is not involved with the sale of water shares from a water provider to a developer or home builder.



# Fee Increase in Relation to Construction Permits

*“...we committed to a budget and allocated significant capital towards this project, **only to recently find out about the proposed 2025 fee increases.**”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”,  
November 26, 2024*



## Fee Increase in Relation to Construction Permits (cont'd)

- Applicant received permit to begin the grading of the site in August of 2024.
- Justification letter states they were informed of the fee increases around the same time.
- The fee increase became public knowledge in March of 2023, approximately 18 months prior to the Applicant beginning construction of the site.
- It is a developer's / homebuilder's responsibility to stay up to date with respect to a municipalities changes in code requirements, application processes and costs, changes in impact fees, etc.



# Executed Development Agreement Language and Payment of Fees

*“Upon this discovery we immediately contacted the Community Development and Building Departments to pursue any options to lock in the current rates. **Unfortunately, we were informed that the fees can only be paid at the time building permits are issued.**”*

*Nick Graham, Brian Bratcher “DHI Telluride – 279 Telluride Street – Impact Fee Determination”,  
November 26, 2024*

## Background Information:

- Statement builds off the prior statement of the applicant only recently finding out about the fee increase and reclassification in August of 2024.
- Statement insinuates that the red-bolded language was first communicated to the applicant after requesting to lock in fees effective April 1, 2024.



## Executed Development Agreement Language and Payment of Fees (cont'd)

- Applicant executed the development agreement in June of 2024.
- Section 2 – *General Conditions, 2.2 Development Impact Fees and Other Fees*
  - *“Developer shall pay all fees related to development of the property described in the Final Plat(s) at the time of issuance of a building permit for any or all portions of the Development. The amount of the fees shall be the amount in effect at the time of construction permits are issued. Any amendment to the kind of fees or the amounts of said fees enacted by the City after the date of this Agreement are incorporated into this Agreement as if originally set forth herein.”*
- Applicant was actively negotiating the development agreement while the potential for a fee increase was being publicly discussed.
- Pursuant to the language, the Applicant agreed to pay the development impact fees, even if they were to increase and/or be reclassified after the date of the development agreement.



# Current Status of DHI Telluride Project, Staff's Conclusion and Potential Consequences of Approving the Amendment



# Current Status of DHI Telluride Project

- Permit to construct public improvements has been in process for five (5) months.
- Applicant has neglected to complete the required steps in order to obtain this permit and begin construction of the public improvements, including the remainder of Telluride Street.
- Applicant has not mobilized the property or surrounding right-of-way for construction of the public improvements.
- Plans were submitted on December 30, 2024 to change the parking layout and some architectural details for the duplex units.
- If said plans are approved, changes will need to be made to multiple permits.



# Staff's Conclusions

- Staff believes the Applicant has neglected their responsibility to stay up to date on changes in a municipalities development impact fees.
- Applicant had ample time to negotiate the terms of the development agreement.
- Applicant had never stated a concern that the construction of the remainder of Telluride Street would cause a delay in the permitting of residential units. As such, Staff assumes the Applicant is only making this argument due to the increase and reclassification of certain development impact fees.
- Since plans were recently submitted to revise the parking layout and architecture, it is fair to assume that the Applicant is not ready to be issued residential building permits.
- The Applicant was informed by Staff that they could make this project affordable and potentially receive a reduction in fees; however, the applicant chose not to pursue this option.
- Per all information presented, staff finds no merit in the Applicant's arguments and statements.



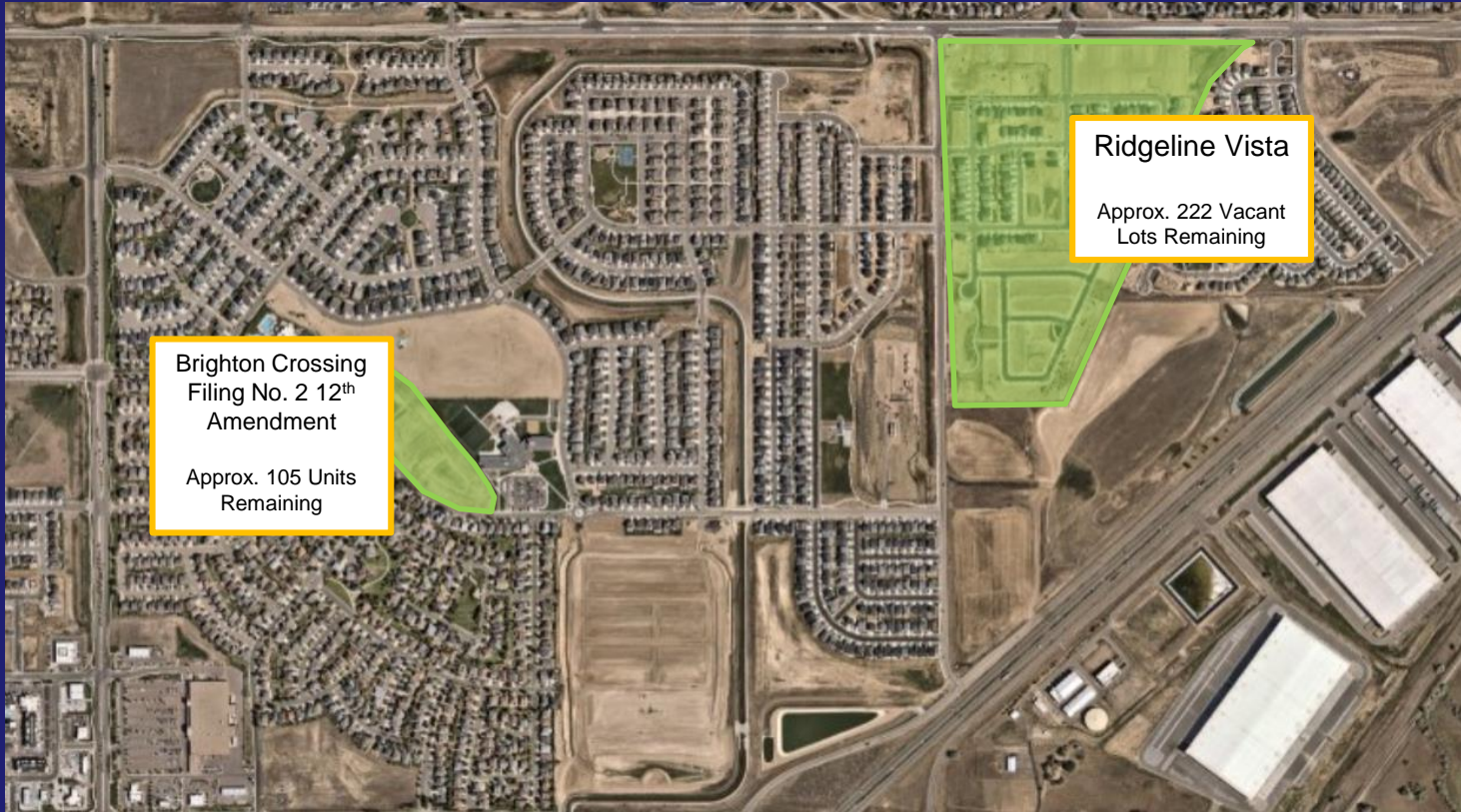


# Consequences of Approving the Amendment

- City agreed to reimburse the Applicant for the construction of the remainder of Telluride Street.
- Reimbursement agreement details a maximum reimbursement of \$903,357.95, but does not detail where the funds will come from.
- Under the prior 2024 Fee Resolution development impact fees, the project would generate \$238,000 in traffic impact fees.
- Under the 2025 Fee Resolution, the project would generate \$495,880 in transportation impact fees.
- Collection of the transportation and multimodal impact fee imposed by the 2025 Fee Resolution would reduce the City's financial impact of the reimbursement.
- Essentially, allowing the Developer to pay fees that are outdated, results in a larger gap between the amount of fees that are collected and the future costs for design, labor, and materials of future capital improvement projects. That additional cost difference will have to be borne elsewhere and would likely result in the City's taxpayers making up the difference; this is against the "development pays its own way" policy.



# Consequences of Approving the Amendment

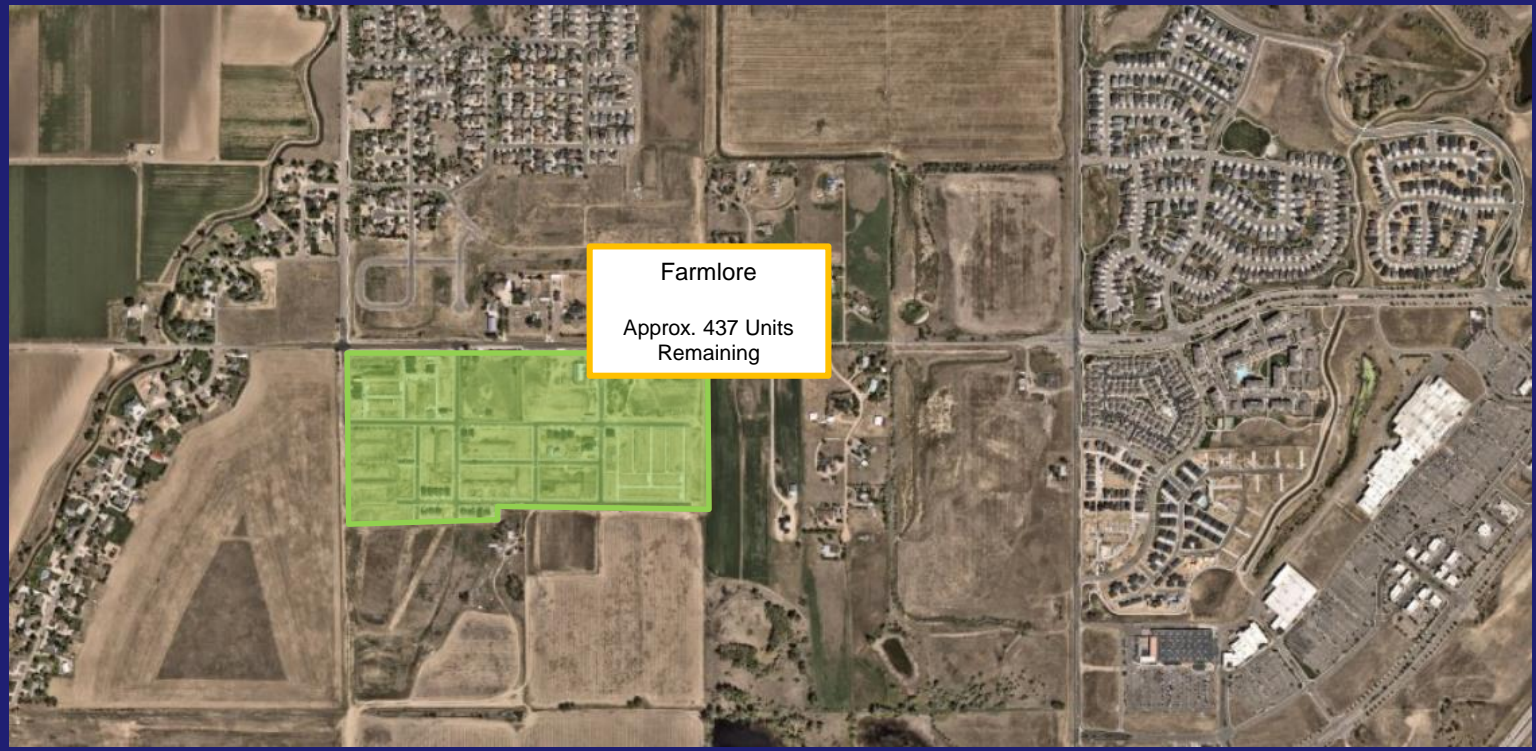


Brighton Crossing  
Filing No. 2 12<sup>th</sup>  
Amendment  
  
Approx. 105 Units  
Remaining

Ridgeline Vista  
  
Approx. 222 Vacant  
Lots Remaining



# Consequences of Approving the Amendment





# Summary of Findings

- ✓ The Development Review Committee has reviewed the Amendment and recommends denial.
- ✓ It is of Staff's opinion that approving the Amendment is not in the best interest of the City.

# City Staff Recommendation

- ✓ Staff recommends denial of the DHI Telluride Development Agreement Amendment.
- ✓ If City Council is to approve the Amendment, Staff recommends a provision be added that mandates the Applicant pay the general services impact fee.



# Options for City Council

- Approve the Amendment as presented via resolution;
- Approve the Amendment with conditions;
- Not approve the Amendment; or
- Provide further direction to staff.