



## Legislation Text

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Department of Community Development

Reference: Bromley Farms PUD Vested Property Rights Extension

**To:** Mayor Kenneth J. Kreutzer and Members of City Council

**Through:** Philip A. Rodriguez, City Manager

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**Date Prepared:** August 27, 2018

### **PURPOSE**

As outlined in Article 17-56 of the City of Brighton *Land Use and Development Code*, a request for a site specific development plan vested property right must be reviewed by the City Council at a public hearing and approved by Resolution.

The applicant, Jack Hoagland of Privateer Bromley is requesting approval of an extension of vested property rights for the Bromley Farms Planned Unit Development (PUD) for three (3) years. The PUD plan covers an approximately 135.14-acre property, which includes a mix of residential densities across six separate planning areas (the "Property.") The PUD plan for the Bromley Farms property also contains additional information and graphics pertaining to landscaping, lot development standards, drainage, utilities, and neighborhood features. A copy of the approved PUD has been attached for your reference.

An extension of vested property rights keeps the current zoning in place for a guaranteed amount of time. Zoning is the second step in the overall development process for the Property. This step is after annexation and before platting and building permitting.

*Annexation > Zoning > Platting > Building Permits*

### **STRATEGIC FOCUS AREA**

Recognizable and Well-Planned Community

### **BACKGROUND**

The Property was part of the Hishinuma Annexation in 2001, and upon entry to City Limits, it was originally zoned as part of the Hishinuma Farms PUD. The Bromley Farms PUD amended the zoning of the Property and was approved by the City Council via Ordinance 2119 and vested via Resolution 2011-119 on November 15, 2011. The vesting for the Bromley Farms PUD was approved for a period of six (6) years. This period is longer than the typical three (3) year period and was granted due to the uncertain economic climate. These rights were set to expire on December 6, 2016 and the owners requested a two-year extension for the vesting to expire on December 6, 2018. That request was approved by the City Council via Resolution 2017-19 with three conditions. Those being:

1. That all ensuing development of the Property subject to the Bromley Farms PUD shall meet all

- applicable City standards in effect at the time of such development, including, without limitations, those related to transportation, drainage, and utilities,
2. That no further extension of the vested property rights for the Bromley Farms PUD will be accepted or considered by the City unless and until a final plat for the Property is finalized on or before December 6, 2018 which conforms to the Bromley Farms PUD in its entirety, and
  3. That Sheets 8, 12, 13, and 14 of the PUD are no longer valid and, as such, shall not be considered applicable or satisfactory as to any development of the Property subject to the Bromley Farms PUD.

To date, the conditions have not been strictly met. With these rights set to expire on December 6, 2018, the Applicant has requested a three-year extension to the vesting with a new expiration date of December 6, 2021.

The property is presently under the ownership of the Thomas L. Hartley Family (the "Owners"). Mr. Hartley was part of the 2016 extension, but has since passed away. The Applicant was not part of the 2016 extension and his team's plans to purchase the Property and to plat were delayed due to Mr. Hartley's death.

Currently, the Property is in use for agricultural production and the PUD calls for future development to take place as mixed-use residential with varying degrees of densities.

#### Surrounding Land Use(s):

Direction	Land Use(s)	Zoning	Annexation Status
North	Single Family Residential	R-1	City
South	Single Family Residential	Indigo Trails PUD	City
East	Agricultural	Case Farms PUD	City
	Recreation	Hish. Farms PUD Amd. No. 1	City
	Agri-tourism	Hish. Farms PUD Amd. No. 2	City
West	Agricultural	Adams County A-1	County

#### CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

The state legislature established vested property rights in order to "ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning." C.R.S. § 24-68-101(1).

#### Comprehensive Plan:

The Comprehensive Plan shows the Property split amongst the designations of High Density Residential, Low Density Residential, and Parks & Open Space. These designations align with the uses proposed in each of the planning areas of the PUD. The differing residential densities align with their respective designation's purpose and character as the higher density uses are along Bromley Lane, a major part of the City's transportation network, and the lower densities uses are buffered from major roadways.

#### Land Use and Development Code:

According to the *Land Use and Development Code*, Article 17-56, Vested Property Rights, a Planned Unit Development (PUD) plan may be considered as a site specific development plan. The applicant is requesting an extension of vested property rights for a PUD that has already been approved. A vested property right means "[t]he right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan and shall be deemed established upon final approval of the application for site specific development plan." *Brighton Municipal Code*, Sec. 17-56-20.

If the requested extension is granted, the Bromley Farms property owner is ensured that any future rezoning or land use action by the City will not adversely affect its development or use of the property for the vesting period. It should be noted that there are four exceptions to this rule. Those exceptions are as follows:

1. If the property owner consents to a rezoning or land use action.
2. If a natural or manmade hazard poses a serious threat to the public health, safety and welfare.
3. If the city compensates the landowner for all costs, expenses and liabilities associated with the rezoning or land use action.
4. If the City wishes, it may subject the property to ordinances and regulations, which are general in nature and are applicable to all property subject to land use regulation by the City (e.g., building, fire, plumbing, electrical and housing codes).

### **STAFF ANALYSIS**

As noted previously, the approved PUD is in compliance with the Comprehensive Plan.

When reviewing the applicant's request, staff finds it appropriate to consider changes that effect the PUD as it was granted a longer initial vesting period of six (6) years due to an uncertain economic climate. Staff was in support of extending the vesting for the requested period of two (2) years in 2016, but only under certain circumstances, which have not been strictly met. Significant progress has been made by the Applicant toward submitting a preliminary plat that conforms to the Bromley Farms PUD and by submitting a formal application for the formation of metropolitan districts for the Property. City staff has determined that this progress meets the intent of the second condition, being that the property is platted prior a further extension being granted. The intent was to get the development of the Property moving forward according to the PUD as re-vested. The applicant team is in the process of preparing preliminary and final plats with civil drawings, but first they are moving forward with the request to form metropolitan districts for the Property. These are being formed in order to move closer to having a plat submitted that they will be able to develop under as their major infrastructure will be laid out and an extended PUD vesting period will provide a certain level of assurance to the development team.

Staff is requesting conditions be again placed on the current request for another three (3) years of vesting.

The initial conditions were recommended as the City had adopted a new Transportation Master Plan that included street sections that differed from those shown in the PUD, new drainage laws were passed by the State of Colorado that rendered the PUD's plan out of compliance, and a utility plan that was no longer valid. Sheets 8, 12, 13, and 14 of the PUD are labeled as "typical" and "conceptual", but as these are no longer valid as they do not meet City standards, they shall not be used for future development. At this time the second condition, that the area be platted by the current expiration on December 6, 2018, has not been strictly met. Staff finds that the applicant has made significant progress towards submitting a preliminary plat that conforms to the Bromley Farms PUD and has submitted a formal application for the formation of metropolitan districts for the Property, therefore staff finds that the intent of this condition has been met. Additionally, the ill health and then passing away of the original property owner created lag time for the applicant. Staff is proposing to have this condition placed again on the vesting extension with the expiration date being on December 6, 2021. In addition, staff is planning to propose updates to the zoning code that may significantly alter PUDs and zone districts within the coming years, therefore staff is opposed to granting any further extension after the three (3) years without platting.

### **Development Review Committee (DRC) Review:**

The Development Review Committee (DRC) and referral agencies have reviewed the request and all comments have been resolved. A complete list of comments and the agencies who made them are available upon request.

### **PUBLIC NOTICE AND INQUIRY**

As set forth in Section 17-8-30(f) of the *Land Use and Development Code*, mailings were sent to all property owners within 300' of this proposal. These mailings were sent on August 29, 2018, and included a letter describing the proposal as well as the time and place for the public hearing. Also included with the letter was a map of the subject area. Along with the public mailings, two public hearing signs were posted on August 22, 2018 at the Property. Finally, a notice was published in the *Brighton Standard Blade* on August 29, 2018, to give notice to those who are not affected property owners or those who do not drive near this Property on a consistent basis. As of the date of this staff report, no formal comments have been received by staff. Please see all public notice attachments for further detail.

### **PLANNING COMMISSION RECOMMENDATION**

Section 17-56-25 of the *Land Use and Development Code*, "Application Procedure," requires that a Vested Property Rights application be submitted to the Planning Commission for evaluation. As the Planning Commission review of an application for vested property rights is not a public hearing according to the *Land Use and Development Code*, public

notices were not required by the Code, but were prepared and sent as if they were required for that meeting.

The Planning Commission heard the request on August 14, 2018 and recommended unanimous approval (see the attached Resolution #18-09).

### **SUMMARY OF FINDINGS AND STAFF RECOMMENDATION**

Staff finds that the application for an extension of vested property rights is in general conformance with the intentions specified in Article 17-56 within the *Land Use and Development Code*. Staff supports the request to extend the vesting for a period of three (3) years, to expire on December 6, 2021, with the following three (3) conditions:

1. That all ensuing development of the Property subject to the Bromley Farms PUD shall meet all applicable City standards in effect at the time of such development, including, without limitations, those related to transportation, drainage, and utilities.
2. That no further extension of the vested property rights for the Bromley Farms PUD will be accepted or considered by the City unless and until a final plat for the Property is finalized on or before December 6, 2021, which conforms to the Bromley Farms PUD in its entirety.
3. That Sheets 8, 12, 13, and 14 of the PUD are no longer valid and, as such, shall not be considered applicable or satisfactory as to any development of the Property subject to the Bromley Farms PUD.

A draft resolution has been provided to the Council should it decide to proceed with the application as presented.

### **OPTIONS FOR COUNCIL CONSIDERATION**

The City Council has four options before it, to:

1. Approve the Resolution as drafted with three conditions;
2. Approve the Resolution with altered or amended language, with or without conditions;
3. Deny the request with specific findings to justify said denial; or
4. Continue the request to a later specified date.

### **ATTACHMENTS**

- Draft City Council Resolution
- Copy of the Planning Commission Recommendation, Resolution #18-09
- Copy of City Council Resolution 2011-119
- Copy of City Council Ordinance 2119
- Copy of City Council Resolution 2017-19
- Bromley Farms PUD
- Aerial Map
- Notice Mailed to Property Owners Within 300'
- Addresses of Property Owners Mailed
- Radius Map of Notice Mailing
- Newspaper Notice
- Newspaper Proof of Publication
- Affidavit of Applicant Sign Posting
- Draft City Staff PowerPoint